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

Appeal No. EOJ/03/2011

Dated- 30th September, 2011

Jharkhand State Electricity Board …….. Appellant

Versus

M/s Rishi Cement Company Limited …….. Respondent

Present:

Shri Arun Kumar Datta	**Electricity Ombudsman**
Shri Rajesh Shankar	**Advocate for the appellant**
Shri Dheeraj Kumar	**Advocate for the appellant**
Shri Biren Poddar	**Advocate for the respondent**
Shri Piyush Poddar	**Advocate for the respondent**
Shri Deepak Sinha	**Advocate for the respondent**

J U D G E M E N T

1. The Appellant/J.S.E.B. has filed this appeal for setting aside the Judgement/Order dated. 11.04.2011 passed in case No. 05/2010 of Vidyut Upbhokta Shikayat Niwaran Forum (In short to be referred as V.U.S.N.F.) of J.S.E.B., Ranchi, by which the V.U.S.N.F. has allowed the complaint/representation of the consumer/respondent and the bill cum statement dated. 21.05.2009 has been quashed and the order dated 04.06.2009 passed by the C.E. (C&R), J.S.E.B. has been modified and quashed to the extent indicated in the findings/decision recorded in the order and consequently directions have been issued to appellant/J.S.E.B.

2. The brief facts of this case is that the consumer/respondent is the consumer of J.S.E.B. bearing consumer no. KJ-6383-HT having the cement plant at Ramgarh. The respondent/consumer entered into at agreement with the

BSEB on 29.03.89 for the total load of 495 KVA which was superseded by another agreement dated 25.07.1991 for enhanced load of 795 KVA. The consumer/respondent had filed the application for remission/reduction/ deduction/adjustment of maximum demand charges (KVA) and guaranteed energy charges (KWH) before the concerned authority of BSEB under Clause 13 of agreement from time to time for period from 1989-90 to 2000-01 for a total amount of Rs. 1,42,33,221.33 because the BSEB was not able to supply electrical energy to the respondent/consumers company continuously and constantly on account of in ability of the appellant board to supply the same and also inability of the respondent's company to consume electricity on account of strike etc. As the authorities of BSEB didn't pass any order on the application of the respondent, therefore the respondent's company had filed the writ petition in the year 2000 bearing C.W.J.C. No. 3854 of 2000(R) before the Hon'ble High Court praying therein for refund/remission/adjustment of aforesaid sum of Rs. 1,42,33,221.33. The Hon'ble court vide under dated 01.12.2000 passed in aforesaid writ petition had directed the respondent's company to file representation before the Superintending Engineering, Hazaribagh and in the mean time the respondent's company was directed to pay current charges. After that the respondent's company filed the representation dated 12.12.2000 before the Superintending Engineer, Hazaribagh for refund/remission/adjustment of the aforesaid sum of Rs. 1,42,33,221.33. On 19.03.2002 the aforesaid representation of respondent's consumer was rejected by the aforesaid authority and directed the respondent's company to pay a similar amount Rs. 1,42,33,221.33 along with D.P.S. amounting to Rs. 13,29,824.00 without giving any reasons and without any details of the aforesaid amount. The respondent's company was also threatened with the disconnection notices in case of non payment of aforesaid amount by respondent's company. Therefore the respondent's company again filed the writ petition bearing W.P. (C) No. 2472 of 2002 before the Hon'ble High Court for quashing the aforesaid disconnection notice and also for quashing the aforesaid order dated 19.03.2002 on the ground of its being non speaking and vague order. The Hon'ble High Court on 22.04.2002 had passed an

interim order in the aforesaid case directing the respondent's company shall go on making payment of all current charges and accordingly the respondent's company regularly paid the current charges from the year 2001-2009 which were also accepted by the appellant board without any objection. On 11.07.2007 the Hon'ble High Court passed the final order in the aforesaid WP (C) No. 2472 of 2002 remitting the matter to the C.E. (C&R), Ranchi with the direction to fix a date, call for the relevant records and to look into the matter and after hearing the parties to pass a reasoned order showing the details of the main amount and D.P.S., if any payable/refundable separately.

3. In view of the aforesaid order of the Hon'ble High Court the C.E. (C&R) heard the parties and hearing was concluded and 06.05.2009 and order was reserved. Thereafter the Electrical Superintending Engineer, Hazaribagh had filed the statement dated 21.05.2009 before the C.E.(C&R) without any notices to respondent's company suo-moto and without any direction filed such statement nor any hearing was made by him on behalf of respondent's company on aforesaid statement and the C.E.(C&R) without looking into the aforesaid statement and without even verifying or discussing the same passed the order dated 04.06.2009 by simply recording that main/energy charges to the tune of Rs. 5,71,13,444/- and D.P.S. Rs. 6,36,41,277/- as mentioned in the aforesaid statement of the ESE, Hazaribagh. Being aggrieved by and dissatisfied with the aforesaid order of the C.E. (C&R) dated 04.06.2009 the respondent's company had filed the writ petition on 23.06.2009 which was numbered as WP (C) 2734 of 2009 before Hon'ble High Court for quashing and setting aside the aforesaid order dated 04.06.2009 of the C.E. (C&R). The Hon'ble High Court by order dated 17.03.2010 referred the matter before the V.U.S.N.F. and the respondent's company was directed to file complete copy of writ petition in a paper books before the V.U.S.N.F. and accordingly the consumer/respondent's company filed the same before the V.U.S.N.F. and after hearing the learned Counsel of both the sides passed the impugned order on 11.04.2001 in case No. 05/2010 against which the appellant/J.S.E.B. has filed this appeal.

4. According to appellant/J.S.E.B. the order dated 04.06.2009 passed by the C.E.(C&R) of J.S.E.B., Ranchi is completely justified and the amount mentioned in it is fully payable by the consumer/respondent, and the statement prepared by the ESE, Hazaribagh is completely inconformity with law and as such the Order/Judgement of learned V.U.S.N.F. passed in case No. 05/2010 dated 11.04.2011 is fit to be set a side.

5. It has been submitted of behalf of respondent/consumer that no interference is required by this forum in the impugned Judgement/Order dated 11.04.2011 passed in case No. 05/2010 by the learned V.U.S.N.F. of J.S.E.B., Ranchi. Because the same has been passed in conformity with the law after considering entire facts and document produced by the parties before the learned V.U.S.N.F. at the time of hearing of the case. The learned V.U.S.N.F. has only set a side the impugned order dated 04.062009 passed by the C.E. (C&R) J.S.E.B. and remanded the matter to appellant/J.S.E.B. to recalculate the amount of dues payable by respondent's consumer after taking into the consideration and the observation made by learned V.U.S.N.F. in its order dated 11.04.2011 passed in case No. 05/2011.

6. On perusal of the pleadings of both the parties of this case and also after hearing the learned Counsel of both sides the following issues arises for their determination and decision thereon:-

Issues :-

I. Whether the consumer/respondent is liable to pay pilferage bill of 89 lacs approximately even though he was acquitted from all charges of theft of electrical energy after regular trial by the competent court of law and whether the AMG charges can be levied for 8 months during which power supply remained disconnected on account of the alleged power theft detected on 21.07.1999 ?

II. Whether the appellant/J.S.E.B. has allowed the remission in obedience to

order dated 22.12.2008 of the C.E. cum Chief Electrical Inspector in appeal No. 11/2008 to the tune of Rs. 29,81,608/- under section 127 of the Electricity Act 2003 ?

III. Whether remission under clause 13 of the HT agreement has not been given in the bill cum statement dated 21.05.2009 during which the respondent's factory was closed due to strike. Which was earlier allowed by the G.M. cum C.E., Dhanbad and also confirmed by the C.E. (C&R) of J.S.E.B. in the order dated 04.06.2009 and whether D.P.S. on the balance amount of M.M.G. charges after allowing remission under clause13 of the HT agreement granted by the G.M. cum C.E., Hazaribagh for the period 1990-91 to 2003-04 ?

IV. Whether the appellant/J.S.E.B. has wrongly charged 10% of extra energy charges relating to consumption towards weigh bridge for February' 96 to June'96?

V. Whether the appellant/J.S.E.B. can levy balance amount of fuel surcharge in spite of direction of Hon'ble Apex Court given to BSEB in M/s Pulak Enterprises case?

VI. Whether the payment made by the consumer/respondent towards current charges which was paid in view of the directions of the Hon'ble High Court can be adjusted towards D.P.S. and other arrears etc. in accordance with the circular of the board No. 87 dated 19.01.1968 or not?

VII. Whether D.P.S. can be charged on earlier amount of D.P.S. or not?

VIII. Whether the order of the C.E. (C&R) dated 04.06.2009 is liable to be quashed along with the bill cum statement dated 21.05.2009?

IX. Whether independent person/agency for accessing/calculating the energy dues and D.P.S. etc. payable/refundable to the consumer/respondent can be allowed or not?

X. Whether the application of the consumer/respondent dated 25.05.2009 under "OTS" scheme can be ordered or not?

XI. Whether the appellant/J.S.E.B. can be directed to take up recovery of energy dues only after obtaining permission from B.I.F.R. or not?

XII. To what relief or reliefs the consumer/respondent is entitled there to and what direction can be issued to both the parties of this case?

FINDINGS

Issue No. (I):-

7. It has been submitted by Shri Rajesh Shankar the learned standing Counsel appearing on behalf of appellant that an F.I.R. was lodged against the consumer/respondent for theft/pilferage of energy by the J.S.E.B. in July 1999 for the loss of Rs. 89,87,759/- to J.S.E.B. out of which the consumer/respondent has only paid Rs. 10,00,000/-. On the basis of the aforesaid FIR the case numbered as GR case No. 1206 of 1999 was lodged against director of respondent's company. The electricity connection of the respondent's company was disconnected by the J.S.E.B. because of the non payment of the aforesaid amount against which respondent/consumer filed a writ petition being CWJC No. 2472 of 1999 (R) and the Hon'ble court ordered the J.S.E.B. to restore the power supply of the respondent's company on payment of Rs. 10,00,000/- by respondent's company. In accordance with the a aforesaid order of the Hon'ble court passed on 27.01.2000 in the aforesaid writ petition filed representation before the G.M. of Hazaribagh 17.07.2000 and the G.M., Hazaribagh, J.S.E.B. vide order dated 30.10.2001 gave remission of Rs. 89,87,759.00. According to learned standing Counsel of appellant/J.S.E.B. the C.E. (C&R) on the basis of civil appeal No. 8394 of 2007, JMD Alloys Ltd. versus BSEB & others had held that the acquittal of directors of respondent's company can't absorb them from their civil liabilities to pay pilferage bill of the board. Therefore the respondent's company is liable to pay amount of pilferage bill as ordered by the C.E. (C&R) of J.S.E.B.. On the other hand Shri Biren Poddar the learned Counsel appearing of behalf of respondent's consumer has submitted that the director of the

respondent's company have been acquitted after full trial by the Judicial Magistrate first class, Hazaribagh for the alleged theft of electricity in GR case No. 1206 of 1999. Therefore the appellant/J.S.E.B. is not entitled to raise pilferage bill. Accordingly to him JMD Alloys case is not applicable in this case rather City Hotel versus Commissioner, Luknow Division and others reported in AIR 2009 Allahabad 137 is applicable because the proprietors of City Hotel were exonerated from civil liabilities on account of pilferage bill on the ground that they were acquitted by the court.

8. On the other hand the learned standing Counsel of appellant/J.S.E.B. has contended that the proprietors of City Hotel were exonerated on account of pilferage bill in view of Clause 8.2 of Electricity Supply Code Regulation 2005 of the state of Uttar Pradesh which provides for the withdrawal of pilferage bill in case of electricity theft if acquitted in that case, where as Supply Code Regulation 2005 of Jharkhand State Electricity Regulatory Commission does not provide for withdrawal of pilferage bill, nor the old tariff of BSEB provides for withdrawal of pilferage bill in case of acquittal. As such I am also of the view that JMD Alloys case is applicable in this case and City Hotel versus the Commissioner, Lucknow Division and others is not applicable and therefore I am led to hold that respondent's/consumer is liable to pay the pilferage bill to appellant. Now the question arises as to how much the respondent's company is liable to pay to J.S.E.B. In this regard the assessment of account of pilferage of electrical energy under clause 16.9 of 1993 tariff is to be applied for the period from 14.07.1999 to 21.07.1999 because on inspection on 13.07.1999 every thing was found correct and CT/PT seal an every thing were found on order and no irregularity was found in the meter and reverse CT was also found to be nil. The inspection report dated 17.07.1999 also shows that nothing illegal was found. Therefore the period of theft of electrical energy is ascertainable. Therefore the period of theft could not be fixed for 180 days. The G.M. cum C.E., Dhanbad can look his own records that is to inspection report dated 13.07.1999 and 17.07.1999 for fixing the period of theft. This same principle have been applied

in the final order dated 21.10.2008 passed in appeal No. 09/2008 under section 127 of Electricity Act 2003 and also in final order dated 22.12.2008 passed in appeal No. 11/2008 under section 127 of the Electricity Act 2003. This principle has also been adopted while fixing liabilities on account of pilferage by the E.S.E., Hazaribagh in passing final order of assessment dated 07.07.2008 and 11.07.2008 under section 126 of Electricity Act 2003 in the case of M/s Durga Cement Company Ltd. and M/s Shiv Shakti Cement Industries, Demotand, Hazaribagh respectively. On perusal of the record it is found that the electricity power was illegally diverted from the premises of the respondent to New Bharat Refractory upto the load of 5 KW whose power was disconnected earlier. But the date of starting theft of electrical energy is not ascertainable. Therefore in view of clause 16.9 of 1993 tariff the period of such pilferage shall be made for 180 days on the basis of formula LXFXHXD. The appellant J.S.E.B. is therefore directed to prepare the revised bill according to directions given in this regard.

9. Now the question arises is to whether AMG charge levied for 8 months during which power supply remained disconnected on account of the alleged power theft detected on 21.07.1999.

10. In this regard it has been submitted by learned standing Counsel of J.S.E.B. that the AMG charges has rightly been levied during the disconnection period on account of alleged theft power which was detected on 21.07.1999. On the other hand the learned Counsel of respondent/consumer has submitted that the directors of the respondent's company were acquitted of the charge of theft of electrical energy. Therefore J.S.E.B. cannot levy AMG charges for 8 months during which power was disconnected.

11. On perusal of Clause 16.9 of 1993 tariff it is found that the appellant has power to disconnect power supply in case of theft of electrical energy. Therefore it is held that AMG charge is legally payable by consumer/respondent to appellant/J.S.E.B. for the period of disconnection that is of 8 months.

12. Thus from the aforesaid discussion and finding made above it is held that the consumer/respondent is liable to pay pilferage bill even though he was acquitted from the charge of theft of electrical energy after regular trial by the competent court of law and it is further held that AMG charges can be levied from 8 months during which power supply remains disconnected on account of power theft detected on 21.07.1999. Accordingly this issue is decided in favour of appellant and against the consumer/respondent.

Issue No. (II):-

13. On this issue it has been submitted by the learned Counsel of respondent/consumer that by the order dated 22.12.2008 the C.E. cum the Chief Electrical inspector has allowed the remission of Rs. 29,81,608/- in appeal N o. 11/2008 under section 127 of Electricity Act 2003 and this order has attained finality because the appellant/J.S.E.B. has not moved any where to challenge the aforesaid order. But in the bill cum statement dated 21.05.2009 the aforesaid amount of remission has not been allowed, nor the aforesaid remission has been allowed by the C.E. (C&R) in his order/Judgement dated 04.06.2009.

14. The aforesaid remission has to be allowed by the J.S.E.B./appellant because the aforesaid order of the C.E. cum the Chief Electrical Inspector in allowing remission of Rs. 29,81,608/- under section 127 of Electricity Act 2003 has attained finality. Therefore the appellant/J.S.E.B. is directed to allow remission and D.P.S. if charged there on the aforesaid amount of Rs. 29,81,608/- while preparing revised fresh bill of the consumer/respondent. Accordingly this issue is decided in favour of the consumer/respondent.

Issue No. (III):-

15. On this issue it has been submitted by the learned Counsel by respondent/consumer that at para III of the order dated 04.06.2009 the C.E. (C&R) has observed that AMG relief during the strike period in the year 1991-92 and 1992-93 were not given as has been allowed by the G.M. cum the C.E.

vide order dated 17.01 1999. The E.S.E., Hazaribagh agreed on 25.08.2007 that excess unit charge during the strike period i.e. 1990-91 and 1992-93 will be deducted from the bill as per the order of the G.M. Cum C.E. dated 14.01.1999. But the order dated 04.06.2009 of the C.E. (C&R) shows that the effect of the above has not been given in the said statement and the C.E. (C&R) also over looked the same. On the other hand the learned standing Counsel of appellant/J.S.E.B. has submitted that the relief of AMG for the strike period has been allowed as per order of the G.M. cum C.E., Dhanbad in the bill cum statement dated 21.05.2009. In such circumstances it is directed that AMG relief allowed by the G.M. cum C.E., Dhanbad and up held at para III of the order dated 04.06.2009 of the C.E. (C&R) is directed to be allowed while preparing the fresh revised bill without levying D.P.S. on the remitted amount under AMG relief under Clause 13 of the HT agreement.

16. The learned Counsel of consumer/respondent has submitted on this point as to whether D.P.S. on the balance amount of MMG charges after allowing remission under Clause 13 of the HT agreement granted by the G.M. cum C.E., Hazaribagh for the period 1990-91 to 2003-04 that in view of clause 13 of the HT agreement no D.P.S. is leviable on the remitted amount but D.P.S. has been charged on such remitted amount in the bill cum statement dated 21.05.2009. He has further submitted that D.P.S. cannot be charged on the balance amount of MMG charge after allowing relief for the period for more than 4 months after the date of filing the claims under Clause 13 of the HT agreement, in view of letter No. 810 dated 29.07.1994. Such claim has to be decided within 4 months. According to him in this case the aforesaid claims were decided very late beyond prescribe period of 4 months and D.P.S. has been charged wrongly for entire period. Therefore it requires to the adjusted in favour of respondent. On the other hand learned standing Counsel of the appellant has submitted that on the remitted relief no D.P.S. has been charged but D.P.S. has been rightly charged on the balance amount after allowing the relief for the aforesaid period as the respondent didn't properly cooperate for timely settlement of the claims.

17. In this regard it is found that claims under clause 13 was ultimately to be decided for the entire period 1990-91 to 2003-04. Under clause 13 no D.P.S. is leviable on the remitted amount since the date of filing of the claims for remission and accordingly it is held that the respondent is liable to pay D.P.S. on the balance amount of AMG after allowing remission under Clause 13 of the HT agreement for the disputed period. If D.P.S. has been charged on the remitted amount in the bill cum statement dated 21.05.2009 then such amount of D.P.S. stands quashed. With the aforesaid directions this issue is decided.

Issue No. (IV):-

18. It has been submitted by the learned Counsel of respondent that 10% extra consumption was charged on the respondent's company due to separate LT connection weigh Bridge though the respondent's company had taken new LT connection for the weigh bridge. But even then 10% extra was charged for the period January' 96 to June'96. It has been further submitted in behalf of respondent that the C.E. (C&R) vide order sheet dated 06.05.2009 merely on the basis of verbal submission of the ESE, Hazaribagh without any documentary evidence, accepted the contention of the ESE, Hazaribagh that unauthorized extension has been detected in Jan.'96 and new LT connection Feb.'96 as such 10% extra charge has been levied in Jan.'96 in Feb.'96 only. In such circumstance it is directed that if 10% extra consumption has been charged from Jan.'96 to June' 96 as alleged by respondent then this amount shall be remitted with D.P.S. at the time of preparing the revised bill by the appellant. With the aforesaid directions this issue is decided.

Issue No. (V):-

19. On the aforesaid issue the learned Counsel of respondent has submitted that the appellant has levied balance amount of fuel surcharge while preparing the bill cum statement dated 21.05.2009. More over the appellant has failed to comply with the directions of the Hon'ble Supreme Court passed in the case of BSEB versus M/s Pulak Enterprises reported in (2009) 2 JCR 182(SC) decided

on 15.04.2009 in which the appellant board was directed to work out of the actual rate of fuel surcharge from 1996-97 onwards within 3 months of the aforesaid Judgement i.e. 15.04.2009 also the order dated 25.01.2010 passed by the Hon'ble Apex Court in I.A. No. 122/142 of 2009 filed in civil appeal No. 7220-7239 of 2000 seeking clarification with regard to the concluding portion of the aforesaid Judgement dated 15.04.2009. According to the learned Counsel of respondent the appellant has failed to abide by the aforesaid direction of the Hon'ble Supreme Court dated 15.04.2009 and order dated 25.01.2010, therefore there cannot be any billing on account of fuel surcharge against the respondent's company. On the other hand the learned standing Counsel of appellant has opposed the aforesaid contention of learned Counsel of respondent. But in my view the appellant/J.S.E.B. cannot realize balance amount of fuel surcharge until final rate of fuel surcharge is re-calculated as held by the Hon'ble Supreme Court held in the case of M/s Pulak Enterprises and till then the amount levied on account of balance of fuel surcharge shall be kept in obeyance. Accordingly this issue is decided.

Issue No. (VI):-

20. Shri Rajesh Shankar the learned standing Counsel of appellant/J.S.E.B. has contended that the C.E. (C&R) of J.S.E.B. has clearly observed in his order dated 04.06.2009 that the adjustment of payment by the consumer has to be made as per Chief Revenue Officer's circular No. 87 dated 19.01.1968 till 26.10.2005 and after the said date the said adjustment have to be made as per Clause 11.8 of Electricity Supply Code Regulations 2005 issued by the JSERC. In view of the aforesaid provision made in the aforesaid circular No. 87 dated 19.01.1968, the payment made by the consumer is to be adjusted firstly towards the amount of surcharge and then towards the other dues. On the other hand Shri Biren Poddar the learned Counsel of consumer/respondent has submitted that the Hon'ble Court vide order dated 01.12.2000 in CWJC No. 3854 of 2000 (R) had passed an order to the effect that the petitioner will pay the current charges. The intention of the Hon'ble Court behind the passing of the aforesaid order was that

the respondent's company shall pay the current charges to the board every month, so that the amount of dispute may not be escalated. The Hon'ble High Court had also passed the similar order in the interim order dated 22.04.2002 in W.P.(C) No. 2472/2002. But the appellant/J.S.E.B. in complete disregard and inviolation of the aforesaid order of the Hon'ble court in stead of adjusting the current charges paid by the respondent's company towards the current bills only adjusted the same towards the arrear as per Chief Revenue Officer circular No. 87 dated 19.01.1968. Due to such illegal action of the appellant/J.S.E.B. the energy bill as well as the D.P.S. over the same has been increased to such inflated amount as determined by the C.E. (C&R) in his order dated 04.06.2009. According to Shri Biren Poddar the aforesaid circular No. 87 dated 19.01.1968 applies only in case of part payments made by consumer. But in this case the respondent's company has made full payment of current charges in view of the Hon'ble court. He has further argued that if it is presumed for the sake of argument that the aforesaid circular is applicable in cases of full payments of current charges even then the direction of Hon'ble High Court will prevail over the circular or any other rules/regulations.

21. I find force in the aforesaid argument of the learned Counsel of the respondent/consumer and I am also of the view that aforesaid circular No. 87 dated 19.01.1968 is applicable in case of part payment only. The respondent/consumer has made full payment of current charges as ordered by the Hon'ble High Court. Therefore I am led to hold that the appellant/J.S.E.B. was not correct in adjusting payments made towards current charges against other arrears and D.P.S. Therefore the appellant/J.S.E.B. is directed to adjust payment made by the consumer/respondent towards current charges be only adjusted towards current charges and the appellant/J.S.E.B. is directed to prepare revised bills accordingly. The D.P.S. levied on account of illegal adjustment of payment towards current charges is also here by quashed. Accordingly this issue is decided in favour of consumer/respondent and against the appellant/J.S.E.B.

Issue No. (VII):-

22. On the aforesaid issue it has been submitted by the learned standing Counsel of appellant/J.S.E.B. that no D.P.S. has been charged on D.P.S. in the bill cum statement dated 21.05.2009 nor D.P.S. can be charged on D.P.S. amount. On the other hand the learned Counsel of consumer/respondent has submitted that in the copies of bills for the months of April 1992and May 1992, Jan. 2006,Feb. 2006 and March 2006 D.P.S. has been charged over D.P.S. which the appellant cannot charge. He has further submitted that in the bill cum statement dated 21.05.2009 D.P.S. over D.P.S. amount has been charged by the appellant/J.S.E.B. which is illegal in view of the circular No. 87 dated 19.01.1968. I also find force in the aforesaid submission of learned Counsel of consumer/respondent that no D.P.S. can be charged on D.P.S. amount in view of circular No. 87 dated 19.01.1968 and also in view of clause 16.2 of 1993 tariff which provides that the appellant/J.S.E.B. cannot charges D.P.S. on D.P.S. amount. Accordingly appellant/J.S.E.B. is directed not to charges D.P.S. over D.P.S. amount while preparing the revised bill. Accordingly this issue is decided.

Issue No. (VIII):-

23. On the aforesaid issue it has been submitted by learned standing Counsel of J.S.E.B. that the order dated 04.06.2009 passed by the C.E. (C&R) of J.S.E.B., Ranchi is completely justified and the amount mentioned therein is fully payable by the respondent/consumer. The C.E. (C&R) has passed the order dated 04.06.2009 after detailed hearing process and after giving due opportunity to the representative of the consumer/respondent. On the other hand Shri Biren Poddar the learned Counsel of consumer/respondent has submitted that the C.E. (C&R) heard the parties and hearing was concluded on 06.05.2009 and order was reserved. But there after the ESE, Hazaribagh suo-moto filed the statement dated 21.05.2009 before the C.E. (C&R) without giving notice to the respondent's company nor the C.E. (C&R) directed the ESE, Hazaribagh to file

such statement which can be found on perusal of the entire order sheet of the proceeding and no hearing was even allowed by him to the respondent's company on the aforesaid statement dated 21.05.2009. According to Shri Poddar this is the best ground for quashing the bill cum statement dated 21.05.2009 and the order of the C.E. (C&R) dated 04.06.2009. Beside it, the aforesaid bill cum statement dated 21.05.2009 and the order of the C.E. (C&R) is wrong which has been prepared illegally which is found in the order/Judgement dated 11.04.2011 of the learned V.U.S.N.F. passed in case no. 05/2010 and therefore the aforesaid bill cum statement dated 21.05.2009 and the order of the C.E. (C&R) dated 04.06.2009 is fit to be quashed. I also find my self in agreement with the contention of learned Counsel of consumer/respondent and I am also of the view that no opportunity was given to respondent/consumer for hearing on the bill cum statement dated 21.05.2009 and the aforesaid bill cum statement dated 21.05.2009 and the order of the C.E. (C&R) suffers from various defects and illegality which have been pointed out earlier while deciding the aforesaid issues in this Judgement. Therefore the bill cum statement dated 21.05.2009 and the order dated 04.06.2009 of the C.E. (C&R) is quashed. This issued is accordingly decided in favour of the respondent/consumer and against the appellant/J.S.E.B.

Issue No. (IX):-

24. On the aforesaid issue it has been submitted by the learned Counsel of respondent/consumer that the learned V.U.S.N.F. has rightly held that the appellant/J.S.E.B. should be entrusted with the duty of preparing revised energy bill in term of Judgement. But the facts and circumstances of this case are so diverse and complicated that mistakes are apt to occur in the revised bill. Therefore the learned forum has directed the appellant/board to prepare revised bill keeping in mind each and every decision recorded regarding issues/sub issues of this case and to send a copy, to respondent's company for inviting honest and sincere written comment regarding correctness and to resolve the discrepancy in the revised bill if any pointed out by the respondent's company in the written comment by sitting together and discussing the same and there after

to issue correct revised bill. How ever, if the parties here in fail to resolve any thing regarding the correctness of revised bill, then in that situation, the job of preparing revised bill in terms of this Judgement would be entrusted to independent person/agency by the order of the learned forum. I also find my self in agreement with the aforesaid submission of the learned Counsel of respondent/consumer and I also direct the appellant/J.S.E.B. to prepare the revised bill in terms of Judgement of this forum and decision recorded while deciding the aforesaid issues in this case. It is further directed that the copy of revised bill will be sent to consumer/respondent for inviting honest and sincere written comment regarding correctness or other wise providing one month time and to resolve the discrepancy in the revised bill if any. Any discrepancy can be resolved by sitting together and discussing the same and there after to prepare revised bill. If the correctness of the revised bill is again disputed by any of the party then in that circumstances this job of preparation of revised bills would be entrusted to independent person/agency by the order of learned V.U.S.N.F. who will prepare the revised bill in terms of Judgement of this forum. Accordingly this issue is decided.

Issue No. (X):-

25. The Hon'ble High Court of Jharkhand, Ranchi in W.P.(C) No. 2472/2002 has passed an order dated 11.07.20007 that.

"If it is found that the petitioner is liable to pay any amount he will pay the main amount except D.P.S. and make a representation before the board for waiver of the D.P.S. and make a representation before the board for waiver of the D.P.S. in view of the policy/scheme/rule of the board within one month from the date of the order. The board will take a decision on the same within six weeks there after and communicate the same to the petitioner."

The appellant/J.S.E.B. has mentioned at para 5(f) at page 25 of memo appeal that "Even now the petitioner/company may approach the office of the E.S.E., Hazaribagh for settlement under the "O.T.S." scheme on the bill as

finally assessed by the C.E. (C&R), J.S.E.B., Ranchi."

26. The order dated 06.04.2009 of the C.E. (C&R) and the bill cum statement of the E.S.E., Hazaribagh dated 21.05.2009 have been quashed while deciding issue No. VIII of this Judgement. Therefore it is directed that if the consumer/respondent would be ready to pay the energy dues in terms of the revised bill which will be prepared in accordance with this Judgement, then the appellant/J.S.E.B. shall dispose of the respondent's application dated 25.05.2009 under "O.T.S." scheme. Accordingly this issue is decided is favour of the consumer/respondent.

Issue No. (XI):-

27. On this issue it has been submitted by learned Counsel of the consumer/respondent that the respondent's company is a sick industrial unit and section 22 of the SICA protects the respondent's sick company from realizing the energy dues by adopting coercive methods and as such the appellant/J.S.E.B. after taking permission from B.I.F.R. can only realize the energy dues. In support of his contention the learned counsel of consumer/respondent has relied and filed ruling of Hon'ble Supreme Court held in the case of Tata Davy ltd versus State of Orissa and others reported in (1997) 6 Supreme Court cases 669. On the other hand it has been submitted by the learned standing Counsel of the appellant/J.S.E.B. that the respondent is not entitled to the protection U/S 22 of SICA in view of the fact and circumstances of present case. It has further been contended by Shri Rajesh Shankar the learned standing Counsel of appellant/J.S.E.B. that the appellant is not a party in the aforesaid proceeding pending before B.I.F.R. then how the appellant/J.S.E.B. can realize the dues from the respondent. While distinguishing the ruling reported in (1997) 6 S.C.C. 670 filed on behalf of respondent he has referred the observation of the Hon'ble Supreme Court in which word creditors is found and according to Shri Shankar the appellant is not a creditor because respondent has not been made a party in the aforesaid proceeding of B.I.F.R., nor the respondent has submitted any

audited account before the aforesaid proceeding therefore the aforesaid ruling filed of behalf of respondent is not applicable in this case. On the other hand the ruling held in the case of Deputy Commercial Tax Officer and others versus Corromandal Pharmaceuticals and others reported in (1997) 10 S.C.C. 649 is applicable in this case. I have gone through the aforesaid ruling filed of behalf of the appellant and I am of the view that the aforesaid ruling reported in (1997) 10 S.C.C. 649 is not applicable into the facts and circumstance of this case and ruling reported in (1997) 6 S.C.C. 669 is applicable in this case which has been filed on behalf of respondent. Because in the aforesaid ruling reported in (1997) 6 S.C.C. at page 672 at paragraph 8 the Hon'ble Supreme court has observed that.

"As soon as the enquiry U/S 16 was ordered by the said board, this court said, the various proceedings set out U/S 22(1) of the central Act were deemed to have been suspended. Creditors could then approach the said board for permission to proceed against the sick company for recovery of their dues and the said board, at its discretion, could accord such approval. If approval was not granted, the creditors remedy was not extinguished. It was only postponed."

28. In view of the aforesaid ruling I am of the view that the appellant/J.S.E.B. can approach B.I.F.R. for permission to proceed against the respondent's company for recovery of its dues. In my view the appellant/J.S.E.B. is also a creditor because it has got dues which it has to realize from the respondent's company. I do not find any force in the contention of the learned standing Counsel of appellant/J.S.E.B. that the appellant is not a creditor therefore the respondent's company has not made the J.S.E.B./appellant as party before B.I.F.R.. As such I am led to hold that appellant/J.S.E.B. in not entitled to recover its any dues by any coercive method without obtaining permission from B.I.F.R.. Accordingly appellant/J.S.E.B. is directed to take up recovery of its energy dues only after obtaining permission from B.I.F.R. and accordingly this issue is decided in favour of consumer/respondent and against the appellant/J.S.E.B.

Issue No. (XII):-

29. While deciding all the aforesaid issues Nos. I to XI of this Judgement the relief's and directions have all ready been given to both the parties. Therefore both the parties are directed to comply the aforesaid direction given while deciding the aforesaid issues No. I to XI of this Judgement.

30. In the result there is no merit in this appeal. The Judgement and order of learned V.U.S.N.F. dated 11.04.2011 passed in case No. 05/2010 is so much perfect that it doesn't require any interference and accordingly it is up held and this appeal filed by appellant/J.S.E.B. is dismissed.

Let a Copy of this Judgement be served to both the side for its early compliance of the directions given in this Judgement.

Sd/-
Electricity Ombudsman