

Territorial Jurisdiction: State of Jharkhand

**AUTHORITY OF THE ELECTRICITY OMBUDSMAN: JHARKHAND**

Present: Gopal Kumar Roy  
Electricity Ombudsman  
2<sup>nd</sup> Floor, Rajendra Jawan Bhawan  
Main Road, Ranchi- 834001.

Dated- Ranchi, the 30th day of September, 2024

**Appeal No. EOJ / 02 of 2020**

(Arising out of judgment passed in Case No.-02 of 2019 by the VUSNF,Chaibasa)

M/S Stan Commodities Pvt. Ltd.  
having its works at Plot No. 788, 5<sup>th</sup> Phase, Adityapur,  
Gamharia, through it's one of the Directors, Sarad Poddar,  
S/O Pawan Kumar Poddar, Resident of House No. 2,  
Road No.C.H. Area, North West, Sonari, Jamshedpur,  
P.O.& P.S.- Sonari, District- East Singhbhum -----Appellant

**Versus.**

1.Jharkhand Urja Vikas Nigam Ltd.  
Engineering Bhawan, HEC Township,  
P.O. & P.S. Dhurwa, District – Ranchi.

2.The Managing Director,  
Jharkhand Bijli Vitran Nigam Ltd.,

Engineering Bhawan, HEC Township,  
P.O. & P.S. Dhurwa, District- Ranchi.

3.The G.M - cum - Chief Engineer,  
Singhbhum Electric Supply Area, Bistupur,  
Jamshedpur, Jharkhand Bijli Vitran Nigam Ltd.  
P.O. & P.S. - Bistupur, District - East Singhbhum.

4.The Electrical Superintending Engineer,  
Electric Supply Circle, Jamshedpur,  
Jharkhand Bijli Vitran Nigam Ltd.,  
P.O.,P.S.: Adityapur, District – Seraikella- Kharsawan. ----- Respondent

#### Counsel/Representative

On behalf of Appellant: Mr. D. K. Pathak, Advocate

On behalf of Respondent: Mr. Mohan Kr. Dubey, Standing Counsel

#### Cases referred

On behalf of Appellant:

(i). M/S Gaya Roller Flour Mills Pvt. Ltd vs Bihar State Electricity Board

(ii). L.P.A. No. 305 of 2015 Hon'ble High Court of Jharkhand M/S Usha Martin Ltd. vs JUVNL & Ors

### **ORDER**

**1.** The appellant M/S Stan Commodities Pvt. Ltd. has preferred this appeal under Clause 14 of the JSERC (Guidelines for Establishment of Forum for Redressal of Grievances of the Consumers and Electricity Ombudsman) Regulation, 2011 being aggrieved with the Order of the learned VUSNF Chaibasa at Jamshedpur.

**2.** The appeal/representation was filed on 20.1.2020 and the same was admitted for hearing on 5.3.2020 by the then Electricity Ombudsman Mr. Prem Prakash Pandey.

**3.** For the first time, at the stage of final argument, it was detected on 25.1.2024 that in this case the mandatory provision of depositing 50% of the ordered amount as required under second proviso of Clause- 14 of the JSERC (Guidelines for Establishment of Forum for Redressal of Grievances of the Consumers, Electricity Ombudsman and Consumer Advocacy) Regulations, 2011 has not been complied with.

**4.** On 25.1.2024, on behalf of M/S Stan Commodities Pvt. Ltd, it was orally submitted that the provision of depositing 50% of the ordered amount is not applicable in this appeal. The appellant was directed vide order sheet dated 22.2.2024 to elucidate as to why it should not be required to deposit at least 50% of the billed amount in terms of the order of the learned VUSNF, Chaibasa at Jamshedpur. The appellant was again directed to take proper steps in this regard v.o.s. dated 4.4.2024.

**5.** On 25.4.2024, the appellant had taken a stand that the consumer had preferred a complaint before the Forum for quashing the supplementary bill amounting to Rs.83,65,221. The Electrical Superintending Engineer has waived three months supplementary bill and learned VUSNF has accepted that waiver, accordingly the ordered amount comes to 42 Lakh. And the appellant is ready to furnish Security of

50% of the ordered amount i.e. of 21 Lakh. The appellant is ready to furnish Security, in lieu of money deposit, as it is a tough task to get the amount returned back from the distribution licensee.

The relevant portion of order passed by the Electricity Ombudsman, Jharkhand on 25.4.2024 in this appeal reads as follows:

“ Mr. Mohan Kumar Dubey, the learned Standing Counsel for the respondents has vehemently submitted that the ordered amount is not only an amount of Rupees 84 Lakh but is an amount of Rupees 7 Crore 66 Lakh.

I have gone through the reliefs sought for by the consumer before the learned VUSNF- Chaibasa at Jamshedpur. The relief no. (b), as sought for is for quashing the demand notice dated 08.10.2018 whereby the respondents have arbitrarily raised a demand of Rs. 2,19,14,031 as arrear plus DPS of Rs. 5,47,25,937 total amounting to Rs. 7,66,39,968. **(Rs. 7 Crore 66 Lakh 39 Thousand)**. The relief no. (c), as sought for is for quashing the Supplementary Bill dated 06.02.2007 for Rs. 83,65,221 **(Rs. 83 Lakh 65 Thousand)** for the period from April 2006 to September 2006.

The operative portion of order of the learned VUSNF Chaibasa at Jamshedpur reads as follows : -

i) The respondents shall in view of the order dated 16.07.2019 passed by ESE, ESC Jamshedpur and the discussions made hereinbefore in Para No. 7 of this judgement, revise the supplementary bill dated 06.02.2007 raised for the period from April 2006 to September 2006 by charging the energy charges for three months instead of six months.

ii) The respondents shall charge the DPS on the entire due amount except the waiver allowed by aforesaid revision of the supplementary bill dated 06.02.2007.

Mr. Pathak, the learned counsel on behalf of appellant, has submitted that there is a catena of decisions of our own Hon'ble High Court as well as of Hon'ble Apex Court that where there is an order for revision of electricity bill, the Delay Payment Surcharge (DPS) shall not be applicable. He has vehemently submitted that the learned VUSNF has committed an error in law and has wrongly passed an order to charge the DPS. It is submitted that the DPS Bill amount, in terms of the order of the learned VUSNF Chaibasa at Jamshedpur, may not be considered as the legally ordered amount.

Now a question arises as to whether a legal question on merit of the case shall override the mandatory provision of depositing fifty percent of ordered amount, as required under the Second Proviso of Clause-15 of The Jharkhand State Electricity Regulatory Commission (Guidelines for Establishment of Forum for Redressal of Grievances of the Consumers, Electricity Ombudsman and Consumer Advocacy) Regulations, 2020. Considering the contradictory ORAL SUBMISSIONS of both the parties, readiness of appellant to furnish security and legal provisions raised by the appellant, I feel expedient to direct the appellant M/S Stan Commodities Pvt. Ltd to make a WRITTEN APPLICATION with specific prayer before this Authority by serving a copy to the respondents. Needless to say that the respondents shall be at liberty to make para wise reply to the petition, if they so desire.

A detailed order shall be passed by this Authority on the written application of appellant by considering the provisions of Law and Regulations after hearing both the parties.”

Though the appellant M/S Stan Commodities Pvt. Ltd. was directed v.o.s. dated 25.4.2024 to make a written application with specific prayer but the appellant has preferred to file a written note of argument on 27.6.2024. On the other hand, the distribution licensee has filed a Supplementary Counter Affidavit and an objection petition on 16.5.2024 claiming provisional final bill amounting to Rs. 30 Crore (Approx) and the appellant is required to deposit 50 % of the ordered amount. The appellant has filed a reply of Supplementary Counter affidavit and also reply to the objection petition on 27.6.2024.

**6. Written Notes of argument, filed on 27.6.2024, on behalf of the appellant :**

{confining upon the matter of pre deposit to entertain the appeal (para - 1 to 6 and para 11 to 14)}

The relevant paras of written notes of argument are being reproduced here. The paragraphs which deal with the merit of the case, have not been focused.

1. Clause 15 of the JSERC Regulation castes a pre-condition for maintaining the appeal in the following manner:-

“ Appeal/Representation : Any consumer aggrieved by an order made by the Forum(s) may prefer an appeal/representation against such order to the Electricity Ombudsman within a period of thirty days from the date of the receipt of the order, in such form and manner as may be laid down in these Regulations. Provided further that the Electricity Ombudsman may entertain an appeal after the expiry of

the said period of thirty days if sufficient cause is shown for not filing the appeal within that period; but not exceeding a maximum period of 60 days from the date of receipt of the order. Provided, further that the Electricity Ombudsman shall entertain no appeal by any consumer, who is required to pay any amount in terms of an order of the Forum, unless the consumer has deposited in the prescribed manner, at least fifty percent of the amount or furnish such security in respect thereof as ordered by Ombudsman.”

2. It would be evident from the aforesaid provision that for maintaining the appeal the consumer is supposed to either deposit 50% of the dispute amount or furnish the securities in respect thereof as ordered by this learned court.

3. Since, the appellant has bonafide apprehension that if any amount is deposited to the respondents and the dispute is being adjudicated in the favour of appellant, then in that case the appellant will have to initiate litigation for realisation of the deposited amount.

4. That there is every chance that ultimately the dispute shall be decided in the favour of the appellant, as because the issue is well settled and this learned court has also decided the issue in the matter of Sukh Sagar Metals Pvt. Ltd. and many other cases in favour of the consumer.

5. In the aforesaid facts of the circumstances the appellant is ready and willing to furnish security of the pre deposit amount if any.

6. that the dispute amount mainly pertains to the demand of Rs.83,65,221/- raised by way of supplementary bill for the period from April 2006 to September 2006 on account of slow meter. Pertinently during the pendency of case before the learned forum the concerned ESE Jamshedpur vide its decision dated 16.07.2019 ordered to

revise the supplementary bill for the period of 3 months, which was initially charged for 6 months.

10. The issue of charging DPS while revising the bill has already been settled by the Hon'ble High Court in the case of M/S Gaya Roller Flour Mill Pvt. Ltd. VS BSEB where in the Hon'ble court has held and settled that no account on DPS can be fastened on the petitioner were to dispute the correctness of bill and the authority subsequently corrected the bill by making fresh calculation. The said judgement has been consistently followed on the issue of charging of DPS in case of revision of bill.

11. The issue of charging DPS after revision of bill also came up in the matter of M/S Sukhsagar metals Pvt. Ltd & M/S Johar Steel Pvt. Ltd. In both the matters the Ld forum held that when the bills are being revised there is no question of charging DPS. The order passed by Ld court was challenged by the respondents before this Ld court and while dismissing the appeal filed by the respondents, this Ld court held that no DPS can be levied when the bills are being revised.

12. It may not be out of place to mention here that almost same and similar disputes were there with respect to one another unit namely M.S Hariom Smelters Pvt. Ltd and the respondents have kept the DPS in abeyance while revising the bill in terms of the order passed by Ld forum.

13. The respondents have arbitrarily raised/assessed a huge amount by way of DPS which is not all payable in view of the law held and settled by the Hon'ble High Court as well this Ld court. Hence, in view of the apparent illegality the DPS is bound to be waived. Hence, under such circumstances the appellant may not be saddled with the liability to pre deposit 50% of the DPS.

14. There is one more aspect which needs consideration on the issue of the pre-deposit. In terms of the order passed by the Ld forum the respondents are



supposed to issue a revised bill. However, till date no bill has been raised, in absence of any bill the amount of pre-deposit can not be returned.

In view of the aforesaid facts this Ld court may decide the instant admitted matter on merit.

The other paragraph of this written argument deals with the merit of the case and I refrain from mentioning the same, at this stage. The relevant law points have been taken into account.

### **7. Supplementary Counter Affidavit of Respondents regarding pre-deposit :**

The appellant is a consumer of the respondent having consumer No.HJAP-156. The consumer requested to disconnect the electric line permanently vide its letter dated 27.09.2019, and as such Electrical Executive Engineer, MRT Division, Jamshedpur had disconnected the electric line of M/S Stan Commodities (P) Ltd and took the reading of the meter. Accordingly, the provisional final bill amounting to Rs. 30,01,27,262/- (Thirty Crore, One Lakh, Twenty Thousand, Two Hundred and Sixty-two Rupees) had been prepared in light of the meter reading taken by the MRT team and it was served to the consumer vide letter no.1262 dated 14.05.2020 after adjusting the security deposit amount and its interest accrued thereon but the consumer did not pay the said amount. For the ready reference the detailed statement of the provisional bill raised to the petitioner is being Submitted herein:-

SI No.	Particulars	Amount (In Rs.)
1.	Arrears as of 30.11.2019	27,34,23,870.00

2.	Provisional Assessment against theft of energy 28.08.2009 Vide W.P(C) No. 420 of 2009	94,15,540.00/-
3.	Amount Kept in abeyance (Rs.1,02,225/-)	1,02,225.00/-
4.	DPS on FIR amount 09/2009 to 11/2019	2,31,62,228.00/-
5.	DPS on amount Kept in abeyance (04/2007 to 11/2019)	3,10,764.00/-
6.	Security Deposit	50,19,357.00/-
7.	Revised Security interest after TDS i.e. 3,17,002/-	3,17,002.00/-
8.	Total (1+2+3+4+5+-6-7)	30,01,27,262/-

DPS (Delayed Payment Surcharge) has been accruing in the consumer's energy bill since March 2007 continuously due to non-payment or part payment of the bills which in turn accrued a huge amount as per applicable tariff during a long period of about 13 years. The provisional final bill amounting to Rs. 30,01,27,262/- (Thirty Crore One Lakh Twenty Seven Thousand Two Hundred and Sixty Two) A certificate case has also been filed against the consumer for recovery of said amount vide letter no. 1264 dated 15.05.2020 before the Certificate Officer, Karandih, Jamshedpur which is registered as Certificate Case no. 01/2020-21. The instant Certificate case No. 01/2020-21 is pending, and the last hearing was conducted on 30.12.2021. It has also been claimed before the Recovery Officer, Debt Recovery, Jharkhand vide letter no.1266 dated 15.05.2020. In view of the judgement made by the Hon'ble Apex Court and the rule 15 of the Jharkhand State Electricity Regulatory Commission (Guideline for Establishment of forum for redressal of grievance of consumers, electricity Ombudsman, and consumer Advocacy) Regulation,2020 the

Appellant is liable to pay the 50% of the ordered amount of the Forum, and failing which this appeal is liable to be dismissed.

### **8. Reply of Appellant on Supplementary Counter Affidavit :**

The supplementary counter affidavit filed by the respondent is full of misleading facts. The arbitrary action of the respondents can be simply understood from the bare facts that all the wrongly charged energy charges which were included in the bills since 2007 were ultimately revised by the respondents in the light of different orders passed by the competent courts including High Court, and served the bill of Rs.2,10,14,031 vide letter No. 3323 dated 08.10.2018. In the said demand they also included Rs.83,65,221. The said bills/demand was challenged by the appellant before Ld. Forum. The Ld. Forum in the impugned order has given specific direction to the respondents to issue revised bills. However, instead of issuing revised bills in terms of the order passed by the Ld. forum, the respondents have bounced back/taken u-turn and in their statement, have again reiterated the same wrongful accumulated energy bills which were shown prior to issuance of revised bill dated 08.10.2018. The respondents are in the habit of deliberately not to honour the direction of any competent court and act as per their whims. No documents in support of their claim and contention has been brought on record by the respondents. Hence, the counter affidavit/ objection filed by the respondents is devoid of any substance and fit to be rejected. The judgement referred by the respondents is not applicable in the facts and circumstances of the case. The respondents are claiming an onerous amount. It may be appreciated that the disputed principal amount is Rs.2.19 crores. And upon the said principal amount the respondents have illegally charged DPS and DPS over DPS accumulated to the

bill is under dispute and it is being revised then upon revision of bill no DPS can be charged. Pertinently even after several orders of competent court the respondents did not revise the bill and carried forward the disputed bill every month with DPS and the same has been ultimately revised by the respondents after several years. Under such circumstances the respondents can not be allowed to take benefits of their own wrong. The competent authorities of the Nigam have also followed the same principle that if the bill is being revised then the DPS included in the bill shall be waived the appellant craves leave to produce the order of the competent authority. The provisional final bill, though, has nothing to do with the instant dispute however it is humbly stated that the same shows malafide intention of the respondents especially in view of the fact that the wrongful amount which was revised much belatedly vide demand notice dated has again been claimed. After fighting long litigation before the Ld.forum upon the revised bill, the respondents have taken a u-turn and again served the same wrongful unrevised bill amount by way of provisional final bill. Details of the statement of the original bill are absolutely false in this case. Through it does not relate to the present dispute however just to clarify the correct position the item wise clarification is being explained in the following manner:-

- A. The amount of Rs. 27,34,23,870 was the unrevised disputed bill which has ultimately been revised in terms of orders of the competent courts vide letter dated 08.10.2018 whereby the principal amount revised to Rs.2,19,14,031 and upon the same DPS of Rs.5,47,25,937 was claimed which is under challenge.
- B. Rs.94,15,540 this is a provisional assessment under section 126 which has not yet been finalised.

- C. Rs.1,00,225 this is the amount which was kept in abeyance the respondents may clarify the details of the kept in abeyance amount and the occasion for bringing back the said amount in the bill.
- D. Rs.2,31,62,228 there is no provision to charge DPS on F.I.R amount/provisional loss amount.
- E. Rs.3,10,764 there is no occasion to charge DPS on kept in abeyance amount.

The respondents may be directed to present the details of bill and payment made thereof to justify their claim. The respondents themselves included an arbitrary amount in the bill and charged DPS and DPS over DPS thereon whereas the petitioner has regularly paid the current payable bill after deducting the rebates allowed in the bill. One of the glaring examples of the manner of illegality in the billing is the inclusion of Rs. 1,52,32,544 in the bill as loss amount. The appellant did not pay but rather contested the same before Hon'ble High Court whereas the respondents went on charging DPS and DPS over DPS in the monthly bill on the said wrongful amount. The respondents ultimately assessed the loss amount to the tune of Rs.12,96,548 which was paid by the appellant immediately. Unfortunately even after payment of the correct amount the wrongful provisional loss amount of Rs.1.52 crores remained as it is in the bill and carried over every month with DPS which was ultimately revised in October 2018. Similar is the issue with respect to the KVA charges wherein the appellant has got favourable order from several forums including division bench of Hon'ble High Court. The appellant craves leave to explain in detail at the time of hearing. The respondents have wrongly filed a certificate case on a highly disputed amount which is not permissible under PDR Act. The claim of the respondent is not maintainable in the eyes of law and hence fit to be rejected in the facts and circumstances of the case.

**9. Supplementary Affidavit of appellant filed on 26.9.2024 (though it is not supported with affidavit) :**

On account of several wrongful billing and charging of DPS thereon, the energy bill of the appellant swelled in appropriately running in several crores. Time to time orders were passed by Competent Courts but the respondents did not rectify the illegality in the bill and thus the bill could not be revised. The appellant went on paying the current energy bill and the respondents also accepted the same, knowing fully well that the accumulated arrears is not a correct bill.

When the appellant applied for enhancement of its load from 1200 KVA to 2600 KVA, then only the respondents calculated / revised the entire energy bill right from January 2007 while giving effects of different orders passed by the competent Court and revised the arrear to the tune of Rs. 2,91,14,031. However, ignoring the settled law that when bill is being revised, no DPS is charged on the revised bill, the respondents also charged DPS of Rs.5,47,25,937 alongwith revised bill and sought objection vide letter dated 08.10.2018. The letter also contained the calculation chart which shall clarify the entire facts. The chart clearly stipulates that the energy bill of the appellant right from January 2007 has been revised in October 2018.

One recent development has taken place which may be pertinent to bring on record. The issue of DPS in case of revision of bill has been settled long back in case of M/s Gaya Roller Mill. However, the same issue has been prominently come up again before the Division Bench of the Hon'ble Jharkhand High Court and recently vide judgement dated 31.08.2024 passed in LPA No.305/2015 and analogous case

the Hon'ble High Court has held that once the bill is being revised, no DPS can be charged. When the bill is being revised there is no question of levied DPS.

The respondents revised the bill but have erroneously levied DPS also. Most unfortunately the Ld. Forum ignoring the settled law and also ignoring the judgement passed by the same Ld.Forum on previous occasions, which has been upheld up to the Hon'ble Court, has upheld the charging of DPS which is absolutely bad and illegal and as such fit to be quashed and set aside

The charging of DPS after revision of bill is bad and illegal and the same is fit to be set aside. In the given set of facts the appellant may not be forced to pay 50% of DPS for the purpose of maintaining the instant memo of appeal.

**10. Argument advances on behalf of Appellant :**

It is argued by Mr. D. K. Pathak, the learned Counsel for the appellant that the learned VUSNF Chaibasa at Jamshedpur has passed Order beyond the provisions of law. The learned Forum has passed an order to charge the DPS (Delay Payment Surcharge) on the entire due amount whereas it has been decided by Hon'ble Superior Court that there shall be no DPS of the bill being revised. It is submitted by Mr. Pathak that the DPS amount may not be considered as an ordered amount of the learned VUSNF, Chaibasa at Jamshedpur. Mr.Pathak has further submitted that the appellant is ready to furnish security of the 50% of rest ordered amount.

**11. Argument advanced on behalf of Respondent :**

Mr. Mohan Kr. Dubey, the learned Standing Counsel for the respondents has argued that this is not the appropriate time to discuss the merit of the Case. It is further

submitted that the entire due amount has not been modified rather a fraction amount/ bill has been modified. The appellant can not be permitted to take advantage of modification of the entire bill amount. It shall be a legal debate as to whether there shall be DPS on legally due amount, which the consumer has intentionally & purposely ignored? Mr. Dubey has submitted that at this Juncture, the Appellant is duty bound to comply with the mandatory provision of these Regulations of the Hon'ble JSERC, Ranchi.

### **FINDINGS**

**12.** Before ambling with my findings, I find that the present appeal was filed on **20.01.2020** and the Jharkhand State Electricity Regulatory Commission (Guidelines for Establishment of Forum for Redressal of Grievances of the Consumer Advocacy) Regulation 2020 came into force on 12.1.2021. These Regulations 2020 are not applicable in this case rather the Regulations 2011 are applicable in this matter.

I have gone through the Clause 14 of Regulations 2011 and the Clause- 15 of Regulations 2020 regarding pre deposit of 50% of the ordered amount. Both the clauses are almost the same.

The Second Proviso of Clause-14 of Regulation 2011 reads as follows: "Provided further that the Electricity Ombudsman shall entertain no appeal by any consumer, who is required to pay any amount in terms of an order of the Forum, unless the consumer has deposited in the prescribed manner, at least fifty percent of that amount."

The Second Proviso of Clause – 15 of Regulation, 2020 reads as follows: "Provided further that the Electricity Ombudsman shall entertain no appeal by any consumer, who is required to pay any amount in terms of an



order of the Forum, unless the consumer has deposited in the prescribed manner, at least fifty percent of that amount **or furnish such security in respect thereof as ordered by Ombudsman**”

In These Regulations, 2020 a mode of depositing “Security” has been added. The Authority of Electricity Ombudsman has been authorised to direct the appellant to deposit security in place of depositing amount.

### **12.1 Whether the provision is mandatory in nature?**

I have gone through Clause 14 of the Jharkhand State Electricity Regulatory Commission ( Guidelines for Establishment of Forum for Redressal of the Consumer Grievances, Electricity Ombudsman and Consumer Advocacy ) Regulations, 2011 thoroughly. The Regulations do not provide any discretion to the Electricity Ombudsman in this regard. To my judicial approach, since the provision of pre-deposit is mandatory in nature for the Electricity Ombudsman under Clause - 14 of the J.S.E.R.C. (Guidelines for Establishment of Forum for Redressal of Grievances of the Consumers, Electricity Ombudsman and Consumer Advocacy) Regulations, 2011, to my dogma I am not authorized to waive the pre-deposit condition and the Electricity Ombudsman has got no discretion to waive it.

In a case of **Kotak Mahindra Bank Private Limited vs. Ambuj A. Kasliwal and others** reported in **(2021) 3 SCC 549** Their Lordships of Hon’ble Apex Court have been pleased to held that- *“Section 21 of the Recovery of Debts and Bankruptcy Act, 1993 employs the phrase “appeal shall not be entertained” indicates that it injuncts the Appellate Tribunal from entertaining an appeal by a person from whom the amount of debt is due to the Bank, unless such person has deposited with the Appellate Tribunal, fifty percent of the amount of debt so due from him as determined by the*

Tribunal under Section 19 of the Act. The proviso to Section 21, however, grants the discretion to the Appellate Tribunal to reduce the amount to be deposited, for reasons to be recorded in writing, but such reduction shall not be less than twenty-five percent of the amount of such debt which is due. Hence the pendulum of discretion to waive pre-deposit is allowed to swing between fifty percent and twenty five percent of the debt due and not below twenty five percent, much less not towards total waiver”. (emphasis supplied by underlining)

In another case of **Narayan Chandra Ghosh vs. UCO Bank and others** reported in **(2011) 4 SCC 548** Their Lordships of Hon’ble Apex Court have been pleased to held that- “The requirement of pre-deposit under sub-section (1) of Section 18 of the SARFAESI ACT, 2002 is mandatory and there is no reason whatsoever for not giving full effect to the provisions contained in Section 18 of the Act. In that view of the matter, no court, much less the Appellate Tribunal, a creature of the Act itself, can refuse to give full effect to the provisions of the statute. We have no hesitation in holding that deposit under the second proviso to Section 18 (1) of the Act being a condition precedent for preferring an appeal under the said section, the Appellate Tribunal had erred in law in entertaining the appeal without directing the appellant to comply with the said mandatory requirement”. (emphasis supplied by underlining)

It is settled that where pre-deposit is a mandatory condition for filing an appeal, the authority being a creature of the Act itself, cannot waive the mandatory condition of pre- deposit by taking adieu from the mandatory provisions.

## **12.2 What amount should be considered as the ordered amount of the learned VUSNF, Chaibasa ?**

The Consumer M/S Stan Commodities Pvt. Ltd had filed complaint before the learned VUSNF- Chaibasa at Jamshedpur for quashing the demand notice dated 8.10.2018 of the licensee whereby a demand of Rs.2,19,14,031 has been raised as 'Arrear Electricity Bill' and Rs.5,47,25,937 has been raised as Delayed Payment Surcharge (DPS). The total amount of demand was of Rs.7,66,39,968 (Rupees 7 Crore 66 Lakh 39 Thousand, 9 Hundred and 68) only.

The complainant had also prayed in the complaint for quashing Supplementary bill dated 6.2.2007 amounting to Rs.83,65,221 for a period of six months i.e from April 2006 to September 2006. But during pendency of the case before the learned VUSNF, the Electrical Superintending Engineer Electric Supply Circle, Jamshedpur reduced it for three months.

The amount of Demand & Supplementary stands to Rs.7,66,39,968 + Rs.41,82,610 =Rs.8,08,22,578 (Rupees 8 Crore 8 Lakh 22 Thousand 5 Hundred 78)

As per order of the learned VUSNF Chaibasa at Jamshedpur, the entire due amount (i.e. Rs. 8 Crore 8 Lakh approx) along with DPS shall be considered as the ordered amount.

The exact figure was not available to the appellant at the time of filing appeal on 20.1.2020. The Provisional FINAL BILL of **Rs 30 Crore 1 Lakh** (approx) was sent to the consumer M/S Stan Commodities Pvt. Ltd. on **14.5.2020** by the Electrical Superintending Engineer, Jamshedpur.

### **12.3 Relevant Facts :**

(i) The Consumer (HJAP-156) M/S Stan Commodities Pvt. Ltd during the pendency of case no.2/2019 before the learned VUSNF-Chaibasa preferred to file an application on 27.9.2019 to the Electrical Superintending Engineer, Jamshedpur for termination of HT Agreement.(Annexure - A of the Supplementary Counter Affidavit of Respondents)

On request of the consumer the electrical connection was disconnected on 28.11.2019 and their H.T. Agreement was terminated.

(ii) On the day of passing the order by the learned VUSNF- Chaibasa at Jamshedpur i.e. on 21.12.2019, there was no existing HT Agreement between the parties and M/S Stan Commodities Pvt. Ltd was not an existing consumer.

(iii) On the day of filing appeal before the Authority of Electricity Ombudsman i.e. on 20.01.2020, M/S Stan Commodities Pvt. Ltd was not an existing consumer of the distribution licensee.

(iv) During pendency of this appeal EOJ/02/2020 before the Electricity Ombudsman, the Electrical Superintending Engineer, Jamshedpur had requested the “ **Recovery officer, Debts Recovery Tribunal, Jharkhand**” on **15.5.2020** to consider Electricity dues amounting to Rs.30,01,27,262 (Rs.30 Crore 1 Lakh approx) in Recovery Proceeding No- 153/2011 in Case No- O.A. Case No- 47 of 2006.

(v) After admission of this appeal for hearing vide order sheet dated 5.3.2020 by the then Electricity Ombudsman Mr. Prem Prakash Pandey, the Electrical

Superintending Engineer raised a revised Provisional Final Bill of Rs.30,01,27,262 (Rs.30 Crore 1 Lakh approx) vide letter No- 1262 E.S.E Jamshedpur dated 14.5.2020.

(vi) The learned VUSNF in impugned order has authorized the Distribution Licensee to charge DPS (Delayed Payment Surcharge) on the entire due amount except the waiver allowed in supplementary bill dated 6.2.2007.

#### **12.4 Legal Aspects :**

(i) The Clause -20 (3) (d) of These Regulations, 2011 prescribes that- No complaint to the Electricity Ombudsman shall lie unless : - “The complaint **does not pertain to the same subject matter for which any proceedings before the Commission or any authority / Court of law is pending** or a decree or award or a final order has already been passed by the Commission or any competent Court.” (emphasis supplied by bolding)

In a Recovery Proceeding, having Recovery Proceeding No- 153/2011 in Case No- O.A. Case No- 47 of 2006, before the Recovery officer, Debts Recovery Tribunal, Jharkhand, the matter of recovery of outstanding electricity dues amounting to Rs. 30,01,27,262 ( the same billed amount of this appeal) is pending (Annexure - D of the objection on behalf of the Respondents filed on 30.3.2024).

Whether the present appeal is hit by Clause -20 (3) (d) of These Regulations, 2011 shall be a matter of legal debate, discussion and adjudication.

(ii) The case of appellant is based upon the law point that when the bills are being revised there is no question to charge D.P.S. (Delayed Payment Surcharge). According to the appellant’s case no delayed payment surcharge should have been

levied because when the Bills itself are wrong and needs to be rectified / revised, there is no question of levying of delay payment surcharge. It is the case of appellant that in view of apparent illegality in impugned order of the learned Forum, the DPS is bound to be waived. The appellant may not be saddled with the liability to pre deposit 50% of the DPS amount.

A legal question shall arise as to whether a consumer can be absolved of the liability to pay delayed payment surcharge on the rectified bill, which is genuinely due to the licensee after the challenge to the applicability of the tariff to their unit has failed.

The respondents vide letter no. 3323 dated 8.10.2018 have raised a revised demand bifurcating of **Rs. 2,19,14,031 against energy charges** and **Rs. 5,47,25,937 against delayed payment surcharge**. The consumer M/S Stan Commodities Pvt Ltd had challenged the total bill amount before the learned VUSNF Chaibasa at Jamshedpur. If the bifurcated **Revised Energy Bill** of Rs.2,19,14,031 found genuine, whether delayed payment surcharge (DPS) on that amount shall be levied from the consumer from 8.10.2018 (i.e. the date of raising of revised bill) till payment? If the entire revised billed amount, generated on 8.10.2018, has been found correct by the learned VUSNF, whether delayed payment surcharge on revised bill amount at least since 8.10.2018 should be levied? To avoid imposition of delayed payment surcharge, a consumer is obliged to pay the bill under protest.

**12.5** The stand of appellant for non depositing of the 50% of the ordered amount is solely based upon the plea that the learned VUSNF, Chaibasa has wrongly passed an order to charge the DPS on the entire due amount except the waiver, which is

against the law laid down by the Hon'ble Superior Courts. It is the viewpoint of Mr. D.K. Pathak, the learned counsel for the appellant, that the DPS amount, as ordered by the learned VUSNF, requires to be set aside. In the given set of facts the appellant may not be forced to pre deposit 50% of DPS for the purpose of maintaining the instant memo of appeal.

I have gone through Clause 14 of These Regulations, 2011 and Clause 15 of These Regulations, 2020. The provisions do not permit the Electricity Ombudsman to enter into the merit of the order of learned Forum, go to the root of the case, to scrutinise the order and open its mind, before passing Final Order/Award in Appeal, while directing the appellant for pre deposit, in compliance with the mandatory provision of deposit of at least 50% of ordered amount.

It is a well settled principle of law that when electricity bills are revised and **found to be erroneous** then in that event levy of delayed payment surcharge has to be set aside. Whether any electricity bill is Erroneous or Veracious, is a matter of adjudication and it can not be speculated without going to the merit of the case.

The appellant has failed to establish that the Authority of Electricity Ombudsman is empowered to brush off any portion of the impugned order of the learned VUSNF outrightly, while giving directions to the appellant to pre-deposit an amount, in compliance with the second proviso of Clause- 14 of the JSERC (Guidelines for Establishment of Forum for Redressal of Grievances of the Consumers, Electricity Ombudsman and Consumer Advocacy) Regulation 2011.

**12.6** Now a question arises as to whether the benefit of furnishing security, in place of depositing amount, can be extended to the appellant M/S Stan Commodities Pvt. Ltd as available in Clause 15 of These Regulations, 2020?

The following facts are relevant:

- I. The appeal was filed on 20.1.2020
- II. The appeal was admitted on 5.3.2020
- III. On the date of admission of appeal, the enforced Regulations were “These Regulations, 2011” and the relevant clause is Clause-14 of These Regulations, 2011.
- IV. These Regulations, 2020 came into force on 12.1.2021
- V. The bill amount challenged by consumer before the learned VUSNF, Chaibasa was: - (a) Demand Notice dated 8.10.2018 amounting Rs.7 Crore 66 Lakh (approx) and (b) Supplementary Bill dated amounting Rs.84 Lakh (approx). The total amount becomes Rs. 8 Crore 50 Lakh (approx).

During the pendency to case before the learned Forum, the licensee waived three months supplementary bill i.e. 50% of the Supplementary Bill amounting to Rs. 42 Lakh approx. After waiver, the entire bill amount stands to Rs. 8 Crore 8 Lakh (approx).

- VI. The appeal was admitted by the then Electricity Ombudsman without passing an order of pre-deposit and without giving an opportunity to the Distribution Licensee to provide outstanding bills, in light of order of the learned Forum.



- VII. The appeal was not “**Provisionally**” admitted for hearing on the point of pre deposit, if the final bill in light of the order of the learned Forum, was not available to the appellant and before the Electricity Ombudsman. After the appearance of respondents, they might be directed to produce the final bill.
- VIII. For the first time, the respondents raised a voice on **16.5.2024** in this appeal regarding the quantum of ordered amount of the learned VUSNF, Chaibasa.
- IX. The Respondents appeared in this appeal on 9.7.2020 but remained mum on pre-deposit.
- X. The Provisional Final Bill was issued by the Electrical Assistant Engineer, Electric Supply Subdivision, amounting to **Rs.30,01,27,262** (Rupees 30 Crore 1 Lakh 27 Thousand 2 Hundred and 62). The bill was generated on **14.5.2020**, the due date was 29.5.2020, Tariff - 11 KV, Metering - HT, Consumer No. - HJAP 156, Ledger No. - AD2, Meter No. - JBV 00084, Date of connection - 6.9.1999.

The Provisional FINAL BILL was sent to the consumer M/S Stan Commodities Pvt. Ltd. by the Electrical Superintending Engineer, Jamshedpur vide Letter No. - 1262 E.S.E., Jamshedpur dated 14.5.2020. (Annexure C of the Supplementary Counter Affidavit on behalf of the Respondents, filed on 30.5.2024)

- XI. The bill amount of the above **Provisional FINAL BILL** is amounting to Rs.30,01,27,262 (Rupees 30 Crore 1 Lakh 27 Thousand 2 Hundred and 62).

After considering the above facts and circumstances, the Electricity Ombudsman is of the opinion that the benefit for furnishing security bond, in addition to deposit

amount, may be extended to the appellant M/S Stan Commodities Pvt. Ltd. in this peculiar circumstances, where the appeal was admitted for hearing on 5.3.2020 without complying with the mandatory provision of deposit of at least 50% of ordered amount and the compliance of the mandatory provision of deposit of 50% of ordered amount is being directed today i.e. on 30.9.2024, covering the period of both the Regulations of 2011 and 2020.

**13.** In view of the facts & circumstances, the provisions of Law & Regulations and the findings & comments made above, the appellant M/S Stan Commodities Pvt. Ltd is hereby

**DIRECTED**

1. To deposit an amount of Rs. 4,04,00,000 (Rupees Four Crore and Four Lakh) only in the office of the JHARKHAND BIJLI VITRAN NIGAM LIMITED **and**
2. To furnish a Bank Guarantee as security deposit, for a period of Six Months, on behalf of M/S Stan Commodities Pvt. Ltd. to cover a payment of Rs. 11,00,000,00 (Rupees Eleven Crore) only to the JHARKHAND BIJLI VITRAN NIGAM LIMITED. The Respondents shall not claim the Bank Guarantee in any circumstances without obtaining written prior permission from the Authority of the Electricity Ombudsman, Jharkhand.
3. The above directions shall be complied with, within a period of thirty days from the day of passing of this order.

**14.** Non compliance of above directions of the Electricity Ombudsman by the appellant M/S Stan Commodities Pvt Ltd, shall tantamount to appellant's unwillingness to proceed with this appeal and the proceeding of this appeal shall be dropped due to noncompliance of the mandatory provision of Second Proviso of Clause- 14 of the JSERC (Guidelines for Establishment of Forum for Redressal of Grievances of the Consumers, Electricity Ombudsman and Consumer Advocacy) Regulation 2011.

The parties shall bear their own cost. There shall be no order of costs. Let a copy of this order be provided to the parties.

Put up the record on 7.11.2024 for further proceedings of the appeal after compliance of the directions by the appellant M/S Stan Commodities Pvt. Ltd.

Dictated & Corrected by me,

Order passed by me,

( G. K. ROY )

( GOPAL KUMAR ROY )

Electricity Ombudsman : Jharkhand