

Territorial Jurisdiction : State of Jharkhand

AUTHORITY OF THE ELECTRICITY OMBUDSMAN: JHARKHAND

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

Dated - Ranchi, the 3rd day of August 2023

Appeal No. EOJ / 03 of 2021

(Arising out of order passed in case no.01 of 2021 by the CGRF, Maithon)

Jindal Steel & Power Limited having its plant at
Balkudra, Patratu, Ramgarh-829143 (Jharkhand)
through its HOD-E&A Mr. Subhash Sharan -----Appellant

Versus.

- 1.Damodar Valley Corporation, DVC Towers,
VIP Road, Kolkata - 700054
- 2.The Chief Engineer (Commercial)
Damodar Valley Corporation,
VIP Road, Kolkata-700054
- 3.The Deputy Chief Engineer (Commercial)
Damodar Valley Corporation, DVC Towers,
VIP Road, Kolkata - 700054

4. The Executive Engineer (Electrical),
Damodar Valley Corporation,
Sub-Station - Patratu, GOMD- VII,
Ramgarh- 829143 ----- Respondents

Counsel/Representative

On behalf of Appellant: Mr. Subhash Sharan (CE & A)

On behalf of Respondent: Mr. Joydip Saha, SDE (Electricity).

JUDGEMENT

1. The present appeal has arisen out of the order passed by the learned Consumer Grievance Redressal Forum (hereinafter shall refer as CGRF), D.V.C. Maithon on 5.10.2021 whereby the petition of the petitioner was disposed of (rejected) at the stage of admission itself.

2. The appellant has preferred this appeal under Regulation 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.

3. The Appellant has sought for the following relief

In the DVC energy bill for the month of April-2020, the Maximum Demand was shown 32 MVA whereas the maximum demand recorded in the meter was 17.75 MVA on 28.04.2020 at 10.30 A.M. The relief sought for by the appellant is for commanding upon

the respondents to calculate the excess amount realized by them on account of Exceed of Maximum Demand.

In Form - III , the appellant has sought for refund of Rs. 12 lakh charged against overbilling of Maximum Demand.

4. Operative portion of the impugned order of the learned CGRE, DVC Maithon :

It is admitted by the petitioner that prior to file this petition, the petitioner filed Case No. 05/2020 for the redressal of the same grievance along with other grievances before this Forum and the said case was disposed of by this Forum vide its Order dtd.06.04.2021.

Admittedly, the Petitioner filed earlier a case vide Case No. 05/2020 for redressal of the same grievances along with other grievances and said case was disposed of vide Order dated.06.04.2021 on contest by this Forum.

It is the General Principle of Law that this Forum has no jurisdiction to review or recall its own order in absence of an express provision under the Electricity Act 2003 or the JSERC Regulation. Accordingly the petition filed by the Petitioner is hereby disposed of at the admission stage.

5. Grounds taken in appeal by Appellant

No ground has been taken by the consumer appellant in its appeal / representation to impugn the order of the learned CGRF, DVC Maithon passed in Case No.1/21 on 5.10.2021. Why the consumer is dissatisfied with the 'Order' has not been disclosed.

Under Regulation 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, any consumer dissatisfied with the order made by the Forum may prefer an appeal / representation against such order to the Electricity Ombudsman.

The present appeal has been preferred by the consumer against the impugned order of the learned CGRF- DVC- Maithon **passed on 05.10.2021 in Case No. - 01 of 2021.**

The consumer Jindal Steel & Power Limited in its appeal / representation has not even whispered that the consumer is aggrieved with the order of the learned CGRF. The appellant has not raised any ground in its appeal to highlight any illegality or irregularity in the impugned order of the learned CGRF passed on 5th October 2021 in Case No. 1 of 2021, for the reasons best known to it. Without impugning the order of the learned CGRF, the consumer appellant has made a grievance as if it is a direct complaint before the Electricity Ombudsman.

6. Case of Appellant in Case No. 01/2021 before the CGRF, DVC - Maithon

In the whole month of April-2020 the mills of appellant were under shutdown due to Covid-19. As per JSERC tariff for FY 2019-20 order dated 28 May 2019 - "The billing

demand shall be the maximum demand recorded during the month or 75 % of contract demand whichever is higher”. The appellant’s Contract Demand was 40 MVA and therefore 75 % of 40 MVA should come to 30 MVA. The additional 02 MVA was charged against Maximum Demand billing costs Rs. 12 lakhs. It is the further case of the appellant that as per the Executive Engineer (Electrical)-DVC, Patratu Maximum Demand shown as 32 MVA in the bill was due to Average Metering of 24 minutes from 13.40 to 14.04 on 15.04.2020. The appellants were not given any prior information/notice whereas as per the JSERC (Electricity Supply Code) regulation 2015 under clause no.-10.3.1 “The licensee shall give prior notice to the consumer”.

7.Previous case of Appellant having Case No. 05/2020 before the learned CGRF, DVC

Maithon

The Jindal Steel & Power Ltd. through Dy. General Manager, Patratu had filed a case against (1). the Chief Engineer (Commercial), DVC, Kolkata, (2). the Dy. Chief Engineer (Commercial), DVC, Kolkata and (3). the Executive Engineer (Elec.), DVC, Maithon before the CGRF, DVC - Maithon The case was registered as Case No. 05/2020.

It was a case between the same parties and for the same relief ,as of Case No. 01/2021, along with another relief. The case was disposed of on 06.04.2021.

The relief sought in light of Clause Number 10.3.1 of the JSERC (Electricity Supply Code) Regulation-2015 by the petitioner in its first case (i.e. Case No. 05/2020) was found not applicable by the learned CGRF, DVC Maithon. Same relief was sought for by the consumer in its subsequent second case (i.e. Case No. 01/2021).

The grievance of consumer and the operative portion of the Order passed in Case No. 05/2020 on 6.4.2021 passed by the learned CGRF, DVC Maithon reads as follows : -

Grievance : Average metering for the month of April, 2020 was done by respondent due to not working of energy meter on 15.04.2020 from 13.40 hr to 14.04hr (24 min.) and respondent has charged maximum demand 32 MVA in the electricity bill of month April, 2020 while the maximum demand of meter reading was 17.5 MVA.

Order : It is understood that meter was not defective/stuck/stopped/burnt but meter could not record energy during outage of PT from 13.40hrs to 14.04hrs on 15.04.2020 due to the act of respondent. Therefore, Relief sought against clause no.10.3.1 by petitioner is not applicable in that case.

8. Case No. 05/2020 vis-a-vis Case No. 01/2021

The relief sought regarding maximum demand in both the cases is same & similar and between the same parties before the CGRF, DVC, Maithon. The relief was/is sought under Clause 10.3.1 of the JSERC (Electricity Supply Code) Regulations, 2015 in both the cases.

9. Reply in Counter Affidavit by the Respondents

The bill raised by DVC for the month of April 2020 is as per the clause 10.3.2 of the Jharkhand State Electricity Regulatory Commission (Electricity Supply Code) 2015 which has pronounced the following: *“In case the Maximum Demand Indicator (MDI) of the meter at the Consumer’s installation is found to be faulty or not recording at all (unless tampered), the demand charges shall be calculated based on maximum demand during corresponding month/billing cycle of previous year, when the meter was functional and recording correctly. In case, the recorded MDI of corresponding month/billing cycle of post*

year is also not available, the average maximum demand as available for a lesser period shall be considered.”

It is the case of the respondents that the above-mentioned regulation clearly states that in case the meter fails to record the maximum demand for any reason unless tampered, the demand charge shall be calculated based on maximum demand during corresponding months/of previous year, when the meter was functional. Shut down (emergency) was taken of half main bus (western side) on 15.04.2020 from 10.00 hrs to 12.00 hrs for replacing damaged flexible bond of Y phase L # 85 main bus isolator. But after maintenance work in the R phase of the high level isolator of Western Side, the Eastern side high level isolator was also opened from 13.40 hrs to 14.04 hrs and 132KV/110V PT was out during that period. Shutdown was unavoidable and as such, maximum demand was considered as corresponding month of previous year i.e. April, 2019 of MD 32 MVA which was as per the clause of 10.3.2 of JSERC (Supply Code) 2015. It is also stated that there are no any specific guidelines indicated in tariff order of JSERC for FY 2019-20 for evaluation of MD and the same standard practice is followed for other consumers in Jharkhand State in comparable case of power supply made without metering/stopped meter. The bill raised for the said period of April 2020 with Maximum Demand as taken of 32 MVA, as per the above clause, is correct and appropriate. Therefore, there is no question of flouting of the commission guidelines and the allegations of the appellant that the said bill of April 2020 has wrongly been raised is inappropriate. Thus the appellant appeal and relief sought does not have any merit and is liable to be rejected.

10. Argument advanced on behalf of the Appellant

The energy consumption bill of DVC received for the month of April-2020 was showing MD recorded as 32 MVA whereas the actual MD recorded in the same month was 17.75MVA. The actual MD which was required to be charged as per the JSERC tariff order for the financial year 2020-21 dated 30th Sep 2020 which says that “Billing Demand shall be max demand recorded during the month or 75% of the contract demand (40 MVA) whichever is the higher”. 75% of the contract demand i.e.40MVA be 30 MVA and the max demand recorded during the month of April2021 was 17.75MVA. Therefore, the billing should have been done on 30 MVA whereas the billing was done on 32MVA. We approached DVC through mail/letter and asked why the billing was done on 32MVA? In reply letter, they said that average metering was done on 15.04.2020 for the period 13:40 to 14:04 (24 min) for maintenance of the y-phase jumper of the isolator.

DVC had not given any prior information to us whereas as per the clause 10.2/10.3 of Electricity Supply Code, regulation 2015 dated 7th Sep 2015, “07 days prior notice to be served to consumers for any work linked with energy meter. In the year 2020, the whole month of April was under Corona effect and even our plant was in shutdown. We could have told them to cut our power and avoid energy metering.

The appellants had filed the case in CGRF against the issue (Case No.05/2020) but it was disposed of on 06.04.2021. The appellants have drawn my attention towards the judgement of the learned CGRF passed in Case No. 05 /2020 (previous case) on 6.4.2021, where it is mentioned that - “ As per respondent Patratu Sub-Station in charge it has been mentioned that half main bus (western side) (Emergency) shutdown was taken by DVC on 15.04.2020

from 10:00 hrs to 12:00 hrs for replacing damaged flexible bond of Y phase L#85 main bus isolator. But after maintenance work in the R phase of the High level isolator of western side, the Eastern side high level was also opened from 13:40 hrs to 14:04 hrs and 132Kv/110V PT was out during that Period”.

It is argued that in the judgment it is clearly mentioned that emergency shutdown was taken from 10:00 hrs to 12:00 hrs only but at that duration our metering system was healthy and no average metering was done during this period but the average metering was done from 13:40 hrs to 14:04 hrs (24 mins). Which means the emergency maintenance work was done during the 10:00 hrs to 12:00 hrs only. But the eastern side isolator was open from 13:40 hrs to 14:04 hrs post completion of emergency maintenance work due to which our meter was stopped and that could be informed to us.

11. Argument advanced on behalf of Respondents :-

It is argued by the respondents that the S/D of 132KV half Main Bus was taken on 15.04.20 to attend a few hot spots as a preventive measure to avoid any major breakdown. As per existing practice, verbal clearances of concerned consumers were taken through official mobile phones. During the process of normalization of the system after completion of scheduled work, the western side isolator got misaligned and severe sparkover started at its conductive blades. The operatives on duty tried to open the said isolator immediately but the fingers of the subject isolator were so struck that it could not be opened and flash-over went on increasing. Under such circumstances, they were left with only option i.e. to open the eastern side bi-section isolator to get control over the sparking situation. Thus, the 132KV PT got out resulting in average billing of M/S JSPL as per guidelines of the Regulatory Commission.

It is further argued that as a normal practice, the pros and cons related with any vital shutdown are narrated to all concerned consumers well in advance, thereafter work is taken up suitable based on verbal/written consent of associated consumers. However, it was a system limitation that led to outage 132KV/110V PT. Moreover, from a system point of view, it was a faster and sensible decision to open the eastern side bisection isolator due to which prolonged breakdown could have been avoided. Isolator blade might have burnt completely causing a prolonged breakdown of 132 KV MB. This is also to mention that, at that time Country was going through COVID-19 Pandemic Lockdown and any prolonged breakdown would have taken a long time for restoration.

FINDINGS

12. In this case, the following three crucial issues crop up for determination : -

- I. Whether the authority of the Electricity Ombudsman can decide and redress a grievance of a consumer, as a direct complaint of the consumer, which matter has already been decided by the learned CGRF and against whom no appeal has been preferred?
- II. Whether the appellant is genuinely dissatisfied with the Order dated 5.10.2021 made by the learned CGRF DVC Maithon in Case No. 01 / 2021?
- III. Whether the learned CGRF, DVC Maithon has committed any error in its Order dated 5.10.2021 passed in Case No. 01 of 2021 and it requires any interference by the Electricity Ombudsman?

13. **Crucial Issue No. I : Whether the authority of the Electricity Ombudsman can decide and redress a grievance of a consumer, as a direct complaint of the consumer, which matter has already been decided by the learned CGRF and against whom no appeal has been preferred?**

The Regulation 20 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, prescribes the procedure for filing a representation. Regulation 20 (3) (a) reads that - *“No complaint to the Electricity Ombudsman shall lie unless the complainant had before making a representation to the Electricity Ombudsman made a written representation to the Forum of the Distribution licensee named in the complaint and either the Forum had rejected the complaint or the complaint had not received any reply within a period of three months from date of filing of the grievance or the complainant is not satisfied with the orders of the Forum or the order of the Forum has not been complied with.”*

It is crystal clear that in following circumstances, a complaint to the Electricity Ombudsman shall lie :-

- (i). The complainant had made a written representation to the Forum and
- (ii). Either the Forum had rejected the complaint
- (iii). Or the complainant had not received any reply within a period of three months
- (iv). Or the complainant is not satisfied with the orders of the Forum
- (v). Or the order of the Forum has not been complied with.

The main grievance of the consumer Jindal Steel and Power Limited against the licensee Damodar Valley Corporation is regarding overbilling of Maximum Demand for the month of April 2020. An average metering was done by the DVC Patratu without informing the consumer violating and flouting Clause No. 10.3.1 of the JSERC (Electric Supply Code) Regulation 2015. The grievance of the consumer is that the licensee has considered the Maximum Demand as 32 MVA whereas the Maximum Demand was 17.75 MVA on 28.4.2020 at 10:31 a.m.

The consumer complainant Jindal Steel and Power Limited had made two written representations (complaints) to the CGRF- DVC, Maithon. The first complaint was made on 19th September 2020 and the second complaint was made on 27th July 2021. The first complaint was registered as Case Number 5 of 2020 and was disposed of on merit of the case by the learned CGRF on 6th April 2021. The second complaint was registered as Case

Number 1 of 2021 and was disposed of on technical ground, without entering into the merit of the case, by the learned CGRF on 5th October 2021.

The consumer complainant Jindal Steel and Power Limited using the order dated 5th October 2021 passed in Case Number 01 of 2021 by the learned CGRF, intends to place a direct complaint before the Electricity Ombudsman against the licensee Damodar Valley Corporation. The authority of the Electricity Ombudsman can decide a direct complaint of Jindal Steel and Power Limited if the complainant had made a written representation to the CGRF DVC Maithon and the complaint had not received any reply within a period of three months from the date of filing of the grievance. But in this case, the complainant had made a complaint to the CGRF, DVC Maithon, a case was registered having case number 05/2020 and the case was finally decided on merit by the learned CGRF on 6th April 2021. The consumer Jindal Steel and Power Limited had not preferred any appeal or representation being aggrieved with that very order.

The Electricity Ombudsman can not take up this complaint / representation as a direct complaint and decide it independently on merit of the case. Accordingly this issue is being decided against the consumer Jindal Steel and Power Limited and in favour of the licensee Damodar Valley Corporation.

14. Crucial Issue No. II : Whether the appellant is genuinely dissatisfied with the Order dated 5.10.2021 made by the learned CGRF, DVC Maithon in Case No. 01 / 2021?

Though the consumer Jindal Steel and Power Limited has made a representation / appeal before the Electricity Ombudsman challenging the order dated 5th October 2021 passed in Case Number 01 of 2021 by the learned CGRF, DVC Maithon but it has not been disclosed that the consumer is not satisfied with the order and has not mentioned any ground as to how the consumer is aggrieved with the order .

The Regulation 20 (3) 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 prescribes the circumstances under which a complaint to the Electricity Ombudsman shall lie. The present case comes within the criteria that the complainant is not satisfied with the order of the Forum.

Non Satisfaction with the Order should be clearly expressed in the representation and it does not derive an implied meaning by merely filing an appeal. The appellant has to

mention the reasons and grounds for his dissatisfaction. The appellant should point out that, **according to the appellant**, the learned CGRF has misinterpreted the Regulations of the Hon'ble JSERC, the learned CGRF has not followed the relevant provisions of the regulations and has derived a wrong finding.

In this instant representation, the complainant consumer has not uttered a single word as to how dissatisfied he is with the order of the learned CGRF, DVC Maithon? Apparently the consumer Jindal Steel and Power Limited is dissatisfied with the Order passed in Case No. 5 of 2020 on 6.4.2021 by the learned CGRF, DVC Maithon but against that order, no appeal has been preferred. It appears to me that the consumer has obtained the second order from the learned CGRF, in Case No. 1 of 2021 on 5.10.2021, only to extend the limitation period of filing appeal against the findings of first order.

I find and hold that the appellant is not genuinely dissatisfied with the order made by the learned CGRF , DVC Maithon in Case No. 01 of 2021 dated 5th October 2021. Accordingly this issue is being decided against the appellant Jindal Steel and Power Limited and in favour of the respondent Damodar Valley Corporation.

15. Crucial Issue No. III : Whether the learned CGRF, DVC Maithon has committed any error in its Order dated 5.10.2021 passed in Case No. 01 of 2021 and it requires any interference by the Electricity Ombudsman?

Though the consumer appellant has not raised the issue that the learned CGRF has committed any error in its order dated 5.10.2021 passed in Case Number 01 of 2021 but since an appeal / representation has been made against that very order, I feel expedient to determine the issue.

The learned CGRF has disposed of the case at the stage of admission itself. I have gone through the impugned order. The reasons for rejection of the case at the stage of admissions are as follows : -

- (i). The consumer had filed an earlier case having Case Number 5 of 2020 for redressal of the same grievance.
- (ii). The case was disposed of on contest by the forum on 6th April 2021.
- (iii). The forum has no jurisdiction to review its own order.
- (iv). The forum has no jurisdiction to recall its own order.

(v). There is no any express provision in the JSERC Regulation which authorises the Forum to review or recall its own order.

(v). There is no any express provision in the Electricity Act, 2003 which authorises the Forum to review or recall its own order.

The consumer appellant has annexed the copy of order passed by the learned CGRF in the previous case (i.e. Case No.- 5 of 2020 passed on 6.4.2021). During the course of argument, Mr Subhash Sharan HOD - E&A of Jindal Steel and Power Limited had submitted that the previous case, that is the case number 5 of 2020, was simply disposed of by the learned CGRF and it shall not cause Res Judicata from filing another case for the same relief.

I have gone through the record of both the cases that are the record of Case Number 5 of 2020 and Case Number of 01 of 2021. I have gone through the Order passed in the previous case. Two issues were raised in the previous case and both the issues were finally decided by the learned CGRF, DVC Maithon. It is very specifically decided that the Relief sought in light of Clause Number 10.3.1 of the JSERC (Electricity Supply Code) Regulation-2015 by the petitioner is not applicable. The second issue regarding imposition of penalty by the licensee was decided in favour of the consumer. It was ordered that the penalty on security deposit in the month of April 2020 is not on merit and should be waived off. Apparently the first case was decided finally on merit.

The subsequent second case has been filed by the same consumer against the same licensee for the same relief, which has earlier been negated by the learned CGRF, DVC Maithon, that is by the same Forum.

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 does not authorise the Forum to admit a subsequent case of a consumer which has already been finally decided by the Forum. Neither the Regulations 2020 of Hon'ble JSERC nor any provision of the Indian Electricity Act, 2003 empowers the Forum to recall or review its own order.

I don't find any illegality or irregularity in the impugned Order of the learned CGRF, DVC Maithon and the Order does not attract any interference by the authority of the Electricity Ombudsman. Accordingly this issue is being decided against the consumer Jindal Steel and Power Limited and in favour of the licensee the Damodar Valley Corporation.

16. In view of my findings & comments made above and the decision arrived at on different crucial issues for determination, it is therefore

ORDERED

that the appeal be and the same is

DISMISSED

on contest against the consumer appellant Jindal Steel and Power Limited and in favour of the respondent Damodar Valley Corporation. The impugned order passed in Case Number 01/2021 on 05.10.2021 of the learned CGRF DVC Maithon is hereby confirmed.

There shall be no order of cost. The parties shall bear their own cost.

Let a copy of this judgement be supplied to the parties.

(Dictated & Corrected by me)

Pronounced by me

(G. K. ROY)

(GOPAL KUMAR ROY)

Electricity Ombudsman