

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 21st day of December, 2023

### **Appeal No. EOJ/04 of 2023**

(Arising out of judgment passed in case no.02 of 2022 by the V.U.S.N.F., Ranchi)

UNION OF INDIA through the East Central Railway Zone  
being represented by Sri Dinesh Prasad Sah, Sr. Divisional  
Electrical Engineer (G), East Central Railway, Dhanbad -----Appellant

### **Versus.**

**1.** Jharkhand Vidyut Vitran Nigam Limited  
through its Managing Director having its registered office  
at Engineering Building, H.E.C., Dhurwa, P.O. - Dhurwa  
P.S- Jagannathpur, District - Ranchi-834004

**2.** Electrical Superintending Engineer,  
Electric Supply Circle, Jharkhand Vidyut Vitran Nigam Limited  
having his office at Daltonganj, P. O. & District - Daltonganj

**3.** Electrical Executive Engineer,  
Electric Supply Division, Jharkhand Vidyut Vitran Nigam Limited  
having his office and P.O and P.S- Daltonganj, District-Daltonganj ----- Respondents

Counsel

For the Appellant : Mr. Prashant Pallav , Ms. Shivani Jaluka, Advocates

For the Respondents : Mr. Mohan Dubey , Advocate

Cases Referred

On behalf of the Appellant :

(2009) 5 SCC 208 Ravi Gupta vs. Commissioner of Sales Tax Delhi and another

On behalf of the Respondents :

1. (2011) 4 SCC 548 Narayan Chandra Ghosh vs. UCO Bank and Others

2. (2021) 3 SCC 549 Kotak Mahindra Bank Pvt. Ltd. vs. Ambuj A. Kasliwal and Others

**ORDER**

**1.** The appellant Union of India has filed an Interlocutory Application, at the stage of admission of appeal itself, for exemption from deposit of 50 % of the amount awarded by the learned Vidyut Upbhokta Shikayat Niwaran Forum (hereinafter shall refer as V.U.S.N.F.), Ranchi in complaint Case No.-02 of 2022 on 20.9.2023. The 2<sup>nd</sup> Proviso of Regulation-15 of the Jharkhand State Electricity Regulatory Commission (Guidelines for Establishment of Forum for Redressal of Grievance of the Consumers, Electricity Ombudsman and Consumer Advocacy) Regulations, 2020 regulates the Electricity Ombudsman not to entertain an appeal by any consumer, who is required to pay an amount in terms of an order of the Forum, unless the consumer has deposited in the prescribed manner, at least fifty percent of the amount or furnish such security in respect thereof as ordered by Ombudsman. The appeal has been PROVISIONALLY ADMITTED v.o.s. dated 9.11.2023 for the limited purpose of disposal of the interlocutory application by giving an opportunity of hearing to both the parties. It has been made clear to both the parties that the decision on this interim application shall govern upon the ADMISSION of this appeal.

## **2. Application of Appellant :**

The appellant application inter alia is that the instant Interlocutory Application is being filed by the Appellant for seeking exemption from depositing 50% of the amount awarded as per order dated 20<sup>th</sup> of September 2023 passed in Complaint Case No. 2 of 2022 as per 2<sup>nd</sup> proviso to Rule 15 of The Jharkhand State Electricity Regulatory Commission (Guidelines for Establishment of Forum for Redressal of Grievance of the Consumers, Electricity Ombudsman and Consumer Advocacy) Regulations 2020. The Appellant has filed the instant Appeal against the order dated 20<sup>th</sup> of September 2023 passed in Complaint Case No.2 of 2022 whereby and where under the Ld. Vidyut Upbhokta Shikayat Niwaran Forum, Ranchi has held that there is no illegality or infirmity in the recast bill of Rs 64,46,14,179/- (INR Sixty Four Crores Forty Six Lakhs Fourteen Thousand One Hundred and Seventy Nine Only).

Regulation 15 of the J.S.E.R.C (Guidelines for Establishment of Forum for Redressal of Grievance of the Consumers, Electricity Ombudsman and Consumer Advocacy) Regulations 2020 provides for Appeal from the order passed by the Forum.

The Regulation 15 reads :- “ Any consumer aggrieved by an order made by the Forum(s) may prefer an appeal / representation against such order to the Electricity Ombudsman within a period of thirty days from the date of the receipt of the order, in such form and the manner as may be laid down in these regulations.

Provided further that the Electricity Ombudsman may entertain an appeal after the expiry of the period of thirty days if sufficient cause is shown for not filing the appeal within that period; but not exceeding a maximum period of 60 days from the date of receipt of order.

Provided further that the Electricity Ombudsman shall entertain no appeal by any consumer, who is required to pay any amount in terms of an order the Forum, unless the consumer has deposited in the prescribed manner, at least fifty percent of the amount or furnish such security in respect thereof as ordered by Ombudsman.”

It is the further case of the appellant that the appellant had approached the Hon’ble High Court by filing a Writ Petition registered as W.P.(C) No. 1445 of 2022 for restoration of the electricity supply which was disconnected by the respondents on 24<sup>th</sup> of March 2022. The Hon’ble High Court allowed the petition and directed the respondent to restore the electricity connection

upon payment of 10 % of the disputed amount i.e., Rs. 6,40,00,000/- (INR Six Crores Forty Lakhs Only) under protest. The Hon'ble Court after taking into consideration that the Forum for resolution of grievance at Palamu Division was not operational was pleased to direct the appellant to file an appropriate application before the Forum at Ranchi. That the appellant has deposited a sum of Rs.6,40,00,000/- (INR Six Crores Forty Lakhs Only) vide RTGS No. SBIN 522097994506 in compliance with the order of the Hon'ble High Court and accordingly the electricity connection has been restored.

The appellant has further submitted that even in a case where pre-deposit is a mandatory condition for filing an appeal, the Court can waive the pre-deposit in light of Justice, equity and good conscience. The appellant has put his reliance upon authority given by the Hon'ble Apex Court in the case of **Ravi Gupta v. Commissioner Sales Tax, Delhi** reported in **(2009) 5 SCC 208**. It is submitted that the appellant had already deposited 10 % of the disputed amount in terms of the order passed by the Hon'ble High Court in W.P.(C) 1445 of 2022. The respondents themselves are not complying with the order dated 20<sup>th</sup> of September 2023 passed in Complaint Case No. 2 of 2022. The Forum had passed the following directions upon the parties:-

- a. Both the parties are directed to adhere to the guidelines as agreed upon through Mom dated 14<sup>th</sup> of July 2021.
- b. Accordingly GM cum CE Medininagar is directed to take initiative for approval of the decision taken in MoM from the Board of Directors JBVNL within one month from receipt of this order.
- c. After approval of Board (JBVNL) the same may be sent to Indian Railways (Appellant) for approval of their Board within one month's time.

In the meantime JBVNL authorities are directed to recast the updated Energy Bills as per modalities decided in the MoM dated 14<sup>th</sup> of July 2021 within a week time from the date of receipt of this order and serve the same to the petitioner for its payment.

d. The Petitioner (Indian Railways) is directed to pay 50 % of the revised bill within 15 days from the date of receipt of revised bill.

The rest balance amount of the aforesaid revised bill should be paid within 7 seven days from the date of approval of the competent authority of Railways.

It is the further case of the appellant that the respondent without taking approval from their Board of Directors have sent a rectified bill for an amount of Rs.63,23,05,999/- (INR Sixty Three Crores Twenty Three Lakhs Five Thousand Nine Hundred and Ninety Nine Only) vide Letter No.1393/ E.S.C., Daltonganj dated 1<sup>st</sup> of October 2023.

The Barwadih Railway Station is one of the important Railway Junctions situated in the State of Jharkhand. The said Junction is a Major Freight Depot and houses a Routine Overhaul facility (ROH) which is tasked with the examination, maintenance and overhaul of freight wagons. Disconnection of electricity supply causes a huge loss to the appellant. The prime facie case and balance of convenience lies in favour of the appellant and further the appellant shall suffer irreparable loss if the condition of pre-deposit is not waived by the Ombudsman.

### **3. Reply by the Respondents :**

In pursuance of order dated 9.11.2023 passed by this Authority the respondents appeared and filed their reply. The respondents have opposed the interlocutory application of the appellant. According to the respondents the appeal is not maintainable because the appellant did not comply with Regulation 15 of the Jharkhand State Electricity Regulatory Commission (Guideline for Establishment of Forum for Redressal of grievance of the consumers, Electricity ombudsman and consumer advocacy) Regulation, 2020. In the proviso specifically mentioned that the Electricity ombudsman shall entertain no appeal by any consumer, who is required to pay any amount in terms of an order of the forum, unless the consumer has deposit in the prescribed manner, at least fifty percent of the amount or furnish such security in respect thereof as

ordered by ombudsman. Therefore it is a mandatory provision, to entertain an appeal, before the Ombudsman. Here the word 'shall' used in the proviso of guideline under regulation 15, means here no discretion to the Appellate Forum regarding exemption.

As per law this appeal should not be entertained, unless 50 % of the awarded / ordered amount shall not be deposited along with the appeal memo. The case cited by the appellant is not applicable in the present case because in case cited by the appellant there was provision, under section 43 (5) prescribed discretion to the court regarding exemption, here the case in hand the statute did not provide any discretion to the court for exemption. It is a mandatory condition and it should comply in true letter and spirit as provided under the statute.

The Hon'ble Supreme Court in the case of **Narayan Chandra Ghosh vs. UCO Bank and others** reported in **2011 (4) SCC 548** held that the appellate tribunal had erred in law in entertaining the appeal without directing the appellant to comply with the said mandatory requirement regarding deposit 50 % amount as precondition to entertain appeal. The Hon'ble Supreme Court had taken the same view in the recent Judgment passed in civil appeal no. 538 / 2021 in this case also held that no appeal shall be entertained unless the amount of 50 % shall be deposited as per rule of statute.

#### **4. Argument advanced on behalf of the Applicant :**

Mr. Prasant Pallav, the learned counsel for the applicant has submitted that the process of admission of an appeal, is in between the Court and the Appellant. The respondents have got no locus standi to appear before this Authority at this stage and to oppose the petition.

Mr. Pallav has drawn my attention towards Para 8 (A) of the impugned Judgment of the learned V.U.S.N.F. Ranchi which reads that – “ Both the parties hereby directed to adhere to the guidelines as agreed upon through MOM dated 14.7.2021.” Mr. Pallav has submitted that the learned V.U.S.N.F. does not have Writ Jurisdiction and cannot pass such type of order. Even it

has no power to entertain any mediation process or the outcome of the mediation. The learned V.U.S.N.F. Ranchi should not refer to the Minutes of Meeting (MOM) in its Judgement and cannot give a statutory shape of MOM in its order. He has vehemently submitted that the learned V.U.S.N.F. Ranchi has not given its independent finding in its Judgment. The learned counsel for the applicant has emphasized upon the term used 'Agreed Upon' at Para 8 (A) of the impugned Judgement . It is submitted that the matter is still under process of obtaining consent of parties concerned.

Mr. Pallav, the learned Advocate for the appellant came back to his interlocutory application. It is submitted that even in a case where pre-deposit is a mandatory condition for filing an appeal, the Court can waive the pre-deposit in light of Justice, equity and good conscience. In the case of Ravi Gupta v. Commissioner Sales Tax, Delhi (2009) 5 SCC 208, the Hon'ble Supreme Court pointed out three factors which needs to be considered for waiver of pre-deposit which are - 1.Prime facie case, 2.Balance of convenience and 3.Irreparable loss. He has further submitted that submitted that the Respondent without taking approval from their Board of Directors have sent the rectified bill for an amount of Rs.63,23,05,999/- (INR Sixty Three Crores Twenty Three Lakhs Five Thousand Nine Hundred and Ninety Nine Only) vide letter bearing No.1393 / E.S.C, Daltonganj dated 1<sup>st</sup> of October 2023. It is further submitted that the Barwadih Railway Station is one of the important Railway Junctions situated in the State of Jharkhand. The said Junction is a Major Freight Depot and houses a Routine Overhaul facility (ROH) which is tasked with the examination, maintenance and overhaul of freight wagons. Disconnection of electricity supply causes a huge loss to the Appellant. The prime facie case and balance of convenience lies in favour of the Appellant and further the Appellant shall suffer irreparable loss if the condition of pre-deposit is not waived by the Ombudsman.

While concluding his argument, Mr. Pallav the learned counsel, for the sake of argument has raised a question for himself as to what amount should be deposited in compliance of the 2<sup>nd</sup> proviso of Regulation 15 of the J.S.E.R.C (Guidelines for Establishment of Forum for Redressal

of Grievance of the Consumer, Electricity Ombudsman and Consumer Advocacy) Regulations 2020. It is submitted that the impugned order of learned V.U.S.N.F. Ranchi does not disclose any specific amount. There is no clarity of demand in impugned order. The J.B.V.N.L. has not generated any revised bill till today after taking approval from their Board of Directors in compliance of order dated 20.9.2023. It is queerly argued that in absence of any revised bill, how one can clear the bill. Mr. Pallav, the learned counsel for the appellant has raised a question by quoting operating part of order para 8 (D) of the impugned Judgment of learned V.U.S.N.F Ranchi which reads – “ The Petitioner (Indian Railways) is directed to pay 50 % of the revised bill from the date of receipt of revised bill.”

As per calculation of Mr. Pallav, the learned V.U.S.N.F. Ranchi has ordered to pay 50 % of the revised bill (64 crores approx) within fifteen days. Hence the amount figures from Rs. 64 Crore to Rs. 32 Crore. And as per Regulations 2020, the 50% of Rs. 32 Crore stands at 16 Crore only. Since Rs.6.40 Crore has already been paid to the J.B.V.N.L. in compliance with the directions of the Hon'ble High Court of Jharkhand, the amount stands Rs. 16 Crore - minus - Rs. 6.40 Crore = 9 Crore 60 Lakh only. As per the calculation of Mr. Pallav the pre-deposit amount stands at Rs. 9.60 Crores only.

To finally conclude, Mr. Pallav has preferred to read out the 2<sup>nd</sup> Proviso of Regulation 15. It reads as follows – “Provided further that the Electricity Ombudsman shall entertain no appeal by any consumer, who is required to pay any amount in terms of an order the Forum, unless the consumer has deposited in the prescribed manner, at least fifty percent of the amount or **furnish such security** in respect thereof as ordered by Ombudsman.” (emphasis supplied by highlighting)

Mr. Pallav, the learned counsel for the applicant has concluded his argument by submitting that there is an option open to the appellant to furnish security in lieu of paying the pre-deposit amount.



**5. Argument advanced on behalf of the Respondents :**

Mr. Mohan Kr. Dubey, the learned Standing Counsel for the respondents has submitted that the case is at the stage of admission itself and today's matter is for the limited purpose of hearing on the Interlocutory Application of appellant praying therein for exemption from deposit of 50% of the amount awarded. Neither the Authority of Ombudsman nor the parties to the appeal can enter into the merit of the impugned Judgement.

Mr. Dubey, the learned standing counsel, has submitted that the case of Ravi Gupta v/s Commissioner Sales tax, Delhi responded in (2009) 5SCC at page-208 is not applicable in the J.S.E.R.C. (Guidelines for Establishment of Forum for Redressal of Grievance of the Consumers, Electricity Ombudsman and Consumer Advocacy) Regulations 2020. It is vehemently submitted by Mr. Dubey that the case of Ravi Gupta (supra) is on the Delhi Sales Tax Act, 1935. The term "MAY" has been used in Proviso of Section 43 (5) of the Delhi Sales Tax Act, 1935 which makes the provision Obligatory whereas the term "SHALL" has been used in the J.S.E.R.C. (Guidelines for Establishment of Forum for Redressal of Grievance of the Consumers, Electricity Ombudsman and Consumer Advocacy) Regulations 2020 which makes it Mandatory.

It is submitted that this appeal is not maintainable because the appellant did not comply with regulation 15 of the Jharkhand State Electricity Regulatory Commission (Guideline for Establishment of Forum for Redressal of grievance of the consumers, Electricity ombudsman and consumer advocacy) Regulation, 2020. In the proviso it is specifically mentioned that the Electricity Ombudsman shall entertain no appeal by any consumer, who is required to pay any amount in terms of an order of the forum, unless the consumer has deposit in the prescribed manner, at least fifty percent of the amount or furnish such security in respect thereof as ordered by Ombudsman. Therefore it is a mandatory provision to entertain an appeal before the Ombudsman. Here the words used in the proviso of guideline under Regulation 15 shall, means here no discretion to the appellate forum regarding exemption.

As per law this appeal should not be entertained, unless 50 % of the awarded / ordered amount be deposited along with the appeal memo. The case cited by the appellant is not applicable in the present case because in case cited by the appellant there was provision, under section 43 (5) prescribed discretion to the court regarding exemption, here the case in hand the statute did not provide any discretion to the court for exemption. It is a mandatory condition and it should comply in true letter and spirit as provided under the statute.

The Hon'ble Supreme Court in the case of Narayan Chandra Ghosh versus UCO Bank and other reported in 2011 (4) SCC 548 held that the appellate tribunal had erred in law in entertaining the appeal without directing the appellant to comply with the said mandatory requirement regarding deposit 50 % amount as precondition to entertain appeal. The Hon'ble Supreme Court same view had taken in recent Judgment passed in civil appeal no. 538 / 2021 in this case also held that no appeal shall be entertained unless the amount of 50 % shall be deposited as per rule of statute.

Mr. Dubey, the learned Standing Counsel for the Respondents has pointed out that originally the Bill was of **Rs. 589,52,27,630** (Rupees Five Hundred Eighty Nine Crore Fifty Two Lakhs Twenty- Seven Thousand Six Hundred Thirty) which was reduced to **Rs. 64,46,14,179** (Rupees Sixty Four Crore Forty Six Lakhs Fourteen Thousand One Hundred and Seventy Nine only) . After rectification of the bill it amounts to **Rs. 63,23,05,999** (Rupees Sixty Three Crore Twenty Three Lakhs Five Thousand Nine Hundred and Ninety Nine Only). Mr. Dubey has submitted that the appellant cannot be permitted to blow hot and cold simultaneously. The operative portion of the impugned orders of learned V.U.S.N.F Ranchi directs the consumer to pay 50 % of the revised bill within 15 days. If the appellant is not comfortable with Rs. 63.23 Crores, he may opt for the other one. Mr. Dubey has further submitted that the consumer has paid a sum of Rs.6.40 Crore by the order of the Hon'ble High Court for Restoration of Electrical Connection and not for filing Appeal. Mr. Dubey, though, has objected to the appellant to enter into the merit of the case, since the case is at the stage of admission itself, but has preferred to make a

reply that the entire documents relating to MOM had been filed before the learned V.U.S.N.F. Ranchi for its consideration and now the appellant is claiming that the MOM has wrongly been entertained by the learned V.U.S.N.F. Ranchi.

## **FINDINGS**

**6.** The interlocutory application of appellant is based upon its concept that – Even in a case, where pre-deposit is a mandatory condition for filling an appeal, the Court can waive the pre-deposit in light of Justice, equity and good Conscience.

The appellant has relied upon the law laid down by the Hon'ble Apex Court in Ravi Gupta case (supra). It was a matter that falls under section 43 the Delhi Sales Tax Act, 1975, which deals with appeals against the orders passed under the Act.

The present appeal having No.- EOJ/04/2023 has been filed by the applicant/ appellant before the Electricity Ombudsman 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. In this case we are concerned with the provisions under these Regulations.

**7.** For a comparative study of the provision of 'Appeals' in The Delhi Sales Tax Act, 1975 and The Jharkhand State Electricity Regulatory Commission (Guidelines for Establishment of Forum for Redressal of the Consumer Grievances, Electricity Ombudsman and Consumer Advocacy) Regulations, 2020. It is expedient to quote both the provisions for better interpretation.

**Section 43. (Appeals) of the Delhi Sales Tax Act, 1975 reads as follows :-**

43 (1) Any person aggrieved by any order, not being an order mentioned in section 44 (Non-appealable orders) passed under this Act or the rules made there under, may appeal to the prescribed authority:

Provided that where an order, not being an order mentioned in section 44 (Non-appealable orders) or made under section 47 (Revision of other orders) is passed by the Commissioner, the person aggrieved may appeal there from to the Appellate Tribunal.

43 (2) The Commissioner or any person aggrieved by an order passed in appeal by the prescribed authority may appeal to the Appellate Tribunal against such order.

43 (3) Subject to the provisions of section 62 (Extension of period of limitation in certain cases), no appeal shall be entertained unless it is filed within sixty days from the date of service of the order appealed against.

43 (4) Every appeal filed under this section shall be in the prescribed form and shall be verified in the prescribed manner and in the case of an appeal to the Appellate Tribunal filed by any person other than the Commissioner, shall be accompanied by a fee of fifty rupees.

43. (5) No appeal against an order of assessment with or without penalty or against an order imposing the penalty shall be entertained by an appellate authority unless such appeal is accompanied by a satisfactory proof of the payment of tax with or without penalty or, as the case may be, of the payment of the penalty in respect of which the appeal has been preferred:

Provided that the appellate authority **MAY**, if it thinks fit, for reasons to be recorded in writing, entertain an appeal against such order--

(a).Without payment of the tax and penalty, if any, or as the case may be, of the penalty, on the appellant furnishing in the prescribed manner security for such amount as it may direct; or

(b).On proof of payment of such smaller sum, with or without security for such amount of tax or penalty which remains unpaid, as it may direct :

Provided further that no appeal shall be entertained by the appellate authority unless it is satisfied that such amount of tax as the appellant may admit to be due from him has been paid.

43 (6) The appellate authority may, after giving the appellant an opportunity of being heard,-

(a).Confirm, reduce, enhance or annul the assessment (including any penalty imposed), or

(b).Set aside the assessment (including any penalty imposed) and direct the assessing authority to make a fresh assessment after such further inquiry as may be directed, or

(c).Pass such order as it may think fit

43 (7) Save as provided in section 45 (Statement of case to the High Court), an order passed by Appellate Tribunal on appeal shall be final.

**The Regulation 15 (Appeal / Representation) of the Jharkhand State Electricity Regulatory Commission ( Guidelines for Establishment of Forum for Redressal of the Consumer Grievances, Electricity Ombudsman and Consumer Advocacy ) Regulations, 2020 reads as follows :**

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

Provided further that the Electricity Ombudsman may entertain an appeal after the expiry of the said period of thirty days if sufficient cause is shown for not filing the appeal within that period ; but not exceeding a maximum period of 60 days from the date of receipt of the order.

Provided, further that the Electricity Ombudsman **SHALL** entertain no appeal by any consumer, who is required to pay any amount in terms of an order of the Forum, unless the consumer has deposited in the prescribed manner, at least fifty percent of the amount or furnish such security in respect thereof as ordered by Ombudsman.

The term MAY has been used for the Appellate Authority in Proviso of the Section 43 (5) of the Delhi Sales Tax Act, 1975, while the term SHALL has been used for the Electricity Ombudsman in J.S.E.R.C. (Guidelines for Establishment of Forum for Redressal of Grievances of the Consumers, Electricity Ombudsman and Consumer Advocacy) Regulations, 2020. The Regulations, 2020 do not provide any discretion to the Electricity Ombudsman to waive the pre-deposit condition.

Their Lordship of Hon'ble Apex Court in Ravi Gupta case (supra), while discussing the Provisos of Section 43 (5) of the Delhi Sales Tax Act, 1975, at para- 10 have been pleased to observe that- *"The first Proviso of Section 43(5) of the Act consists of two parts. In a given case the appeals can be entertained by the Tribunal, for reasons to be recorded in writing, without insisting on payment of tax and penalty as the case may be, of the penalty on the appellant furnishing security in the prescribed manner for such amount as it may direct. The other category which is applicable to the present case relates to direction for deposit of smaller sum with or without security for such amount of tax or penalty which remains unpaid, as it may direct. In other words, **the appellate authority has discretion not to insist on payment as a condition precedent to entertain the appeal, for which the reasons have to be recorded in writing.**"*

I have gone through the Regulation 15 of the Jharkhand State Electricity Regulatory Commission ( Guidelines for Establishment of Forum for Redressal of the Consumer Grievances, Electricity Ombudsman and Consumer Advocacy ) Regulations, 2020 thoroughly. The Regulations do not provide any discretion to the Electricity Ombudsman in this regard. To my judicial approach, since the provision of pre-deposit is mandatory in nature for the Electricity Ombudsman under Regulation - 15 of the J.S.E.R.C. (Guidelines for Establishment of Forum for Redressal of

Grievances of the Consumers, Electricity Ombudsman and Consumer Advocacy) Regulations, 2020, to my dogma I am not authorized to waive the pre-deposit condition and the Electricity Ombudsman has got no discretion to waive it.

In a case of **Kotak Mahindra Bank Private Limited vs. Ambuj A. Kasliwal and others** reported in **(2021) 3 SCC 549** Their Lordships of Hon'ble Apex Court have been pleased to held that- *"Section 21 of the Recovery of Debts and Bankruptcy Act, 1993 employs the phrase "appeal shall not be entertained" indicates that it injuncts the Appellate Tribunal from entertaining an appeal by a person from whom the amount of debt is due to the Bank, unless such person has deposited with the Appellate Tribunal, fifty percent of the amount of debt so due from him as determined by the Tribunal under Section 19 of the Act. The proviso to Section 21, however, grants the discretion to the Appellate Tribunal to reduce the amount to be deposited, for reasons to be recorded in writing, but such reduction shall not be less than twenty-five percent of the amount of such debt which is due. Hence the pendulum of discretion to waive pre-deposit is allowed to swing between fifty percent and twenty five percent of the debt due and not below twenty five percent, much less not towards total waiver"*. (emphasis supplied by underlining)

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

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

**8.** The appellant has raised a question regarding the quantum of bill amount in terms of the Order of the learned V.U.S.N.F. Ranchi and what should be 50% of that amount?

The appellant in his interlocutory application at Para- 10 has admitted that the Respondent have sent the rectified bill for an amount of **Rs.63,23,05,999/=** (INR Sixty Three Crore Twenty Three Lakhs Five Thousand Nine Hundred and Ninety Nine Only) vide Letter No-1393/ E.S.C. Daltonganj dated 1<sup>st</sup> October 2023. A question is raised by the appellant that the rectified bill has been generated without getting approval of the Board of Directors.

To my considered opinion, the question as to whether the respondent has generated Rectified Bill with or without approval of the Board of Directors is a question of fact, which enters into the merit of the appeal. I don't find any impediment to consider the rectified bill amount for this purpose of pre depositing.

**9.** The appellant has raised a question regarding adjustment of the amount deposited by appellant in compliance with the Order of the Hon'ble High Court passed in W.P.(C) No.1445 of 2022 with I.A. No- 2703 of 2022 vide order dated 5.4.2022.

It is not disputed by the respondents towards the fact that the appellant has deposited an amount of Rs.6,40,00,000/= (INR Six Crore Forty Lakh only) **under protest** to the J.B.V.N.L.

The 2<sup>nd</sup> Proviso of Regulation-15 of the J.S.E.R.C. (Guidelines for Establishment of Forum for Redressal of Grievances of the Consumers, Electricity Ombudsman and Consumer Advocacy) Regulations, 2020 does not restrict pre-deposit to EXACT 50 % of the ordered amount rather prescribes AT LEAST 50 % of the awarded amount. The Electricity Ombudsman may pass an

order and direct the appellant to pre-deposit more than 50% of the awarded amount, if the circumstances warrant.

The Hon'ble High Court of Jharkhand in Order dated 5.4.2022 passed in W.P.(C) No- 1445 of 2022 with I.A. No. 2703 of 2022 at Para 7 have been pleased to order that – “ *Considering the opposite aspect and keeping in view that the present dispute is a quite old one pertaining to the period from 04/1993 to 02/1999, if the petitioner makes payment of 10% of Rs.64,46,14,179/- i.e. Rs.6.40 crores (approx), under protest, the electrical connection of the petitioner shall immediately be restored by the respondents. The said payment shall, however, be subject to the outcome of the complaint which would be filed by the petitioner before the VUSNF, Ranchi. It is, however, clarified that the petitioner shall continue to pay the current electricity charges.*”

Thereafter a complaint case was filed before the learned VUSNF, Ranchi and the impugned Judgment/Order was passed by the learned VUSNF, Ranchi. The said Judgement / Order of the VUSNF, Ranchi is under challenge and is at the stage of admission itself. The Electricity Ombudsman is not empowered to enter into the merit of the appeal at this juncture.

It is not proper and desirable, for the parties to the Civil Writ Petition before the Hon'ble Jharkhand High Court, to make a prayer before the Electricity Ombudsman to pass an order in continuation with the Order of the Hon'ble High Court. The prayer of the appellant regarding adjustment of the deposited amount is hereby negated.

**10.** Now I turn to figure out the ordered amount, as per order of the learned VUSNF, Ranchi, to get compliance of the 2nd proviso of Regulation 15. The relevant portion of the order of learned V.U.S.N.F. reads as follows : - “The Petitioner (Indian Railways) is directed to pay 50 % of the revised bill **within 15 days** from the date of receipt of revised bill. The rest balance amount of the aforesaid revised bill should be paid **within 7 seven days** from the date of approval of the competent authority of Railways.” (emphasis supplied by highlighting)



It is an admitted fact that a Rectified Electricity Bill was served to the Indian Railways through Letter No.-1393/E.S.C. Daltonganj dated 1.10.2023. Though it is the case of the applicant that the respondents without taking approval from their Board of Directors have sent the said rectified bill, but this contention of appellant can not be and should not be adjudicated by the Electricity Ombudsman at this stage of disposing the interlocutory application.

The Revised (Rectified) bill is of Rupees 63,23,05,999/- @ Rs. 63.23 Crores approx. The Indian Railways appellant was directed to pay the entire amount in two tranches. In the first tranche, half of the revised bill amount was ordered to be paid within 15 days after receiving the revised bill and in the second tranche, the remaining half was ordered to be paid within 7 days after getting the revised bill approved by the Competent Authority of Indian Railways. The order does not allow the Competent Authority of Indian Railways to sit over the revised bill to make it non-existent and to consider only half of the rectified bill amount as ordered amount. The amount falls within the second tranche is also an ordered amount that to be paid by the consumer within a reasonable period. To figure out the ordered amount, for the purpose of compliance of the 2nd proviso of Regulation-15, the entire Rectified Bill of Rs.63,23,05,999/= shall be considered as ordered amount.

**11.** While advancing the argument on behalf of the applicant Mr. Prasant Pallav, the learned counsel has submitted that there is an option open to appellant to furnish security in lieu of paying amount to the account of respondents.

With due respect to Mr. Pallav, I am to say that for furnishing security in lieu of depositing the amount, the consumer has to obtain a specific order from the Electricity Ombudsman. In this case, neither such prayer has been made nor even any ground has been taken in its application to obtain such order from the Electricity Ombudsman. Consequently an order to furnish Security, in place of depositing the amount, shall not be available to the Consumer.

**12.** In view of my findings and comments made above the prayer of the appellant Union of India, made in the interlocutory application to exempt from depositing of 50 % of the amount awarded by the learned Vidyut Upbhokta Shikayat Niwaran Forum: Ranchi in Complaint Case No.-02 of 2022 on 20.9.2023, stands refused.

The appellant is hereby directed to comply with the mandatory pre-deposit condition in compliance of the 2<sup>nd</sup> Proviso of the Regulation 15 of the Jharkhand State Electricity Regulatory Commission (Guidelines for Establishment of Forum for Redressal of Grievance of the Consumers, Electricity Ombudsman and Consumer Advocacy) Regulations, 2020 and deposit fifty percent (50%) of the Rectified Bill of Rs.63,23,05,999/= as communicated to you through Letter No. - 1393/E.S.C. Daltonganj dated 1.10.2023. The Interlocutory Application is accordingly Rejected.

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

Dictated & Corrected by me

( G.K.ROY )

( GOPAL KUMAR ROY )

Electricity Ombudsman : Jharkhand