

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 4th day of November, 2024

**Appeal No. EOJ/02 of 2024**

(Arising out of judgment passed in Case No. 1 of 2023 by the Ld. VUSNF, Chaibasa at Jamshedpur)

M/S HEENA INDUSTRIES LLP, a Limited liability Partnership firm, having its Unit at Dhunaburu, Chandil, Chowka-Kandra Road, P.O & P.S. Chowka, District: Saraikela Kharsawan, through its authorized signatory Sri Sunil Modi, Son of Sri Budarmal Agarwal, aged about 48 year, resident of Manifit Bazar, Main Road, Telco, Hullung P.O. and P.S.: Telco, Town: Jamshedpur, District: East Singhbhum (Jharkhand).  
CONSUMER NO. 7007 / HT114 -----Appellant

Versus

1. JHARKHAND BIJLI VITRAN NIGAM LIMITED, having its Head Office at Engineering Building, Dhurwa, P.O. & P.S.: Dhurwa, District: Ranchi -834004, through its Managing Director.
2. GENERAL MANAGER – cum – CHIEF ENGINEER, Jharkhand Bijli Vitran Nigam Limited, Singhbhum Electric Supply Division, Jamshedpur, South Park, Above Jharkhand State Cooperative Bank, P.O. & P.S. – Bistupur, Jamshedpur-831001, Jharkhand.

3. DEPUTY GENERAL MANAGER (Technical), Jharkhand Bijli Vitran Nigam Limited, Electricity Supply Area, Jamshedpur, South Park Above Jharkhand State Cooperative Bank, P.O. & P.S. – Bistupur, Jamshedpur- 831001, Jharkhand. ----- Respondents

**Counsel / Representative**

On behalf of Appellant: Mr. Nitin Kumar Pasari, Advocate  
Ms. Sidhi Jalan, Advocate  
Mr. Shubham Choudhary, Advocate  
Mr. Gaurav Kaushlesh, Advocate  
Mr. Sudhir Kumar Singh, Advocate

On behalf of Respondents: Mr. Mohan Kumar Dubey, Standing Counsel  
Mr. Utpal Kant, A.C to the Standing Counsel

**ORDER/AWARD**

**1.** M/S Heena Industries LLP, a Limited Liability Partnership firm having its Unit at Dhunabure, Chandil, District – Saraikela – Kharsawan through its authorized signatory Shri Sunil Modi has filed this appeal being aggrieved & dissatisfied with the Order dated 8.2.2024 passed by the Learned Vidyut Upbhokta Shikayat Nivaran Forum (hereinafter shall be referred as VUSNF) Chaibasa at Jamshedpur in Case No. 01/2023 under Clause 15 of The Jharkhand State Electricity Regulatory Commission (Guidelines for Establishment of Forum for Redressal of Grievances of the Consumer, Electricity Ombudsman and Consumer Advocacy) Regulations, 2020 (hereinafter shall be referred as These Regulations, 2020).

**2.** It is relevant to mention here that prior to filing of the above case before the learned VUSNF, Chaibasa at Jamshedpur, the parties to the case had entered into an 'Agreement'. The agreement was executed on 20.1.2023 and the consumer had filed the case before the Forum on 24.2.23. The matter was pressed before the learned

Forum on 25.1.2024 i.e. after rolling a period of one year of execution of Agreement. (The Order sheet dated 25.1.2024 of the learned Forum in Case No – 01/2023). The copy of Agreement has been annexed as Annexure 6 of the Memo of Appeal.

The parties to the agreement, who are also parties to the Case before the learned Forum had started performance as per the terms & conditions of the agreement.

### **3. The operative portion of Order of the learned VUSNF Chaibasa at Jamshedpur :**

“ On the above, JBVNL and consumer petitioner are directed to abide by the terms and conditions of the agreement strictly as the same has already been acted upon by the parties. Hence, this case is disposed of in the light of terms and conditions of the agreement executed between consumer petitioner and JBVNL.”

### **4. Appellant's Case :**

The Appellant is a consumer of the Licensee since long and without fault has been paying the energy consumption bill, as and when the same fell due without any dispute and / or demur. The Appellant, having a Contract Demand of 400 KVA under High Tension Service Tariff and at any given point of time, the Appellant runs its industry as per the demand / requirements of its product in the open market. The last revision of Load / Contract Demand of 400 KVA. Further, after the energy meter was replaced, on an average the monthly energy bill was stable, however suddenly, in the month of November 2022, an inspection on 28.11.2022, was carried out in the factory premises of the Appellant and although, all the parameters were found to the satisfaction of the Department, however remark was made that billing should be the done on multiplying factor of 1200, whereas it was billed on the basis of multiplying factor of 600. Based upon the inspection report for the month of December 2022 when the energy bill was served upon the Appellant, the Appellant was surprised to note that an amount of ₹26.75 Lakhs was imposed in the energy bill and the Appellant was surprised to note that as on the date of raising of energy bill there was no dues of such a volume as against the electrical connection of the Appellant. Since,

no action was being taken by the Licensee, the Appellant approached the Licensee personally and requested for the copy of the meter replacement report of 2020, the same was made over to the Appellant. However, a perusal of the same transpired that so far the multiplying factor is concerned, the meter replacement report is silent on the issue. It is not understood as to how the figure of 1200 has been plucked which is not evident from the meter replacement report issued by the Licensee to the Appellant. Not even is the fault of the Appellant, since after almost 2 years the bills are sought to be revised. In the meantime, the Licensee issued a disconnection Notice under Section 56 vide letter dated 03.01.2023. Aggrieved of the same, the Appellant raised its objection with the Licensee vide notice dated 13.01.2023. On receipt of objection raised by the Appellant, the Appellant was informed that the bill has been prepared as per Jharkhand Bijli Vitran Nigam Limited (J.B.V.N.L.) norms and regulations and if the energy bill is not paid within the notice period, action shall be taken. Since, the industry of the Appellant is running industry, the Appellant had no alternative but to succumb to the demand under protest and entered into an installment agreement which was carried out in January, 2023. The only reason seeking installment was to avoid electrical disconnection, since notice of electrical disconnection was issued upon the Appellant and the request was made in January, 2023. Aggrieved thereof, the Appellant filed a Complaint Petition before the Learned Vidyut Upbhokta Shikayat Nivaran Forum, which was registered as Complaint Case No. 01/2023. The aforesaid complaint was filed on 04.02.2023. At this stage, it would be appropriate to state and submit that the disputed bills as against the Appellant has been paid in totality. The Learned Forum heard the parties and vide order dated 08.02.2024, dismissed the claims of the Appellant, holding that the Appellant cannot be granted rebates and is liable to pay the Delay payment Surcharge on the installment so granted. Aggrieved thereof, the Appellant seeks to assail the order dated 08.02.2024, passed by the Learned Vidyut Upbhokta Shikayat Nivaran Forum, Chaibasa at Jamshedpur.

## **5. Grounds of Appeal :**

- I. The Learned Electricity Forum did not apply its mind judiciously and based upon the statements made before the Forum by way of an affidavits, the Forum just copied it and without recording any finding as to why the order of the Hon'ble Court in the matter of M/S AMI Enterprises is not applicable in the fact of the present case, went ahead to dismiss the claim of the Appellant concerning deletion of Delay Payment Surcharge, on account of supplementary bill.
- II. The Learned Forum failed to appreciate the dictum of Section 56 of the Electricity Act, 2003, reads with the provisions of Supply Code Regulations, 2015, in terms of which levy of Delay Payment Surcharge is only on leviable account of default in payment of regular energy bills and not on the supplementary energy bills raised for covering up the lapses of the Licensee and allowing to continue levy Delay Payment Surcharge on supplementary energy bills, would amount to giving premium to the for wrong done by the Licensee.

## **6. Respondent's Case :**

The petitioner was a consumer bearing Consumer No. HT114 has a contract demand of 500 KVA load. In this regard, an agreement was executed on 02.07.2018. The meter and metering unit was installed on 13.08.2018. The petitioner approached for load reduction from 500 KVA to 101 KVA for which a fresh Agreement was also executed on 28.11.2019. Further on request load of the petitioner company was also enhanced from 101 KVA to 400 KVA. The multiplying factor depends on meter specification and metering unit. On scrutiny of the meter and metering unit installation Report dated 13.08.2018, the multiplying factor was found 1299, but inadvertently the multiplying factor was written as 600. For ascertaining multiplying factor 1200, an inspection was carried out on 28.11.2022 and the multiplying factor reveals 1200. The detailed calculation sheet was already given to the petitioner vide letter No.2018 ESE/CBSA dated 28.12.2023. The bill has been prepared as per JBVNL norms and regulations and a delay payment surcharge is levied as per tariff order and

regulation the bill for Rs.31,05,346/- (Rupees Thirty one lakhs five thousand three hundred forty six) only was prepared and served upon the petitioner. The petitioner Company was served with Notice under Section 56 of the Electricity (Supply) Act, 2003 for disconnection of the electric line for non – payment of the dues. In reply of the letter dated 13/01/2023 issued by the Appellant, the deputy general manager (Technical), Electrical Supply Circle, Chaibasa vide its letter No.109 – ESE/CBSA dated 18.01.2023 has informed the Appellant about change of Multiplying Factor and requested to make payment of energy bill within notice period. The petitioner approached for payment in 10 (ten) equal installments and considering the request, Electrical Superintending Engineer, Electric Supply Circle, Chaibasa entered into an Agreement on 20<sup>th</sup> January,2023 with M/S Heena Industries LLP represented by its Partner Sri Shankar Lal Agarwal, S/O Sri Narayan Agarwal, and accordingly 10 Installments were granted for the monthly installment amount of Rs. 3,10,540/- with the current assessment of the monthly electric consumption bill. Thereafter the appellant had filed Case No.01/2023 before the Vidyut Upbhokta Shikayat Nivaran Forum, Jharkhand Bijli Vitran Nigam Limited, Jamshedpur. After completing pleading, and hearing of both the parties, the Learned Forum has been pleased to dispose of the case with the direction that JBVNL and the consumer petitioner are directed to abide by the terms and conditions of the agreement strictly as the same has already been acted upon by the parties.

## **FINDINGS**

**7.** The learned Forum has disposed of the case acknowledging the agreement executed between the Consumer and the Distribution Licensee. The learned Forum has found that the parties to the agreement have already acted upon the agreement as per its terms and conditions.

The appellant in its memo of appeal has not even whispered as to why their agreement should not be acknowledged by the Learned Vidyut Upbhokta Shikayat Nivaran Forum, Chaibasa at Jamshedpur in Case No. 01/2023

## 8. About Agreement:

The Consumer M/S Heena Industries LLP had entered into an agreement with the Distribution Licensee on 20.1.2023 and had filed a complaint before the learned VUSNF Chaibasa on 24.2.2023.

The Consumer at para 12 of its complaint before the learned VUSNF has pleaded that – “ Since the industry of the Petitioner is running industry, the Petitioner had no alternative but to Succumb to the demand **under the protest** and entered into an installment agreement which was so carried out on January,2023” (emphasis supplied by bolding).

Annexure 6 is a copy of the said agreement and there is nothing in this agreement to establish that it was executed under protest. The Annexure S/1 of the Supplementary Affidavit filed on 25.4.2024 on behalf of the appellant confirms that out of the disputed amount of Rs.26,75,936 (as per Annexure 3 a notice dated 3.10.2023 u/s 56 of the Electricity Act 2003) and agreed amount to the tune of Rs.31,05,700 (as per agreement dated 20.1.2023, Annexure-6 ) an amount of Rs.31,05,700 has already been paid to the Distribution Licensee.

## 9. Under Protest :

It is the case of the appellant that the industry M/S Heena Industries LLP is running industry, the appellant had no alternative but to succumb to the demand **under protest** and entered into an installment agreement. It is also the case of the consumer that on 18.1.2023, the JBVNL had issued a notice (Annexure – 5) to make payment of energy bills within the notice period otherwise action will be initiated as per JBVNL norms and regulations.

The term UNDER PROTEST shall mean that the Consumer had paid the amount with right to recover the excessive amount which may have been collected by the Distribution Licensee. When a consumer is served notice u/s 56 (1) of the Electricity

Act 2003, the consumer should not refuse payment on the pretext of "Error in the Bill". Such Bills should be paid "**Under Protest**" and a written complaint should be made with regard to the accuracy of the bill.

In this case, the agreement for payment in Installments was executed on **20.1.2023** and the consumer had filed a complaint before the learned VUSNF, Chaibasa at Jamshedpur on **24.2.2023**. Though the consumer at para 12 of the complaint petitioner has claimed that they had entered into the agreement 'Under Protest' but the said "Agreement" does not disclose that it was executed under protest. This apart, the consumer has not filed any document either before the learned Forum or even this Authority of the Electricity Ombudsman to establish that the agreement dated 20.1.2023 was executed UNDER PROTEST and the payment in installments through A/C payee cheques were/are being honoured in bank UNDER PROTEST.

When a consumer, who had voluntarily accepted the demand notice of biller, entered into an agreement for making payment in installments and willingly deposited post dated signed cheques of entire installments at a point of time, can not be permitted to claim subsequently that he is aggrieved with the demand notice.

**10. Clause 12 (7) of These Regulations, 2020 :**

Clause 12(7) of These Regulations, 2020 reads as follows:- " The Forum may settle any grievance in terms of an agreement arrived between the parties at any stage of the proceedings before it and there shall be no right of representation before the Ombudsman against such order."

In this case the parties had settled their disputes & grievances in terms of an agreement executed voluntarily without "under protest" prior to file application before the learned Forum. The terms and conditions of the agreement have already been acted upon by the parties. The learned Forum has committed no error to acknowledge the agreement between the parties and pass directions to the parties to follow the terms and condition of the agreement. Though the agreement was



executed prior to file complaint/application before the learned Forum, the terms and conditions of the agreement were being acted upon at the time of filing the case even after admission of the case and during hearing of the case. I don't find any error in impugned order and it doesn't require any interference by the Appellate Authority.

**11.** In view of my findings and comments made above, it is therefore,

**ORDERED**

that the representation/appeal be and the same is

**DISMISSED**

on contest in favour of the Respondents Jharkhand Bijli Vitran Nigam Limited & its Officers and against the Appellant M/S Heena Industries LLP. The impugned Order of the learned VUSNF, Chaibasa at Jamshedpur is hereby confirmed.

There shall be no order of cost. The parties shall bear their own cost. Let a copy of this Order / Award be supplied to the parties.

(Dictated & Corrected by me)

Pronounced by me

( G. K. ROY )

(GOPAL KUMAR ROY)

Electricity Ombudsman : Jharkhand