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

Case No. EOJ/01/2014

M/s Cattle Feed Plant …….. Appellant(s)

Versus

Jharkhand State Electricity Board & Others …….. Respondent(s)

Present:

Shri Ramesh Chandra Prasad	:	Electricity Ombudsman
Advocate for the Petitioner	:	Sri. Sachin Kumar
	:	Sri. Binod Kumar
	:	Sri. Pawan Kumar
Counsel for the Respondent	:	Sri. Rahul Kumar
	:	Sri. Prabhat Singh

ORDER

(Order passed on this 25th day of November,2014)

The Appellant filed the instant petition/representation before the Electricity Ombudsman,Jharkhand against the Order dated 07.3.2013 in Case No.10/2012 passed by the Hon'ble Vidyut Upbhokta Shikayat Niwaran Forum,Ranchi (herein after referred to as VUSNF in short) which was registered as Case No. EOJ/01/14 on 29.4.2014.

1. Brief of the Case

1.1) The instant petition/appeal has been filed by the Appellant through its Chief Executive on behalf of the petitioner Company for redressal of grievances relating to condonation of Delayed Payment Surcharges (DPS) mentioned in the energy bill for the month of April,

2012 after having made representation to the Authority concerned the Electrical Superintending Engineer, Electrical Supply Circle, Ranchi vide letter No.CFP:585 dated23.4.2012 for the said relief. The petitioner Company did not get any relief from officers of Jharkhand State Electricity Board(herein after referred to as JSEB/Board in short) .The appellant preferred writ before the Hon'ble High Court, Jharkhand giving rise to WPC No.2080 /2013,which was disposed of giving liberty to the appellant to move to the appropriate Forum. Accordingly, the petitioner approached the VUSNF at Ranchi which after due diligence passed the following order:

"**A plain reading of Clause 6(a) clearly indicates that the direction contained therein regarding the period within which a claim under Clause - 13 of the HT agreement is to be decided is directory and suggestive and not mandatory in form. Accordingly, we are of the considered opinion that the length of the proceeding to be conducted by the GM cum CE under Clause-13 can very well go beyond four (4) months. However, we feel at the same time that a period of 17 years is definitely to be designated as inordinate delay which should not have taken place by the GM cum CE in deciding the claims of the petitioner, yet we are not in a position to uphold the contention of the petitioner that only four (4) month's DPS is chargeable. Because the above direction contained in Clause 6(a) of the aforesaid notification is directory and suggestive, and not mandatory. Accordingly, the present application of the petitioner is here by rejected "**

Aggrieved by the aforesaid Order of the learned VUSNF, Ranchi the Appellant preferred this appeal before the Electricity Ombudsman under the provisions of relevant Regulation for quashing the Order passed by the learned VUSNF, Ranchi in Case No.10/2013 and order dated 15.02.2012 passed by the General Manager-cum-

Chief Engineer, Ranchi (herein after referred to as GM cum CE in short) as well as for quashing the energy bill for the month of April, 2012 to the extent of D.P.S. charges and for issuance of appropriate direction/directions in such circumstances in the instant case.

2) **Issues involved in this case:**

Whether the petitioner Company is liable to pay D.P.S. on the energy charges revised after settlement/decision of all the claims preferred under Clause-13 of the HT agreement to the extent of four (4) months or for the entire period during which the proceedings of claims under Clause-13 lasted?

3) Submissions of the Appellant

3.1) The learned counsel for the appellant submitted that four(4) claims under Clause-13 of the HT agreement were preferred for the years 1995-96,1996-97,1997-98 and for the year 1998-99.The impugned decision of the GM cum CE, Ranchi bearing letter No. 452 dated 15.02.2012 disposed of all the four said claims by a common decision dated 15.02.2012 which speaks itself that the claims of the petitioner were decided after an inordinate delay of about 17 years.

3.2) Further, the learned counsel appearing for the petitioner contended on the strength of Clause-6(a) of the Notification of the BSEB bearing No. 810 dated 29.07.1994 and submitted that the petitioner is liable to pay D.P.S. on the revised balance amount as per decision of the GM cum CE only to the extent of four(4) months and not for the entire period of 17 years during which the impugned proceeding relating to the aforesaid claims lasted.

3.3) The learned counsel further submitted that at the time of establishment of the unit the appellant had taken the electrical

connection from the then Bihar State Electricity Board for a contract demand of 200 KVA under appropriate Tariff Schedule which was applicable to the consumers at that point of time and for the purpose of power supply, the appellant had entered into an agreement with the then Bihar State Electricity Board wherein Clause 13 of the High Tension Agreement provided for grant of remission on account of KVA charges, maximum demand as also the unit charges for the period the consumer was prevented from utilizing the electricity for whatever reason, for the reasons not attributable to the default of the consumer and for which the consumer had to lodge its claim in proper format to be lodged after the Annual Minimum Guarantee Charges bill is served upon the consumer.

3.4) The learned counsel further submitted that on the basis of Contract Demand, Average Unit Consumption is fixed and if the units to be consumed by a consumer could not be consumed in a given year, the consumer had to pay the Annual Minimum Guarantee Charges, at the end of the financial year after necessary adjustment are carried out and to avail the benefit of remission under Clause 13 of the HT Agreement, an option to the consumer was given to lodge its claim after payment of 50% of the demand raised on account of Annual Minimum Guarantee Charges in order to avoid disconnection. Moreover, in terms of Clauses 4 and 6 of the Notification No.810 dated 29.07.1994 issued by the then Bihar State Electricity Board, it was the duty of the Respondents itself bestowed upon the General Manager-cum-Chief Engineer to decide the claim, within a period of 4 months from the date of lodging of the claim. However, if for some reason, the proceedings are delayed at the behest of the consumer in

that event the Delayed Payment Surcharge was to be levied. It was an extra ordinary jurisdiction provided to the General Manager-cum-Chief Engineer to decide the claim within 4 months, even in the absence of consumer if the General Manager-cum- Chief Engineer is of the view that the consumer has been adopting dilatory tactics and is not participating in the proceeding for unreasonable explanations.

3.5) The learned counsel contended that in the instant case, for the period under reference i.e. 1995-1996 to 1998-1999 the Annual Minimum Guarantee Charges bills were raised and in terms of the Notification No. 810 dated 24.09.1994, the applicant made 50% payment of the impugned demand and lodged its claim within time but the claim application of the appellant was kept pending for years together and the Respondents woke up from deep slumber only in 2011. Since April, 2011 various dates were fixed viz. 23.04.2011, 05.05.2011, 14.05.2011, 20.05.2011, 10.06.2011, 05.07.2011, 16.07.2011 and lastly on 30.01.2012, but on some pretext or the other, the matter could not be concluded by the then General Manager-cum-Chief Engineer for either want of interruption report or for non-presence of Officers of the Board or for non-availability of the Authority, himself, owing to some other urgent work. At last, the hearing was concluded and the orders were reserved and on 21.02.2012 the appellant was served with an order passed by the General Manager-cum-Chief Engineer, Ranchi Electricity Supply Area under the covering letter dated 15.02.2012 wherein the relief was granted to the appellant in terms of unit charges, although the said relief has not been granted in terms of settled proposition of law by the Hon'ble High Court of Jharkhand and duly upheld by the Hon'ble

Supreme Court, but the appellant is not claiming relief in terms of bills raised on account of interruption of duration of 30 minutes and above. However, in a most arbitrary manner and being monopolistic Electricity Supplier within the area of Ranchi, the General Manager-cum-Chief Engineer in a most cryptic manner hold that the consumer is not entitled for proportionate remission in maximum Demand Charges and hence relief in maximum Demand is not admissible

3.6) The learned counsel further submitted that apart from aforesaid the appellant cannot be held responsible for delay in disposal of the claim, since mandatorily claims were to be decided within a period of 4 months which cannot be attributed to any act of the appellant .The appellant has even made requests before the authorities of the Board to look into the matter and pass appropriate order for waiver of Delayed Payment Surcharge vide its representations dated 23.04.2012, 24.04.2012, 03.05.2012 but all in vain. On the contrary on 15.05.2012, the appellant was served with a bill for the month of April, 2012, along with a notice under Section 56 of the Electricity Act, 2003 dated 09.05.2012 for payment of the disputed amount which is inclusive of energy charges for March, 2012, revised AMG charges and the Delayed Payment Surcharge of Rs. 11,56,62.Since the appellant was under threat of disconnection and having no efficacious remedy approached the Hon'ble High Court of Jharkhand, at Ranchi in WPC No. 3044/2012 as the Summer Vacation was going to begin from 19.05.2012 and the VUSNF was not likely to function for the period of Summer Vacation and as such the appellant was left with no other alternative remedy, but to pursue its remedy before the Hon'ble High Court of Jharkhand which was taken up by the Hon'ble High

Court and was disposed of vide Judgment/order dated 29.05.2012 granting liberty to the appellant to move appropriate Forum with an interim stay by 30.05.2012 and direction to deposit Rs. 6,56,770/- by 30.05.2012.In compliance with the direction of the Hon'ble High Court, the appellant deposited Rs. 6,56,770/- by way of account payee cheque dated 30.05.2012 drawn in favour of JSEB and receipt No. 916303 dated 30.05.2012 was issued in favour of the appellant. As per direction of the Hon'ble High Court, the appellant filed a petition before the VUSNF on 30.05.2012, which was registered as case No. 10/2012. The Learned VUSNF was pleased to admit the case and grant interim relief to the appellant subject to deposit of Rs. 5,00,000/- in two installments and in compliance of the order dated 01.06.2012, the appellant deposited a sum of 5,00,000/- against the claim of Rs. 11,56,297/- on account of delay payment the matter was finally heard by the VUSNF and the case No. 10/2012 filed by the appellant under the direction of the Hon'ble High Court was disposed of without granting any relief to the appellant rather a direction was given to the appellant to clear the outstanding energy dues including delay payment surcharge within a period of one month. The copy of the order dated 7.3.2013 was sent to the appellant vide letter dated 14.03.2013, which was received by the appellant only on 18.03.2013.

3.7) The learned counsel further submitted that the Board has divested its own authority to decide the claim of the appellant in terms of clause 13 of the HT agreement. The General Manager-cum-Chief Engineer was pleased to impose Delayed Payment Surcharge on the amount, which is payable by the appellant, only after revision and correction in the AMG Bill. The appellant cannot be held responsible

for the delay payment surcharge, which is solely attributable to the respondent Electricity Board. After the claims were filed by the appellant for the period commencing from 1995-1996 to 1998-1999, in terms of Clause 13 of the High Tension Agreement the same was kept pending by the Board for about 17 years and now after 17 years the claim of the appellant has been decided and for all these period the Respondents are seeking to levy Delayed Payment Surcharge on the amount which after revision of bills is to be paid by the appellant. It is a well settled proposition of law that once the bills are liable for revision, then in that event, no Delayed Payment Surcharge can be levied on the same.

3.8) The learned counsel contended that the learned VUSNF also rejected the claim of the appellant though came to the finding of inordinate delay in deciding the claim of the appellant, still no relief has been granted to the appellant. The learned VUSNF has taken a view that clause 13 of the HT agreement is directory and suggestive and not mandatory in form. The learned VUSNF has failed to appreciate that the appellant acted in terms of the HT agreement and lodged its claim after depositing the required amount as per the agreement and the remaining amount of energy charges were required to be paid by the appellant only after revision of the bills. The bills have been revised after 17 years and the appellant has already deposited the entire amount pursuant to the revised bill except the delay payment surcharge. The respondents want to take advantage of their own wrong and latches in deciding the claim of the consumer, which is against the principles of natural justice .The appellant has been compelled to deposit the demand of DPS and therefore, the

appellant is entitled for the refund of the said adjusted amount against the future bills. Therefore, the order dated 15.02.2012 as well as the order dated 07.03.2013 are illegal, arbitrary and bad in law and fit to be quashed.

Hence, the appellant filed the instant appeal in pursuance of the Hon'ble High Court of Jharkhand order passed in writ application being W.P. (C) No. 2080 of 2013 giving direction to the appellant to approach the appropriate Forum for redressal of the grievances.

4) Submissions of the Respondent:

4.1) The learned counsel appearing for the respondents submitted that although the GM cum CE happens to be an officer on the pay rolls of the JSEB, yet he discharges quasi judicial function while deciding claims under Clause-13 of the HT agreement, and accordingly, it was contended that such quasi judicial proceedings cannot be bound by absolute terms. The order dated 15.02.2012 of the General Manager-cum-Chief Engineer, Electric Supply Area; Ranchi on AMG under clause 13 of HT agreement was as per law. Accordingly, the DPS has not been charged on the amount for which relief has been granted however, notice under section 56 of Electricity Act, 2003 was served as per rule due to non-payment of the dues amount and the AMG amount was kept under abeyance subject to the final decision under clause 13 of the HT agreement. The matter was decided by the General Manager-cum-Chief Engineer, Electric Supply Area, Ranchi by order dated 15.02.2012. The D.P.S. charged on balance payment amount of AMG is as per notification no. 810 dated 29.07.1994.

4.2) The learned counsel further contented that Clause 13 of the High Tension Agreement provided for grant of remission on account of

KVA charges, maximum demand as also the unit charges for the period the consumer was prevented from utilizing the electricity for whatever reason, for the reasons not attributable to the default of the consumer and for which the consumer had to lodge its claim in proper format to be lodged after the Annual Minimum Guarantee Charges bill is served upon the consumer.

4.3) The learned counsel further submitted that the concept of Annual Minimum Guarantee Charges is that on the basis of Contract Demand, Average Unit Consumption is fixed and if the units to be consumed by a consumer could not be consumed in a given year, the consumer had to pay the Annual Minimum Guarantee Charges, at the end of the financial year after necessary adjustment are carried out. To avail the benefit of remission under Clause 13 of the HT Agreement, an option to the consumer was given to lodge its claim after payment of 50% of the demand raised on account of Annual Minimum Guarantee Charges in order to avoid disconnection. The appellant is not entitled to any relief and is liable to make payment in terms of the impugned energy bill which has been raised as per the norms and regulation. The contention of the petitioner that only 4(four) month's Delayed Payment Surcharge is chargeable is not tenable because the above direction contained in Clause 6(a) of the Notification No.810 dated29.7.1994 is directory and suggestive and not mandatory. Hence, the present appeal is devoid of any merit and deserves to be dismissed.

5) Delay in Award

The delay in passing this award beyond the period specified in the (Guidelines for Establishment of Forum for Redressed of Grievances'

of the Consumers and Electricity Ombudsman Regulation,2011 was due to vacancy of the Electricity Ombudsman.

6) Findings of the issue:

The contract between the Appellant and the contesting Respondent governs the entire transaction between them and the contract of supply and purchase of power is in terms of the Agreement which provides for levy and collection of D.P.S.

In this respect it will be relevant to extract few of the clauses/stipulations agreed to between the parties and as contained in the Agreement.

Notification No.810 dated29.7.1994 issued by Bihar State Electricity Board, Patna,

Clause 4 (a):

"If the consumer deposits a sum representing 50% of the amount in the bill for shortfall in the charge within due date and informs that he intends to file claim for remission, then his electric line will not be disconnected for the dues relating to the bill, whereas interest/D.P.S. will be charged for the balance payable amount as settled under the clause".

Clause 6(a): "Claim made under clause 13 of the H.T. Agreement in respect of current year will be disposed of within a period of 4 months by the competent authority of the Board from the date of filing of claim."

Clause 13 of the H.T. Agreement:

" If at any time the consumer is prevented from receiving or using the electrical energy to be supplied under this agreement either in whole or in part due to strikes, riots, fire floods, explosion, act of

God or any other case reasonably beyond control or if the Board is prevented from supplying or unable to supply such electrical energy owing to any or all the causes mentioned above then the demand charge and guaranteed energy charge set out in the schedule shall be reduced in proportion to the ability of the consumer to take or the Board to supply such power and the decision of the Chief Engineer, Bihar State Electricity Board, in this respect, shall be final.

Note- The term Chief Engineer includes Additional Chief Engineer for the area concerned."

It is clear from the above stipulations agreed between the parties the Appellant has agreed to pay Delayed Payment Surcharge at the rate specified in the agreement and also various other stipulations including rate at which the charges are to be remitted. The bilateral agreement is a comprehensive one containing various stipulations.

In the instant case, during impugned period the power supply was not restricted on whole or part due to strike, riot, fire, flood, explosion, act of God or any other case reasonably beyond the control for continuous period of 24 hours and also the Board was not prevented from supplying or unable to supply such electrical energy owing to any or all the cases mentioned above to the consumer. Therefore, the Order dated 15.02.2012 under the signature of GM cum CE, Ranchi allowing relief against units 30 minutes and above without any relief in maximum Demand and also disallowing delay payment surcharge on the amount of relief granted as above is well within the ambit of clause 13 of the H.T. Agreement but devoid of essence of Clause 6(a) of Notification No. 810 dated 29.7.1994 where in the period within which a claim is to be decided by the competent authority of the

Board from date of filing of claim is four (4) months without any upper time limit. A plain reading of above Clause 6(a) clearly indicates that the direction contained therein regarding the period within which a claim under Clause 13 of the H.T. Agreement is to be decided is directory and not mandatory in form. The delay in deciding the issue is arising not on account of any act on the part of the Appellant but because of the latches on the part of authority concerned of the licensee Board though plain reading of Clause 6(a) clearly indicates that the direction regarding period within which a claim under Clause 13 of the H.T. Agreement is to be decided is directory and suggestive and not mandatory in form.

The instant Appeal arises out of the Order of Learned VUSNF, Ranchi passed on 07.3.2013 in Case No.10/2012 wherein the core issue was order of the competent authority, the GM cum CE, Ranchi Area Board under Clause 13 of the H.T. Agreement in the matter of claim petition, filed as back as in the year 1995-96 and now it is more than 17 years the decision has been taken by the competent authority designated as per Clause 13 of the H.T. Agreement. It has undoubtedly caused concern to my conscience that the competent authority under Clause 13 of the H.T. Agreement has taken 17 long years to decide the issue .The concerned authorities should adopt a mechanism to avoid such inordinate delays in such matters which can really be dealt with in an expeditious manner. In fact putting a step forward is a step towards the destination.

In course of pleading/discussion, the learned counsels of both the sides are unanimous on considering the route of the scheme

known as One Time Settlement(OTS) recently launched by the Respondents against finalizing pending bills.

Had timely efforts been made and due concern bestowed ,delay could have been avoided resulting into two fold gain for both the parties in terms of self interest of the Licensee whose balance amount of principal energy charges would not have been blocked for a longer period and for the consumer by not paying D.P.S. charges.

Conclusion:

I have carefully perused the record and have heard both parties at length in this matter.

In view of the aforesaid facts and circumstances of the instant Appeal, I am not inclined to interfere with the Order of the learned VUSNF, Ranchi in Case No.10/2012 passed on 07.3.2013 however, the Appellant is at liberty to adopt One Time Settlement (O.T.S.) route recently launched by the Licensee to resolve such issues as agreed upon by the learned counsel of both the parties.

ii) No order as to cost,

With the aforesaid direction the instant Appeal is disposed of.

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

Sd/-

Electricity Ombudsman.