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

Case No. EOJ/03/2014

Anil Chourasia	……..	Appellant(s)
	Versus	
JUVNL & Others	……..	Respondent(s)

Present:

Shri Ramesh Chandra Prasad	:	Electricity Ombudsman
Advocate for the Appellant	:	Sri. D. K.Pathak
	:	Sri. Vijay Gupta
Counsel for the Respondent	:	Sri. Rahul Kumar
	:	Sri. Prabhat Singh

O R D E R

(Order passed on this day of 29th September, 2014)

By this Petition under Rule 13 of the (Guidelines For Establishment of Forum For Redressal of Grievances of The Consumers And Electricity Ombudsman) Regulation, 2005, the Appellant has challenged the order of Vidyut Upbhokta Shikayat Niwaran Forum, Ranchi (herein referred to as VUSNF for short) dated 26.4.2014 dismissing his grievances bearing Case No.02/2013.

1. Brief of the Case:

The Appellant has constructed a residential hotel at Kokar in the name of Saumya Residency. On request of the appellant the Board's Officials visited the premises and assessed the total requirement of load as 60-70 K.W. and accordingly directed to take five separate

electrical connections of 15 KW each for each floor with aggregate load of 75 KW. Accordingly the Appellant applied for five electrical connections of 15 KW for each floor which was granted under NDS-II category. The electrical connections were energized on 15.12.2010. Few officers of the Jharkhand State Electricity Board (here in after referred to as Board) visited the premises of the Appellant and inspected the meter installed in the premises but did not care to assess the actual load rather questioned as to why the Appellant has taken five separate connections and handed over an application form saying that the category has to be changed. Subsequently, Board officials directed the appellant to sign an agreement with contact demand of 135 KVA. The Appellant objected the same because that was on much higher side with respect to the installed load. Upon objection the concerned authorities straightway said, either sign the agreement and deposit a sum of Rs. 3, 64,000/- as security money or face disconnection of electrical supply. In view of newly started residential hotel and fear of losing both business and goodwill for all time to come, Appellant signed the HT Agreement and also deposited security money to the tune of Rupees 3,64,000/-.The HT Agreement was executed on 20.11.2011. Under clause-8 of the said agreement, the date of commencement of supply has been mentioned as 03.02.2011.Thus, upon signing of the said agreement, the Appellant electrical connection under NDS-II category was converted to HTS-I w.e.f. 03.12.11 and accordingly the Board started billing under HT tariff from December, 2011.

2. Prayer of the Appellant:

2.1) To set aside the order passed by learned VUSNF in case no. 02/2013,

2.2) Quashing the energy bill from December, 2011 till December, 2012,

2.3) Restoration of original status of category which has been illegally converted from NDS-II to HTS.

3. Submission of the Appellant

3.1) The learned counsel submitted that being novice entrepreneur and ignorant of procedures related to the electrical connection, the Appellant sought guidance from the Board's officials with respect to the nature/category and load of the proposed electrical connection in the residential hotel at Kokar in the name of Saumya Residency. The Board's officials determined the total required load as 60-70 K.W. and accordingly directed the Appellant to take electrical connection of 75 KW .On the advice of Board's named officials five separate electrical connection of 15 KW each for each floor was taken under NDS-II category and the same were energized on 15.12.2010.After about six months few officers of respondent Board visited the premises of the Appellant and inspected the meter installed in the premises and without caring to assess the actual load questioned as to why the Appellant has taken five separate connections and subsequently handed over an application form saying that the category has to be changed. The concerned A.E.E. simply informed that the Junior Engineer, Kokar has committed mistake and hence, formalities are being done. One of the members of the inspecting team prepared report on few separate sheets on the same day and directed the

Appellant to make signature over the same. The Appellant had no knowledge about the technicalities and without verifying the same put his signature over the report as well as the blank application form.

3.2) The learned counsel further submitted that the respondents had assured the Appellant to provide just and proper advice, on the contrary forced to sign HT agreement having contract demand of 135 KVA. Upon objection the concerned authorities straightway asked the Appellant either sign the agreement and deposit a sum of Rs. 3,64,000/- as security money or face disconnection. Being new to this business and fear of losing goodwill for all time to come, under compulsion signed the HT Agreement and also deposited the aforementioned security money. The HT Agreement was executed on 20.11.2011 and under clause-8 of the said agreement, the date of commencement of supply has been mentioned as 03.02.2011.Thus,upon signing of the said agreement, the Appellant electrical connection under NDS-II category was converted to HTS-I w.e.f. 03.12.2011.The the respondents accordingly started billing under HT tariff w.e.f. from December,2011.

3.3) The learned counsel further submitted that the respondents without making thorough inspection assessed the load as 135 KVA and imposed HT tariff .Further by way of harassment the respondents deliberately flouted the settled provisions of law as well as the specific provisions of Clause-4(c) of the HT agreement wherein for the first twelve months of the connection the maximum demand is charged on the basis of the actual demand recorded in the meter, started raising the maximum demand charges on the basis of 75% of the contract demand while totally ignoring the actual demand recorded in the

meter. In fact, the actual demand recorded in the meter has always remained in between 20 to 40 KVA during the impugned period. However, in spite of same nature of consumption, every month billed the demand charges on the basis of 101 KVA i.e. on the basis of 75% of the contract demand and the bill shoot up on account of fixation of arbitrary demand charge.

The learned counsel contended that had the actual load been taken into account, it shall never fall in the HT Category. Moreover, the Appellant is being penalized for no fault of his and adding to his woos additional amount of Rs. 5000/- is being charged for the rent of the transformer. Therefore, in order to have justice, the load of the appellant premises may be assessed through any committee at any point of time and accordingly category may be fixed as per tariff.

3.4) The learned counsel further submitted that the illegality committed by the respondents as stated above can be better appreciated from the fact that the required mandatory procedure with respect to energization of a HT connection i.e. sanction of load by the competent authority of Board, installation of consumer's transformer through Licensed Electrical Contractor ,written approval to energize H.T. installation from Chief Electrical Inspector/Electrical Inspector have not been followed at all by the Respondents. The respondents have no answer against the specific issue raised by the Appellant with respect to compliance of laid down procedure for energization of HT installation of any private consumer. Moreover, the learned Forum taking all frivolous ground justifying respondent's unlawful action did not even address this issue in the impugned Order. Further the respondents in their counter affidavit have also not controverted the

fact that in any month the petitioner's maximum demand has exceeded beyond 40 KVA.

4) **Issues involved:**

Issue No. 1. Whether energy bills should have been raised on the basis of actual consumption recorded in the meter during the impugned period or not?

Issue No. 2 Whether the category of the petitioner is liable to be reverted to NDS-2 from HTS as asserted in the complaint or not?

Findings of Issue No. 1:

On the basis of submissions made by the learned counsel for the Respondent the following points emerge as indicated below:

a) The petitioner had initially applied for five electrical connections of 15 KW load under NDS-2 category for each floor of the petitioner commercial complex as advised by the official of the respondents after visiting the site by them.

b) In order to ascertain the actual load, the premises was inspected on 23.6.2011 by officials of the respondent Board and in course of inspection, the connected load was found to be 123128 watts i.e. 124 KW approx. Accordingly H.T. agreement was executed on 25.11.2011 for 135 KVA load. The said agreement speaks of load sanctioned by the Electrical Superintending Engineer, Electric Supply Circle, Ranchi.

c) From the record of V.U.S.N.F. it transpires that just only one week after the execution of the aforesaid HT agreement Appellant requested Electric Superintending Engineer, Electric Supply Circle, Ranchi for giving connection from the Board's Transformer installed in the premises of the Appellant and this

request letter bears the seal of the aforementioned officer with date 03.12.2011 as mark of receipt.

d) Allegation made by the Appellant of putting pressure for signing HT agreement is not tenable because matter on record reveals smooth transaction of all events like signing of HT agreement, making request for giving supply from existing Board's transformer installed inside Appellant's premises are concerned.

e) The learned Forum has rightly opined that putting a person under pressure, threat and coercion for executing any kind of document is a criminal offence and cognizance of such matter can be taken only by competent authority of civil court under code of criminal procedure.

On the basis of aggregate connected load found in course of inspection in the premises of the appellant on 23.6.2011 and subsequently signing of HT agreement, the appellant is bound by the terms of agreement and the applicable Tariff.

The Tariff Order for J.S.E.B. for the FY 2011-12 notified by the Jharkhand State Electricity Regulatory Commission(in short referred to as JSERC)and the applicable portion for this case runs thus at page 184 of the said Order :-

"HTS Tariff: - The billing demand shall be maximum demand recorded during the month or 75% of contract demand whichever is higher."

Therefore, the contention of the appellant that bill should have been raised on the basis of Clause 4(c) of the HT agreement is not tenable.

Therefore, this issue is decided in favour of the Respondent.

Findings of Issue No. 2:

The Appellant prayed for directing the Respondent to change the category of the Appellant from HTS to NDS 2 and revise the impugned bills for the months of December, 2011 to December, 2012 with respect to actual demand recorded in the meter.

Before I cogitate and analyze the rival contentions in detail, it would be proper to pore cover several clauses in the agreement as well as applicable statutory Rules etc. to which reference have been made by the learned counsel for the parties.

Therefore, the following aspects are required to be categorically examined:

Point No. 1): Consumption pattern recorded during the impugned period i.e. 2011-2012 by HT meter installed in the premises of Appellant by Respondent Board and,

Point No2) Contravention of mandatory provisions as stipulated in the Indian Electricity Rules, 1956.

Point No.1):

As per agreement, the total connected load of the Appellant is 135 KVA but it is strange to observe that not even single month during the impugned period it has exceeded 40 KVA .Reasons of the aforementioned matrix could not be explained by the learned counsel of the Respondents.

Taking cognizance of the consumption pattern during the impugned period appended to the supplementary affidavit filed by the Appellant, it is in the interest of justice to estimate the quantity of the energy supplied to the Appellant during such time not exceeding six months as the energy meter shall, in the opinion of the licensee board,

have been correct, the register of the energy meter shall be conclusive proof of such amount or quantity of energy supplied to the Appellant.

Point No. 2):

It is worth to mention that the Appellan**t** requested Electric Superintending Engineer, Electric Supply Circle, Ranchi for giving connection from Board's Transformer installed in the premises of the Appellant and this request letter bears the seal of the aforementioned officer with date 03.12.2011 as mark of receipt. Meaning thereby the maxim "hand in gloves" is perfectly applies in the instant case. Therefore, quashing bill for the period December, 2011 to December 2012 is uncalled for at this stage.

During the course of discussion it could be gathered that written permission to energize HT installation of the Appellant from Chief Electrical Inspector/Electrical Inspector has not been obtained by either party as per statutory provisions of the Indian Electricity Rules, 1956 .This is a serious issue and required to be dealt with accordingly by the Respondent Board.

In view of these circumstances and material available on record, I, therefore, pass the following order:-

a) The representation/appeal is partly allowed.

b) In the light of Clause 8 of the agreement, the Respondent Board is directed to assess the load with respect to consumption recorded in HT meter installed in the premises of the Applicant and execute agreement under appropriate category as per the applicable tariff. If ultimately the Appellant succeeds, it would get back difference of amount with admissible rate of interest and the same will be adjusted against future energy bill/bills.

c) Till verification of load by Respondent Board, the Order of the Forum is maintained.

e) No order as to cost.

With the aforesaid observation the Appeal is disposed of.

Let copies of this Judgement /Order are served on both the parties for information and compliance.

Sd/-
Electricity Ombudsman