

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 25th day of October, 2024

Appeal No. EOJ / 04 of 2023

(Arising out of judgment / order passed in Case No. 02 of 2022 by the learned VUSNF, Ranchi)

Union of India through East Central Railway Zone
being represented by Dinesh Prasad Sah, S/O Late Shiv Shankar Sah
R/O Bunglow No. 901, Railway Officers Colony, P.O. and P.S.- Harapur,
Dist-Dhanbad, discharging duty as Sr. Divisional Electrical Engineer (G)
East Central Railways, Dhanbad, Jharkhand. -----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. - Dhruva
P.S -Jagannathpur, Dist-Ranchi.

2. Electrical Superintending Engineer,
Electric Supply Circle, Jharkhand Vidyut Vitran Nigam Limited
having his office and P.O. + P.S.- Daltonganj, Dist.Daltonganj

3. Electrical Executive Engineer

Electric Supply Division, Jharkhand Vidyut Vitran Nigam Limited

P.O. + P.S. - Daltonganj, Dist.Daltonganj ----- Respondents

Counsel / Representative

On behalf of Appellant : Mr. Prasant Pallav, DSGI and Ms. Shivani Jaluka,AC to DSGI

On behalf of Respondents : Mr. Mohan Kumar Dubey, Standing Counsel

Cases Referred :

On behalf of Appellant

1. (2022) 3 SCC 161 : E. S. Krishnamurthy and Ors vs Bharat HiTech Builder Pvt. Ltd.

On behalf of Respondents

1. (2005) 4 SCC 327 : Bombay Electricity Supply & Transport Undertaking vs Laffans India Pvt Ltd.

ORDER / AWARD

1.The present Energy Bill Dispute falls within the jurisdiction of the learned VUSNF, Medininagar but since the Forum constituted for redressal of grievances of the electricity consumers of Palamau Division was not functional, the Hon'ble Jharkhand High Court, treating the instant case as an exceptional one, the

consumer was given liberty to file a complaint before the learned VUSNF, Ranchi vide Order No.2 dated 5.4.2022 passed in W.P.(C) No.-1445 of 2022 with I.A. No.2703 of 2022 Union of India v/s JBVNL Ranchi & Ors.

Accordingly, the Consumer (Consumer No. L-2/D1788) had filed a complaint before the learned VUSNF, Ranchi on 19.4.2022. It was registered as Case No. 02/2022. The case was disposed of vide Order No. 20 on 20.9.2023.

2. The Union of India through East Central Railway Zone has filed this appeal for setting aside the Order/Judgement dated 20.9.2023 passed in connection with complaint case No.02 of 2023 by the learned VUSNF, Ranchi under Clause-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.

3 . The relief sought for by the Consumer before the learned VUSNF, Ranchi:

The appellant of this case, who is a consumer having consumer number L-2/D1788 had filed a complaint before the learned Vidyut Upbhokta Shikayat Niwaran Forum, Ranchi. The complainant had sought for following reliefs before the learned VUSNF, Ranchi.

a. For the issuance of order(s) or direction(s) upon the Respondent for quashing of the bill dated 31st of March 1999 and all subsequent bills, which has been raised assuming the contract demand to be 2267 kVA is wholly illegal and arbitrary and done without any statutory and / or contractual basis.

b. For the issuance of order(s) or direction(s) for quashing of the letter dated 8th of March 2022, in pursuance to which the electricity connection having Number -

L-2/D-1788 has been disconnected, contrary to Section 56 of the Electricity Act,2003.

c. For the issuance of such other order(s), or direction(s) as this Hon'ble Court may think just and proper in the facts and circumstances of the case doing conscionable justice to the Applicant.

3.1 The relief sought for by the Appellant before the Electricity Ombudsman:

The appellant had sought for the following reliefs before the Authority of the Electricity Ombudsman, Jharkhand.

- a. To set aside the order dated 20.9.2023 passed in complaint case no. 2 of 2022 by the learned VUSNF, Ranchi
- b. To stay the operation of order dated 20.9.2022 passed in complaint case no. 2 of 2022
- c. To pass such other orders as may be deemed fit and proper in the facts and circumstances of the case

4. The operative portion of Order of the learned VUSNF, Ranchi

The learned VUSNF, Ranchi, in case No.02/2022 on 20.9.2023 has passed judgement / order. The operative portion of Order of the learned VUSNF, Ranchi reads as follows :

- A. Both the Parties hereby directed to adhere to the guidelines as agreed upon through MOM dated 14.07.2021.
- 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 period from receipt of this order.

C. After approval of Board (JBVNL) the same may be sent to Indian Railways (Petitioner) for approval of their Board within one month time.

In the meantime JVBNL authorities are directed to recast the updated Energy Bills as per modalities decided in the MOM dated 14.7.2021 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 (Eastern Railway Barwadih, Consumer No-L-2/D1788,HT) is directed to pay 50% of the revised bill within 15 days from the date of receipt of the revised bill.

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

E. The Case is hereby disposed of with above directions.

F. Let the copy of the order be served to both the parties.

G. There shall be no order as to costs.

5. Grounds of Appeal

The appellant has preferred this appeal on following grounds:

The Ld. Forum has erred in disposing of the complaint filed by the appellant holding that there is no illegality or infirmity in the Recast Bill of Rs.64,46,14,179/- (INR Sixty Four Crores Forty Lakhs Fourteen Thousand One Hundred and Seventy Nine Only).

The Ld. Forum has acted beyond the purview of Rule 16.4.1 of the Tariff Notification 1993 which was implemented with effect from 23rd of June 1993. The Ld. Forum failed to take into consideration that the bills can only be raised as per the Contract Demand and not as per the installed transformer capacity. The Ld. Forum has not taken into consideration that Rule 16.4.1 of the Tariff Notification 1993 provides

that in case the transformer capacity is more than 150% of the contract demand then the service connection shall be disconnected. However, instead of disconnecting the service, the respondent began raising bills on the basis of the alleged installed transformer capacity. The Ld. Forum failed to take into consideration that the appellant had on various occasions requested the respondent to increase the contract demand from 300 kVA to 800 kVA however, the respondent refused to do so. The Ld. Forum failed to take into consideration that the Joint Inspection conducted on 22nd of June 2001 was not binding as the Junior Engineer Level Official was not authorized to execute any joint note or agreement. The Ld. Forum failed to consider the fact that the terms arrived at in the Minutes of the Meeting dated 14th of July 2021 was subject to the final approval of Board of Director of JBVNL and Competent Authority of the Appellant. The Ld. Forum failed to consider that the terms arrived at in the Minutes of the Meeting dated 14th of July 2021 was not binding upon the parties as the Respondent failed to prepare that draft MOU as per the Minutes of the Meeting dated 14th of July 2021. The Ld. Forum failed to consider that the Respondent never agreed to settle the dispute as per the terms of the Minutes of the Meeting dated 14th of July 2021 as they never recast the bill as per the Minutes of the Meeting dated 14th of July 2021. The Ld. Forum failed to consider the entire context of the Letter dated 5th of October 1998 wherein it was provided that the installed transformer capacity was 3400 kVA however, the maximum demand was only 604 kVA. The Respondent failed to bring on record any document showing that the Contract Demand of the Appellant ever exceeded 816 kVA. The Impugned Order passed in Complaint Case No. 2 of 2022 is illegal, arbitrary and perverse.

6. Crucial Issues:

The crucial issues, which have been cropped up in this appeal, for determination of this appeal, are as follows :

- I. Whether the learned VUSNF Ranchi has passed order/ Judgement on the merit of the case?
- II. Whether the Resolution / Decision taken in Minutes of Meeting (MOM) held on 14.7.2021, with reference to letter no.583 dt.7.7.2021 of JVBNL on an agenda of long pending billing dispute of consumer (NO-L-2/D1788,HT) has attained its finality?
- III. Whether the learned VUSNF Ranchi is authorized under the JSERC (Guidelines for Establishment of Forum for Redressal of Grievances of the Consumers, Electricity Ombudsman and Consumer Advocacy) Regulations, 2020 to direct & compel the Board of Directors of JVBNL and the Competent Authority of Railway to approve the resolution taken in meeting dated 14.7.2021 by their subordinates, if the resolution had not attained its finality?
- IV. Whether any VUSNF/ CGRF is authorized under The JSERC (Guidelines for Establishment of Forum for Redressal of Grievances of the Consumers, Electricity Ombudsman and Consumer Advocacy) Regulation,2020 to pass an order / Judgement directing the parties to adhere to a NOT-FINAL resolution/decision on an agenda in meeting ?
- V. Whether the Inspection Report of installed capacity of 11/0.4 KV transformer at Eastern Railway Barwadih Consumer No. HT/D - 1788 at Barwadih on 6.8.2001 is binding upon the consumer?
- VI. What is the Evidentiary Value of the MOM dated 14.7.2021 (Annexure-8 of the Memo of Appeal)? Whether the facts admitted by the parties in MOM shall operate

“estoppels” upon them or it should not be taken on record, as if the admissions were made during the course of mediation & conciliation, on the principle of confidentiality?

VII. Whether the assessment of Contract Demand of 2267 kVA (1234 kVA) is illegal, arbitrary and has been assessed without any statutory or contractual basis?

VIII. Whether the electricity disconnection notice dated 8.3.2022 of the Distribution Licensee to the Consumer, in pursuance to which the electricity connection having Consumer Number - L-2/D-1788 had been disconnected, was contrary to the Electricity Act, 2003?

7. Argument advanced on behalf of the appellant.

Mr. Prasant Pallav, the learned DSGI on behalf of the appellant in addition to a thorough argument preferred to submit short notes of argument by formulating two issues involved in this appeal. The short notes of argument reads as follows :-

1. Whether the Bill dated 31st of March 1999 raised for the period of April 1993 to February 1999 is illegal and arbitrary?

a. It is most humbly submitted that the Bill dated 31st of March 1999 for the period April 1993 till February 1999 is illegal and arbitrary and against the provision of law. It is most humbly submitted that tariff Notification issued under the Electricity (Supply) Act 1948 dated 23rd of June 1993 provides for the tariff to be charged to the consumers and further provides the terms and conditions for supply of electricity to the consumers. Clause 16.4 of the Tariff Policy provides for the Transformer Capacity which is reproduced as under:-

“16.4.1 The Transformer capacity of H.T. and E.H.T. consumers shall not be more than 150 percent of the contract demand.

If any Consumer is found violating this provision his service connection will be disconnected.”

Further, Clause 16.5 of the tariff policy provides for the manner in which surcharge shall be levied for exceeding the contract demand Clause 16.5 of the Tariff Policy is reproduced as under:-

“If during any month in a Financial Year (April to March next year) the actual maximum demand of a consumer exceeds 110 percent of the contract demand then the higher demand so recorded shall be treated as the contract demand for that financial year and the minimum base charges, both in respect of maximum demand and energy charge shall be payable on that basis.”

b. It is therefore submitted that the bill has to be charged as per Tariff Policy and the Tariff Policy nowhere provides that invoice can be raised as per the Transformer Capacity. The Invoice can only be charged as per the energy consumed as per the meter.

c. It is most humbly submitted that the Appellant has time and again informed the Respondent that the transformer of 3400 kVA was never installed at the premises of the Appellant. The High Tension electric Meter was not working for most of the period between the period 1989 to 1995 and therefore the payment was made at 75% of the contract demand. It is submitted that the non-functioning of the meter was within the knowledge of the Respondent however, no steps were taken by the Respondent to repair the meter.

d. It is most humbly submitted that Section 26(6) of the Electricity Act 1910 provides for steps to be taken in case of defective meter. Section 26(6) of the Electricity Act 1910 is reproduced as under:-

“ Where any difference or dispute arises as to whether any meter referred to in subsection (1) is or is not correct, the matter shall be decided, upon the application of either party, by an Electrical Inspector; and where the meter has, in the opinion of Such Inspector ceased to be correct, such Inspector shall estimate the amount of the energy supplied to the consumer or the electrical quantity contained in the supply, during Such time, not exceeding six months, as the meter shall not, in the

opinion of such Inspector, have been correct; but save as aforesaid, the register to the meter shall, in the absence of fraud, be conclusive proof of such amount or quantity:

Provided that before either a licensee or a consumer applies to the Electrical Inspector under this subsection, he shall give to the other party not less than seven days I notice of his intention so to do”

It is submitted that Section 70 of the Electricity (Supply) Act 1948 provides for the effect of other laws which is as under:-

“ (1) No provision of The Indian Electricity Act, 1910 (9 of 1910), or of any rules made there under or of any instrument having effect by virtue of such law or rule shall, so far as it is inconsistent with any of the provisions of this Act, have any effect:

Provided that nothing in this Act shall be deemed to prevent the State Government from granting, after consultation with the Board; a licensee not inconsistent with the provisions of The Indian Electricity Act, 1910 (9 of 1910) to any person in respect of such area and on such terms and conditions as the State Government may think fit.

(2) Save as otherwise provided in this Act, the provisions of this Act shall be in addition to, and not in derogation of, The Indian Electricity Act, 1910 (9 of 1910).”

e. It is submitted that as per Section 26(6) of the Electricity Act 1910, the Respondent could not have raised a bill for 6(six) years as the meter was defective and the Respondent took no steps to repair the defective meter.

f. It is submitted that the act has to be done as per the manner prescribed. The Bill dated 31st of March 1999 has been raised in violation of the provisions of law.

2. Ld. Court cannot compel the parties to enter into a compromise.

a. That the Ld. Forum while disposing of the Complaint case filed by the Appellant has held the Appellant and Respondent should comply with the Minutes of the Meeting dated 14th of July 2021. It is most humbly submitted that the Minutes of

the Meeting dated 14th of July 2021 was conditioned on the approval of the Higher Authorities of the Appellant as well as the Respondent. The Minutes of the Meeting dated 14th of July 2021 was not approved either by the Higher Authorities of the Appellant or the Respondent. Further, no MoU has been drafted by the Respondents as per the Minutes of the Meeting dated 14th of July 2021.

b. That it is most humbly submitted that the Ld. Court cannot compel the parties to a dispute to enter into a compromise. In the case of **E. S. Krishnamurthy v. Bharath Hi Tech Builder Pvt. Ltd. (2022) 3 SCC 161**, has held that the Adjudicating Authority cannot compel a party to the proceedings before it to settle a dispute.

c. That the Ld. Forum instead of adjudicating the issue involved has directed the parties to abide by the Minutes of the Meeting dated 14th of July 2021 which is against the principles of law.

8. Argument advanced on behalf of the respondents.

During the first surprise inspection made by the licensee on 30.8.1995, it was found that a transformer having capacity of 3400 kVA was installed in premises. One Senior Divisional Electrical Engineer (G) of the Eastern Railway, Dhanbad has also admitted that a transformer having capacity 3400 kVA was installed in the year 1994. The cause of burning "Meter" was due to installation of under capacity meters by the licensee and overloading by the consumer. Again on 6.8.2001 an inspection was made and it was found that a transformer having capacity of 1850 kVA was installed.

It is argued that Rule 16.4.1 of the Tariff Notification 1993 does not govern billing. The relevant Rules are 16.8 and 16.9 of the Tariff Notification, 1993. The licensee has committed no wrong in charging electricity bills on the basis of the capacity of the installed transformer.

Mr. Mohan Kumar Dubey, the learned Standing Counsel on behalf of the respondents, in addition to a thorough argument preferred to submit short notes of argument. The short notes of argument reads as follows :-

There is no irregularity in the bill dated 31.03.1999 raised for the period of April 1993 to February 1999, which is in accordance with Minutes of Meeting dated 14.07.2021. The bill was raised in accordance with the applicable tariff policy governing at that time and not as per the installed transformer Capacity and the said interpretation was duly informed to the appellant vide letter No. 110 dated 25th Feb. 1999(Annexure- H series of counter affidavit). The reason for the burning of the meter was self explanatory, the installed transformer capacity was always more than the C.D. because the meters installed at the premises of the Consumer were made for the C.D of 300 KVA but the unauthorized load consumed by the consumer resulted into the malfunctioning of the meter. The section 26(6) of the Electricity Act 1910 bars the licensee from raising a bill after the lapse of the period of 6 months in case of the defective meter, but in the instant case, the defect was caused due to non-disclosure of the actual load consumption and installation of the underpowered electricity meter. Hence the provision referred by the Appellant is not relevant and out of context in this instant dispute.

Section 20 of the Indian Electricity Act, 1910 provides that:-

“ 20. Power for the licensee to enter premises and to remove fittings or other apparatus of licensee- (1) A licensee or any person duly authorized by a licensee may, at any reasonable time, and on informing the occupier of his intention, enter any premises to which energy is or has been supplied by him, of any premise or land, under over, along, across, in or upon which the electric supply-lines or other works

have been lawfully placed by him for the purpose of- (a) Inspecting, testing, repairing or altering the electric supply, lines meters, fittings, works and apparatus for the supply of energy belonging to the licensee; or (b) Ascertaining the amount of energy supplied or the electrical quantity contained in the supply;

During surprise inspection on 30.08.1995 nine nos. transformers were installed having a total capacity of 3350 KVA. In the inspection report, each transformer capacity, Manufacture name (make), Voltage ratings and their serial no. were clearly mentioned in installed position. The respondents obeyed the rule and proceeded accordingly. The transformer found during surprise inspection was duly connected to the main electricity and was being used on a regular basis. A meeting was held on 15.12.1998 in the office of ESE, ESC, Daltonganj and as per MoM dated 15.12.1998, *“Both ESE, ESC, Daltonganj and Sr. DE, Railway, Dhanbad were agreed to enhance contract Demand from 300 KVA and the Railway agreed to limit the total capacity of installed Distribution Transformers within 1200 KVA as per tariff notification of Board.* However, the respondents never executed the agreement for the contract demand of 800 KVA and also never limited their uses to 1200 KVA. The representative present during the Joint inspection dated 06.08.2001 was the Junior Engineer and as such during the inspection, the main work of the inspector is to note the capacity of the transformer written on the plate of the transformer, and as such a Junior Engineer is capable of understand that much of the technicalities.

FINDINGS

9. Crucial Issue No. I : Whether the learned VUSNF, Ranchi has passed Order / Judgement on the merit of the case?

Before ambling with this issue, I feel it expedient to highlight the directions of the Hon'ble Jharkhand High Court given to the learned Vidyut Upbhokta Shikayat Niwaran Forum, Ranchi.

The Senior Divisional Electrical Engineer (G), East Central Railway, Dhanbad had filed a Civil Writ Petition, on behalf of the Consumer, before the Hon'ble Jharkhand High Court against the Distribution Licensee JBVNL having W.P.(C) No. 1445 of 2022. **The Hon'ble Jharkhand High Court in W.P.(C) No. 1445 of 2022 with I.A. No. 2703 of 2022 vide Order No. 02 dated 5.4.2022** had been pleased to give liberty to the petitioner Union of India through East Central Railway Zone to file a complaint on the present issue before the VUSNF, Ranchi . And the learned VUSNF, Ranchi was directed, by the Hon'ble Jharkhand High Court, to consider the complaint **on merit and pass appropriate orders in accordance with law.**

I have gone through the operative portion of Judgement / Order of the learned VUSNF, Ranchi. The learned Forum has ordered that – (A) Both the parties hereby directed to adhere to the guidelines as agreed upon through MOM dated 14.07.2021, (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 period from receipt of this order.

The Hon'ble Jharkhand High Court had been pleased to pass the order on **5.4.2022**. On the date of passing order, the MOM dated **14.7.2021** was available before the parties to the Writ Petition W.P. (C) No.1445 of 2022 but none of them had raised the said MOM dt. 14.7.2021 before the Hon'ble Court. The case of the petitioner

was that – “ The energy bill dated 31.3.1999 and all subsequent energy bills which have been raised assuming the **contract demand to be 2267 kVA** is wholly illegal and arbitrary”. And the case of Respondents is that the Consumer had efficacious remedy of preferring a complaint with respect to the dispute in question before the concerned “Vidyut Upbhokta Shikayat Niwaran Forum (VUSNF) constituted by the JBVNL under section 42(5) of the Act,2003.

The Hon’ble Jharkhand High Court in W.P.(C) No.1445 of 2022 vide Order dated 5.4.2022 have been pleased to direct the learned V.U.S.N.F. Ranchi to consider the complaint of consumer complainant **on merit and pass appropriate order in accordance with law.**

To my considered opinion, the learned VUSNF Ranchi should have formulated an issue as to whether the bills raised by Licensee on contract demand of 2267 kVA is justified? The learned VUSNF Ranchi should have decided the formulated issue on merit of the case. But the learned VUSNF, Ranchi has not passed the Judgement / Order on the merit of the case and preferred to direct the parties to adhere to the guidelines as agreed upon through MOM dated 14.07.2021.

Decision : I find and hold that the learned VUSNF, Ranchi has not passed the impugned order/ judgement on the merit of the case and has not passed appropriate orders in accordance with law.

Accordingly This issue is being decided in favour of the appellant and against the respondents.

10. Crucial Issue No- II: Whether the Resolution/ Decision taken in Minutes of Meeting (MOM) held on 14.7.2021, with reference to letter no.583 dt.7.7.2021 of JVBNL on an agenda of long pending billing dispute of consumer (No-L-2/D1788,HT) has attained its finality?

The Annexure-8 of the Memo of Appeal (at page-107 to 111) of the appellant and the Annexure-L of the Counter Affidavit of Respondents (at page 69 to 72) of the respondents are the same document. It is a copy of a letter issued by Mr. A.S. Das, General Manager (Rev) to (1). The Principal Chief Electrical Engineer : East Central Railway : Hazipur, (2). The Chief Electrical Engineer (General) : East Central Railway : Hazipur, (3). Divisional Electrical Engineer (G) : Eastern Railway Dhanbad, (4). The General Manager-cum-Chief Engineer : Eastern Supply Area : Medininagar and (5). The Electrical Superintending Engineer : Electric Supply Circle : Daltonganj having Letter No. 6171 dated 15.7.2021.

A copy of the Minutes of Meeting (MOM) dated 14.7.2021 is available in above Annexure-8 and Annexure-L. The Issue No. II of my order/award is concerned with this MOM dated 14.7.2021. The agenda of the meeting was to *“Resolve a long pending billing dispute of Divisional Electrical Engineer (G), Eastern Railway, Dhanbad (Consumer No.L-2/D1788,HT) for the Railway station, Barwadih.”*

The relevant portion of the MOM images as follows:

Minutes of meeting held on 14.07.2021 under the chairmanship of
Managing Director, JBVNL, Ranchi

A meeting has been held on 14.07.2021 in the office chamber of Managing Director, Jharkhand Bijli Vitran Nigam limited, with reference to letter no.583 dated 07.07.2021 to resolve long pending dispute of Divisional Electrical Engineer (G), Eastern Railways, Dhanbad (Con.No.L-2/D1788,HT) for Railway Station, Barwadih.

Following officers are present in the meeting :-

Official of JBVNL	Official of Eastern Railway,Dhanbad
Sri Avinash Kumar (I.A.S.) Managing Director	Sri A.K.Singh, C.E.G.E, E.C.Rly
Sri K.K.Verma, Executive Director (C&R)	Sri Aanandi Pandit, Sr.DEE/G/DHN/ECR
Sri Umesh Kumar, GM (A&R), JBVNL	
Sri Sanjay Kumar, GM-cum-CE, ESA, Medininagar	
Smt. A.S.Das, General Manager (Revenue)	
Sri Rishi Nandan, General Manager (Coml.)	
Sri S.B. Saran, DGM (F&A), JBVNL	
Sri Manmohan Kumar, Electrical Superintending Engineer, ESC, Daltongang	
Sri Basant Kumar, Electrical Executive Engineer, (C&R), Daltongang	
Smt. Vibha Kumari, Electrical Executive Engineer, (Revenue)	

The brief history of the case is as follows:- (Not brought here to encumber the order/award)

Conclusion of meeting:-

In the meeting, the Managing Director, JBVNL and the Chief Electrical Engineer (General), East Central Railway, Hazipur agreed upon the following:

- As per joint inspection report dt 06.08.2001, the installed transformer capacity was 1850 kVA which shall be treated as basis for calculation of contract demand. The billing demand is calculated as per Transformer

capacity (be 1.5 times Contract Demand as per the prevailing tariff) = 1850 kVA, i.e. Contract Demand = $1850 \times \frac{2}{3}$, which comes near 1233.3 = 1234 kVA. As such, billing demand of 925 kVA (75% of 1233.33 kVA = 925 kVA) or maximum demand recorded in the meter, whichever is higher, may be considered for entire billing period and all the bills, issued from April 1993 till July 2011, may be revised accordingly. As per available records, when meter was running, the Maximum kVA recorded was 818 kVA in the month of Oct.2006, which also supports Contract Demand of 1234 kVA.

- After July 2011, the maximum demand will be considered as contract demand as per prevailing tariff order & Supply Code regulation 2015.
- Arrear amount up to bill month June 2021 (collection month July 2021) is being kept in abeyance. From bill month July 2021 (collection month August 2021) billing shall be done on revised Contract Demand as stated above.
- However, **a decision on this matter shall require approval by JBVNL BoD. Similarly, Railways would require approval of the Competent Authority.** Therefore, GM-cum-CE, ESA, Medininagar shall draft MoU for the same. The proposal shall detail out chronological order of decisions made on this matter and shall be forwarded to Railway for initiation of process. Further, Railways Authority have requested for waiving off accumulated Delay Payment Surcharge in light of above correction, but it was informed by MD, JBVNL that JBVNL does not hold any decision making power in regard to waiving of DPS. (emphasis supplied by bolding)
(The Minutes of Meeting bears signature of all attendees with date 14.7.2021)

The minutes of meeting (MOM) is very much clear that in this meeting the dispute was not finally resolved, rather they had arrived at a conclusion that the Decision taken in the meeting shall require **Approval** of JBVNL BoD and the Competent

Authority of Railway. There is nothing on the record of the learned VUSNF, Ranchi that till passing order by the learned Forum, "Approval" had been accorded by the Competent Authorities of both the parties.

It is crystal clear from the MOM dt.14.7.2021 (Annexure-8 / Annexure-L) that the billing dispute has/had not been finally resolved in meeting, rather the said decision/resolution is subject to the approval of Competent Authorities.

Decision : I find and hold that the Resolution / Decision taken in Minutes of Meeting (MOM) held on 14.7.2021, with reference to letter no. 583 dt.7.7.2021 of JVBNL on the agenda of long pending billing dispute of consumer (No-L-2/D1788,HT) has NOT Attained its finality. The resolutions taken in this meeting are subject to the approval of appropriate authority of both the parties. Accordingly this issue is being decided in favour of the appellant and against the respondents.

11. Crucial Issue No. III : Whether the learned VUSNF Ranchi is authorized under the JSERC (Guidelines for Establishment of Forum for Redressal of Grievances of the Consumers, Electricity Ombudsman and Consumer Advocacy) Regulations, 2020 to direct & compel the Board of Directors of JVBNL and the Competent Authority of Railway to approve the resolution taken in meeting dated 14.7.2021 by their subordinates, if the resolution had not attained its finality?

I have gone through the record of learned VUSNF, Ranchi having case no.02/2022. The consumer had not come before the learned VUSNF, Ranchi for rejection / modification / approval of the Resolution taken in the Minutes of Meeting dated

14.7.2021. The resolutions taken in MOM dt. 14.7.2021 by the subordinate officers of both the parties were subject to the approval of Board of Directors of JBVNL and Competent Authority of Railways.

Neither party to the complaint case no. 02/2022 before the learned VUSNF, Ranchi had ever sought any relief for enforcement of the said **NOT-FINAL** Resolution. Clause-8 of the Jharkhand State Electricity Regulatory Commission (Guidelines for Establishment of Forum for Redressal of Grievances of the Consumers, Electricity Ombudsman and Consumer Advocacy) Regulation, 2020 prescribes that the grievances/complaints, as defined in Clause 2(e) of These Regulations are admissible for hearing and redressal before the Forum (s). Clause 2 (e) of these Regulations,2020 reads as follows :-

Complaint means any grievance made by a complainant for:-

- i)Defect or deficiency in electricity supply or service provided by the licensee;
- ii)Unfair or restrictive trade practices of licensee in providing electricity service;
- iii)Charging of a price in excess of the price fixed by the Commission for supply of electricity and allied services;
- iv)Any error in billing;
- v)Erroneous disconnection of supply;
- vi)Electricity services which are unsafe or hazardous to public life provided in contravention of the provisions of any law or rule in force; or
- vii)Any other grievance related to supply of electricity by the licensee to the consumers except grievances arising under Sections 126,135 to 139, 143,152 and 161 of the Act.
- viii)Non-performance in Standards of Performance, as stipulated under Jharkhand State Electricity Regulatory Commission (Distribution Licensee's Standard Performance) Regulations 2015.

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

The MOM dt.14.7.2021 is not an agreement between the parties rather a resolution taken by the attendees on a long pending billing dispute subject to approval of their high-ups. The Resolution was under consideration of the high-ups of both the parties for ‘Approval’. The order of the learned VUSNF, Ranchi is not a settlement of grievance in terms of the agreement arrived at by the parties rather a **COMPELLING DIRECTION** to approve the resolution i.e. to compel the parties to arrive at a settlement. I have no hesitation to say that the learned VUSNF, Ranchi has exceeded its jurisdiction to pass such an order.

In the case of **E. S. Krishnamurthy and Ors. vs. Bharath Hi Tech Builder Pvt. Ltd.** reported in **(2022) 3 SCC 161**, the Hon’ble Supreme Court at para 29 have been pleased to hold that - “ *The Adjudicating Authority and the Appellate Authority are creatures of the statute. Their jurisdiction is statutorily conferred. The statute which confers jurisdiction also structures, channelises and circumscribes the ambit of such jurisdiction. Thus, while the Adjudicating Authority and Appellate Authority can encourage settlements, they cannot direct them by acting as Courts of equity.* “

Decision : In view of my findings and comments made above, I find & hold that the learned VUSNF, Ranchi was **NOT** authorised under These Regulations,2020 to direct and compel the Board of Directors of JBVNL and the Competent Authority of Railway to **APPROVE** the resolutions taken in the meeting of 14.7.2021 by their subordinates.

12. Crucial Issue No- IV : Whether any VUSNF/CGRF is authorized under the JSERC (Guidelines for Establishment of Forum for Redressal of Grievances of the Consumers, Electricity Ombudsman and Consumer Advocacy) Regulation,2020 to direct the parties to adhere a NOT-FINAL Resolution / Decision on an agenda in meeting?

The learned VUSNF/ CGRF while deciding a complaint of consumer and passing order does not have any 'Writ Jurisdiction'. It can not pass any direction to the parties to adhere to a non-final resolution/decision. The Forum is not authorized to give a statutory shape to a not final resolution/ decision on an agenda between the parties in meeting. In this instant case, in one hand the learned Forum has ordered that- (A) Both the parties hereby directed to adhere to the guidelines as agreed upon through MOM dated 14.07.2021, (B) Accordingly GM-cum-CE Medininagar is directed to take initiative for approval of the decision taken in MOM from Board of Directors JBVNL within one month period from receipt of this order and (C) After approval of Board (JBVNL) the same **may be** sent to Indian Railways (Petitioner) for approval of their Board within one month time, on the other hand the Licensee JBVNL has been directed to recast updated energy bills as per MOM dated 14.7.2021 within a week and the consumer was directed to pay 50% of the revised bill within 15 day from the date of receipt of revised bill, without waiting for the approval of the Competent Authority.

The operative portion of order makes it clear that to the mind of the learned Forum, "Approval of decision taken in MOM dt. 14.7.2021" of high-ups of both the Licensee and Consumer are required. The learned Forum has provided, in its order, altogether two months' time to both the parties for 'approval' but simultaneously passed another order to recast the bill & to make 50% payment within 3 weeks of

order, meaning thereby payment was requires to be made before 'approval' of the high-ups of the parties.

Decision : I find and hold that the learned VUSNF, Ranchi has committed an error in Law & Regulations in providing statutory shape to the MOM dated 14.7.2021. The learned Forum is not authorised to direct the parties to adhere to a not final resolution/decision on an agenda in minutes of meeting. The learned Forum is not authorised to direct the GM cum CE Medininagar to take initiative for approval of the decision taken in MOM from the Board of Directors of JBVNL. The learned Forum is also not authorised to direct the GM cum CE Medininagar that after approval of Board (JBVNL) the same may be sent to Indian Railways (Petitioner) for approval of their Board.

13. Crucial Issue No. - V : Whether the Inspection Report of installed capacity of 11/0.4 KV transformer at Eastern Railway Barwadih Consumer No. HT/D - 1788 at Barwadih on 6.8.2001 is binding upon the consumer?

Mr. Prasant Pallav, the learned DSGI on behalf of the appellant has vehemently argued that the Joint Inspection conducted on 6.8.2001 is not binding upon the Railway Department as the junior engineer level official was not authorized to execute any joint note or agreement.

The Inspection Report is available in Annexure-1 Series of the Counter Affidavit of the respondents filed on 18.4.2024. A copy of the Inspection Report is also available in Annexure – R/C Series filed by the appellants on 5.6.2024 in reply to the counter

affidavit of respondents. The Report is also annexed as Annexure-30 of the Memo of Appeal. It reads as follows :-

Inspection Report of **Installed** capacity of 11/0.4 KV transformer at E.Rly Barwadih Con. No. HT/D – 1788 at Barwadih on 6th August 2001.

Details of Incoming feeder From JSEB / Barwadih / S/S 11 KV line. 11KV. CT & PT combined installed Meter in working condition.

Details of outgoing 11KV feeders with connected 11/0.4 KV **Transformer installed.**

(1) Main feeder S/S Transformer

Transformer **installed**- Make – Eastern Transformer Equipments
Sl. No.- SAI / 9 / 2
Capacity kVA - 500

(2) R.O.H. feeder

1) Intensive Transformer
Make- East India Calcutta.
S.No.- 347/1
Capacity 350 kVA

2) Box end S/S Transformer
Make – Eastern Transformer & Equipments Pvt. Ltd.
Sl. No. 7/1
Capacity 500 kVA.

(3) New Colony S/S

Make Sajaj Electricals Ltd. Bombay
Sl.no.250222
Capacity 250 kVA

(4) River pump House S/S Make NLI
Sl.No.- RY/1751/1
Capacity- 250kVA

Total Capacity of Transformer **installed** 1850 kVA

(Emphasis supplied by Bolding)

The Inspection Report bears the signature of - (i). Consumer Representative, (ii). AEE Barwadih, (iii). EEE MRT, (iv). EEE / S / Latehar and (v). EEE / CRA / D.G.

The consumer appellant in its memo of appeal has taken a ground (Ground-F, Page-53 of Memo of Appeal) that the Joint Inspection conducted on 22.6.2001 was not binding as the Junior Engineer Level Official was not authorized to execute any joint note or agreement. Though the appellant in ground F page 53 of Memo of Appeal has mentioned the date of joint inspection is 22.6.2001 but the correct date of inspection is 6.8.2001. On 22.6.2001 an office order having number 65 dt. 22.6.2001 was issued by the Electrical Superintending Engineer, Daltonganj in which a committee was formed to conduct joint inspection. The office order was issued in compliance with directions of the resolution taken on 1.6.2001 by the Board of Directors of JSEB, Ranchi.

In my considered opinion the consumer appellant has misdirected itself by considering the joint inspection report as a joint note or an agreement between the parties. It is a report after an inspection of the spot. The inspection was made in the presence of a junior engineer of the consumer department. The signature of the said junior engineer was received over the inspection report in token of acknowledgement. Such type of inspection may be termed as surprise inspection but in the presence of the consumer.

The consumer has taken a unique plea that the inspection was made without prior intimation to them. I fail to understand why the consumer has/had raised a voice

demanding prior intimation of this surprise inspection and what preventive measure the consumer had to take before inspection. It is relevant to mention here that in the year 1999 also, an inspection was made, a transformer having capacity 3400 kVA was found lying on premises during inspection. A man of prudence shall presume that it was for the purpose of installation unless rebutted by the consumer. The consumer had taken a plea that the inspection was made behind his back.

The Inspection Report dated 6.8.2001 is an acknowledgement of the Eastern Railway Barwadih Consumer No. HT/D - 1788 at Barwadih, through its junior engineer, who has acknowledged installation of a transformer of 1850 kVA capacity. The junior Engineer of the consumer Railway has admitted the fact and has put his signature over the inspection report dated 6.8.2001 in token of admission. It is not the case of the consumer Railways that its Junior Engineer is too novice to identify the capacity of a transformer. The attendee of consumer Railway is a Junior Engineer and not a layman. It is also not the case of the consumer department that the said junior engineer had violated his service conduct rules and any departmental proceeding was initiated against him. It is also not the case of the consumer department that the junior engineer has had a hand in glove with the distribution licensee. I don't find any reason to disbelieve the admission of the junior engineer regarding the capacity of the installed transformer. It is a well settled principle of law that an admission need not to be proved. Moreover, in this matter Mr. A.K. Singh the C.E.G.E. of the Eastern Central Railways and Mr. Aanandi Pandit Sr. DEE/G/DHN of Eastern Central Railways have acknowledged in Minutes of Meeting dated 14.7.2021 that during joint inspection made on 6.8.2001 it was found that the capacity of the installed transformer was of 1850 kVA.

Decision :- In view of my findings and comments made above, I find & hold that the Inspection Report dated 6.8.2001 is very much binding upon the consumer.

14. Crucial Issue No- VI : What is the Evidentiary Value of the MOM dated 14.7.2021 (Annexure-8 of the Memo of Appeal)? Whether the facts admitted by the parties in MOM shall operate “estoppels” upon them or it should not be taken on record, as if the admissions were made during the course of mediation & conciliation, on the principle of confidentiality?

Mr. Prasant Pallav, the learned DSGI on behalf of the appellant has vehemently argued that the facts admitted in this MOM dt. 14.7.2021 can not be taken on record as the admissions were made during the course of mediation & conciliation. It is submitted that on the principle of confidentiality, this Authority of Electricity Ombudsman can not take cognizance of the facts admitted by the parties in the meeting.

With due respect to Mr.Pallav, I am to say that the meeting held on 14.7.2021 was not under the process of mediation & conciliation. Mediation and Conciliation are **Alternative Dispute Resolution (ADR)** processes that involve a neutral third party to help the parties to reach a mutual agreement through negotiation and to reach a settlement. The involvement of a neutral facilitator i.e. an advisory third party conciliator is must in ADR process. Apparently the MOM dated 14.7.2021 is not an outcome of the mediation & conciliation process.

Admissibility of Minutes of Meeting in evidence : Now a question arises about the evidentiary value of the minutes of meeting. Minutes are notes or the instant written record of a meeting or hearing. It serves as a record or as an important

source of information. There is a statutory obligation on the Corporates under Companies Act, 2013 to record the proceedings of the meeting of Board & its Committees thereof and of General Meetings. It can be produced as evidence in the Court of law. Minutes serves as an evidence of the proceedings of meetings and according to section 118 (8) of the Companies Act, 2013, if the minutes are kept in accordance with the provisions of section 118, then, until the contrary is proved, the meetings are deemed to have been duly called and held, and all proceedings thereat to have duly taken place. When talking about evidence, looking into Bhartiya Sakshya Adhinyam, the definition of Evidence includes documentary evidence (electronic form also) The minutes of meeting, as maintained under section 118 of Companies Act, 2013, if produced in Court of law, it will be construed as Documentary Evidence.

Decision : The minutes of Meetings are admissible in the evidence. The MOM dated 14.7.2021 is not an outcome of any mediation or conciliation process. The facts admitted in writing in this memo of appeal shall operate estoppel against them. The admission made by parties regarding the capacity of the transformer, in MOM dated 14.7.2021 and in the joint inspection report dated 6.8.2001 are admissible in evidence and shall be used in favour of and/or against the parties.

14.1 The outcome of the Minutes of Meeting dated 14.7.2021 may be divided in three parts – (i) Acknowledgement, (ii) Calculation and (iii) Resolution.

(i). Acknowledgement made in MOM : (REGARDING CAPACITY OF INSTALLED TRANSFORMER)

In MOM dt. 14.7.2021, it is acknowledged by the parties that as per Joint Inspection Report dated 6.8.2001, the capacity of installed transformer was of 1850 kVA. On

6.8.2001, a joint inspection was carried out by a team of JEE/BRWD Railway, Assistant Electrical Engineer: MRT Division: Daltonganj, Electrical Executive Engineer: Electric Supply Division: Latehar, Electrical Executive Engineer (C&R): Electric Supply Circle: Daltonganj. It was found during inspection that the capacity of the installed transformer was 1850 kVA.

Conclusion: I find & hold that the admission made regarding capacity of installed transformer of 1850 kVA, in Inspection Report dated 6.8.2001 and acknowledgement of the said capacity of 1850 kVA installed transformer in MOM dated 14.7.2021 are admissible in evidence. The MOM dated 14.7.2021 confirms the joint inspection report dated 6.8.2001. There is sufficient documentary evidence available on record which establishes the fact that a transformer having capacity 1850 kVA was found installed and the consumer used to consume electric energy through this transformer.

(ii). Calculation made in MOM: (REGARDING CONTRACT DEMAND)

The Contract Demand has been calculated in MOM dt.14.7.2021 considering the capacity of installed transformer as of 1850 kVA. The Calculation, as made in MOM dt. 14.7.2021, reads as follow:

As per joint inspection report dt 06.08.2001, the installed transformer capacity was 1850 kVA which shall be treated as basis for calculation of contract demand. The billing demand is calculated as per Transformer capacity (be 1.5 times Contract Demand as per the prevailing tariff) = 1850 kVA,i.e. Contract Demand = $1850 \times \frac{2}{3}$, which comes near 1233.3=1234 kVA. As such, billing demand of 925 kVA (75% of 1233.33 kVA = 925

kVA) or maximum demand recorded in the meter, whichever is higher, may be considered for entire billing period and all the bills, issued from April 1993 till July 2011, may be revised accordingly. As per available records, when meter was running, the Maximum kVA recorded was 818 kVA in the month of Oct.2006, which also supports Contract Demand of 1234 kVA.

None of the parties has claimed that an arithmetical error has occurred in this calculation. The calculation has been made basing upon the transformer capacity of 1850 kVA and this Authority of Electricity Ombudsman in preceding sub-paragraph that there was an installation of transformer of 1850 kVA and this fact has been admitted by both the parties.

Conclusion: I find & hold that there is no any “arithmetical error in calculation” of contract demand basing upon the capacity of the installed transformer of 1850 kVA.

(iii). Resolution taken in MOM : (REGARDING ITS FINALITY)

I have arrived at a decision, while deciding issue no. II, at para 10 of my order/award that the resolution taken in Minutes of Meeting (MOM) held on 14.7.2021, with reference to letter no. 583 dt.7.7.2021 of JVBNL on the agenda of long pending billing dispute of consumer (No-L-2/D1788,HT) has NOT attained its finality. The resolutions taken in this meeting are subject to the approval of appropriate authority of both the parties.

Conclusion: The resolution taken in MOM dated 14.7.2021 is/was a not-final resolution.

15. Crucial Issue No- VII : Whether the assumption of Contract Demand of 2267 kVA (1234 kVA) is illegal, arbitrary and has been assessed without any statutory or contractual basis?

Before ambling with this issue, I make it clear that in Minutes of Meeting dated 14.7.2021 the assumed Contract Demand is 1234 kVA (Not 2267 KVA) based upon the capacity of the installed transformer of 1850 kVA. Undoubtedly the licensee had previously raised bills assuming Contract Demand 2267 kVA on the basis of the transformer capacity 3550 @ 3400 kVA capacity, which was found connected during inspection on 30.8.1995.

The consumer Railway had raised an objection against the first Inspection made on 30.8.1995 on the ground that it was carried out behind the back of the consumer and no opportunity was given to the consumer to explain its position. It was the plea of the consumer that during the first inspection the transformer was found lying in the premises and not installed. Though the **Eastern Railway** through the Senior Divisional Electrical Engineer (G), Eastern Railway, Dhanbad) in his letter no. EL/1218/BRWD/2320 dt. 5.10.98 has admitted that **in the year 1994 3400kVA transformer was installed, at present 2650 kVA transformer are installed.** (Annex. F of the Counter Affidavit). The capacity of the transformer was 3400 kVA and 75 % of 3400 i.e. 2267 kVA was considered as contract demand.

But in the subsequent inspection made on 6.8.2001, it was found that a transformer having capacity 1850 kVA was installed. This inspection was made in presence of a junior engineer of the consumer Railway. Since the capacity of the installed

transformer was detected as 1850 kVA, the contract demand was calculated as 75 % of 1850 i.e. 1234 kVA and this figure is considered as contract demand. The JBVNL has agreed to raise bills in MOM dated 14.7.2021 on assumption of Contract Demand of 1234 kVA. and not 2267 kVA.

The Inspection Story of Transformer, either installed or lying and Assumption of Contract Demand

(as admitted by consumer appellant at para 4h, 4p of memo of appeal, admission made by the consumer officially, MOM dt. 14.7.2021 and as per counter affidavit)

1. Date of Inspection 2. Capacity of transformer 3. installed or lying	Assumption of Contract Demand and Billing Demand	BILLS 1. Issued on 2. Bill Period 3. Bill amount	1. Defence of Consumer 2. Remarks
<ol style="list-style-type: none"> 1. 30.8.1995 2. 3350 kVA 3. Installed 	<p>Contract Demand 75% of the Capacity of Transformer i.e. 75% of 3400 = 2267 kVA</p> <p>Billing Demand 75% of Contract Demand i.e. 75% of 2267 = 1700 kVA or the maximum demand recorded in the meter, whichever is higher.</p>	<ol style="list-style-type: none"> 1. 31.3.1999 due date 29.4.1999 2. April 1993 to Feb 1999 3. Rs. 5,57,42,965 <p>(Annexure 4 of Memo of Appeal)</p>	<ol style="list-style-type: none"> 1. Inspection was carried out behind the back of the consumer and no opportunity was given to the consumer to explain its position. 2. The transformers were not installed, rather were lying in the premises. 3. The Eastern Railway through the Senior Divisional Electrical Engineer (G), Eastern Railway, Dhanbad) in his letter no. EL/1218/BRWD/2320 dt. 5.10.98 has admitted that in the year 1994 3400kVA transformer was installed, at present 2650 kVA transformer are installed. (Annex. F of the Counter Affidavit) 3.1 Electricity connection was disconnected on 31.3.1999 but

			subsequently on 8.4.199 it was connected without asking for any amount from the disputed bill.
<ol style="list-style-type: none"> 1. 6.8.2001 2. 1850 kVA 3. Installed 	Continuing to raise demand on the basis of 2267 kVA i.e. considering the capacity of the transformer as 3400 kVA and not 1850 kVA as found during inspection.	<ol style="list-style-type: none"> 1. ---- 2. ---- 3. Rs. 589,52,27,630 	<ol style="list-style-type: none"> 1. Joint Inspection was carried out without any prior intimation. Junior Engineer was not the competent authority to represent the consumer in joint inspection. 2. Bill was subsequently revised & corrected by the Licensee.
A meeting was held on 14.7.2021 on long pending billing disputes. Based upon the capacity 1850 kVA of the installed transformer, Contract Demand was assessed.	<p>Contract Demand 75% of the Capacity of Transformer i.e. 75% of 1850 = 1234 kVA</p> <p>Billing Demand 75% of Contract Demand i.e. 75% of 1234 = 925 kVA or the maximum demand recorded in the meter, whichever is higher.</p>	<ol style="list-style-type: none"> 1. ---- 2. ---- 3. A Provisional Bill of Rs.158,98,390 (Rs.159 Crore approx) was generated. (Annex. 10 of the memo of appeal) <p>After correction, Final Bill of Rs.64,53,65,198 was claimed by the JBVNL and a notice u/s 56 of the Electricity Act, 2003 was issued. (Annex. 15 of the memo of appeal)</p>	<ol style="list-style-type: none"> 1. The Resolution taken in MOM dated 14.7.2021 was disapproved by the Competent Authority of Railway. 2. The learned VUSNF Ranchi in impugned judgement/Order has directed the Board of Directors of the JBVNL and the Competent Authority of Railway to approve the Resolution taken in MOM dated 14.7.2021

The appellant in its memo of appeal (para-B, C & D of Grounds, at page 53 of Memo of Appeal) has taken plea that the bills can only be raised as per the Contract Demand and not as per installed transformer capacity. The Rule 16.4.1 of the Tariff Notification 1993 prescribes that in case the transformer capacity is more than 150% of the contract demand then the service connection shall be disconnected.

The Rule 16.4.1 of the Tariff Notification 1993 reads as follows:

16.4.1 The transformer capacity of HT and EHT consumers shall not be more than 150 percent of the Contract Demand.

If any consumer is found violating this provision his service connection will be disconnected.

It is the case of the appellant that instead of disconnecting the service, the distribution licensee i.e. the respondents began raising bills on the basis of the alleged installed transformer capacity, without any statutory or contractual basis. But it is not the case of the consumer that he has not consumed electric energy during the billing period.

The consumer appellant has taken a ground that the Joint Inspection Report dated 22.6.2001, where it had been found that the capacity of installed transformer was 1850 kVA, is not binding upon the appellant. This Authority of Electricity Ombudsman has come to a decision at para-13, while deciding the crucial issue number V of this order/award that the facts available on Inspection Report have got binding effect.

The only grievance of the consumer is that the Distribution Licensee began raising electricity bills on the basis of the installed transformer capacity (as per inspection report dated 6.8.2001) instead of disconnecting the service, as authorized under Rule – 16.4.1 of the Tariff Notification 1993.

The copies of Energy bills are available on the record of Memo of Appeal. The calculation as shown in bills are :

Meter Defective

Average Billing 75% of 2267 kVA = 1700 kVA

Average Energy Consumption 124400

Part A Energy Consumption 124400 Units @ Rs.4.35 per unit – Rs.541140=00

Part B Maximum Demand Charge for 1700 kVA

1700 kVA @ Rs.165/- per kVA – Rs.280500=00

15.1 The Licensee never remained stable in bill amount. It has recast and modified the quantum of bills time and again. The following DATA shall make it clear.

S.N.	Exact Bill Amount @ Bill Amount in Crore	Billing Period	Contract Demand (assumed)	Remarks
1	₹5,57,42,965 @ ₹5.57 Crore	April 1993 to February 1999	2267 kVA	<p>1. Bill dated 31.3.1999 showed the due date 29.4.1999 but the electricity connection was disconnected on the same day.</p> <p>2. Demand was made on the basis of the 1st Inspection made on 30.8.1995, a transformer having capacity 3400 kVA was found lying</p> <p>3. The Eastern Railway through the Senior Divisional Electrical Engineer (G), Eastern Railway, Dhanbad) in his letter no. EL/1218/BRWD/2320 dt. 5.10.98 has admitted that in the year 1994 3400kVA transformer was installed, at present 2650 kVA transformer are installed. (Annex. F of the Counter Affidavit)</p>
2	₹ 586,65,18,042 @ ₹ 586.65 Crore	up to May 2021	2267 kVA	Bill No. - 924402014229118732
3	₹ 217,63,42,254 @ ₹ 217.63 Crore	up to June 2021	1234 kVA from March 1999 to June 2011 800 kVA since	Letter No. 1288 dated 19.8.2021 of the Electrical Executive Engineer (C & R), Electrical Supply Circle, Daltonganj

			July 2011	
4	₹ 158,98,62,390 @ ₹ 158.98 Crore	up to June 2021	1234 kVA from March 1999 to June 2011 800 kVA w.e.f. July 2011 to June 2021	Letter No. 1412 dated 11.9.2021 of the Electrical Executive Engineer (C & R), Electrical Supply Circle, Daltonganj
5	₹ 64,46,14,179 @ ₹ 64.46 Crore	up to December 2021	1234 kVA from March 1999 to June 2011 800 kVA w.e.f. July 2011 to December 2021	1. Bill No. 924402014238076260, Bill issued on 7.1.2022 due date 28.1.2022 Note : As per MOM held on 14.7.2021 and G.M. (Rev.), L- No. 617 dated 15.7.2021 and 106 dated 6.11.2021 Revised Energy Bill from Rs. 589,52,27,630 to Rs.64,09,26,939 2. Letter No. 1945 dated 10.12..2021 of the Electrical Executive Engineer (C & R), Electrical Supply Circle, Daltonganj
6	₹ 64,09,26,939 @ ₹ 64.09 Crore	up to December 2021	1234 kVA from March 1999 to June 2011 800 kVA w.e.f. July 2011 to December 2021	1. Letter No.----- dated 11.2.2022 of the Electrical Executive Engineer (C & R), Electrical Supply Circle, Daltonganj 2. As per Consumer's calculation the payable amount was Rs. 11,13,371 (Rs. Eleven Lakh Thirteen Thousand Three Hundred Seventy One Only) vide Letter No.----- dated 28.1.2022.
7	₹ 63,23,05,999 @ ₹ 63.23 Crore Amount kept in abeyance subject to waive of after approval of BoD, JBVNL (MOM dated 14.7.2021) ₹ 525,21,18,557 @ ₹ 525.21 Crore	Bill month September 2023	?	Bill No. - NIL, Issue date - 1.10.2023 due date 22.10.2023

Matter of Concern :

1. How the Bill amount of Rs. 586.65 Crore (as shown in Sl. No. 2) has been reduced to Rs. 217.63 Crore (as shown in Sl. No. 3) even for an enhanced billing period? What was the error in calculation in that bill?

{ Reference : Letter No. 1288 dated 19.8.2021 of the Electrical Superintending Engineer, Electric Supply Circle, Daltonganj (Annexure-R/F3 of the Reply of Rejoinder filed by Appellant on behalf of the Respondents, filed on 5.6.2024). It is mentioned in the letter that the Electricity Bill has been recast. The bill amount comes to Rs. 217,63,42,254. It is mentioned that - इसे मार्च 1999 से जून 2011 तक 1234 KVA एवं जुलाई 2011 से अभी तक 800 KVA Contract Demand पर Bill recast किया गया है ।

The above letter is addressed to the General Manager (Revenue), JBVNL, Ranchi and has been issued in response to his letter number 617 dated 15.7.2021 }

2. How the Bill amount of Rs. 217.63 Crore (as shown in Sl. No. 3) has been reduced to Rs. 158.98 Crore (Sl. No. 4) for the same billing period ? What was the error in calculation in that bill?

{ Reference : Letter No. 1412 dated 11.9.2021 of the Electrical Superintending Engineer, Electric Supply Circle, Daltonganj (Annexure-R/F3A of the Reply of Rejoinder filed by Appellant on behalf of the Respondents, filed on 5.6.2024). The details of salient points of the revised bill are mentioned in tabular form in this letter. The total payable amount comes to Rs. 158,98,62,390 only up to June 2021.

The above letter is addressed to the General Manager-cum-Chief Engineer, Electric Supply Area, Medininagar and has been issued in response to D.E.E.(G), Eastern Railway, Dhanbad Letter No. EL/1218 dt. 27.8.2021 }

3. How Bill amount of Rs. 158,98 Crore has been reduced to Rs. 64.09 Crore (Sl. No.5) even for an enhanced billing period? What was the error in calculation in that bill?

{ Reference : Letter No. 1945 dated 10.12.2021 of the Electrical Executive (Commercial & Revenue Engineer), Electric Supply Circle, Daltonganj (Annexure-R/F7 of the Reply of Rejoinder filed by Appellant on behalf of the Respondents, filed on 5.6.2024). It is mentioned in the letter that - उपभोक्ता संख्या **L-2/D1788, Divisional Electrical Engineer (G) का Final Revised bill Rs. 64,09,26,939 का विपत्र भुगतान हेतु भेजी जा रही है ।**

The above letter is addressed to the Divisional Electrical Engineer (G), Eastern Railway, Dhanbad and has been issued in response to his Letter No. EL/1218/L2-611 dt. 12.10.2021 }

4. How the Distribution Licensee, even after- (i) generating Final Revised Bill, (ii). issuance of notice u/s 56 of the Electricity Act 2003 for an outstanding dues amount of Rs. 64,53,65,198 on 8.3.2022, (iii). after disconnection, (iv). after filing Counter Affidavit before the Hon'ble Court & after passing Order by the Hon'ble Jharkhand High Court in W.P.(C) No.1445 of 2022 on 5.4.2022, (v). after disposal of the Case No. 2 of 20222 by the learned VUSNF, Ranchi on 20.9.2023 and (vi).after filing of present appeal EOJ / 04 / 2023 by the Consumer before the Authority of Electricity Ombudsman, has raised another bill on 1.10.2023 of Rs. 63.23 Crore **by keeping an amount of Rs. 525,21,18,557@ Rs. 525.21 Crore in abeyance** (Sl. No. 7 of above DATA)?

The licensee after correction, recorection and subsequent correction of outstanding bills & dues, again ventures to make a claim of Rs. 63.23 Crore and Rs 525.21 Crore (kept in abeyance) = Rs. 588.44 Crore.

5. Whether the conduct of the Distribution Licensee is justifiable in raising a bill amount, modify & correct the bill amount several times on representation of consumer, again revert back to original bill amount, at its own? What errors were detected subsequently, after making previous rectifications and modifications, which compelled the licensee to revert back to the original bill amount?

Whether the JBVNL has raised bills assuming Contract Demand 2267 kVA after Minutes of Meeting dated 14.7.2021 ?

For the first time the dispute arrived before the Hon'ble Jharkhand High Court, when the distribution licensee issued a disconnection notice through letter no- 421 dt.8.3.2022 of the Electrical Executive engineer, Daltonganj under section 56 of the Electricity Act 2003 claiming an outstanding dues of Rs. 64,53,65,198 (Rs. 64 Crore 53 Lakh 65 Thousand approx) followed by disconnection of electricity supply. The notice was issued after a meeting held on 14.7.2021 between the parties on a long pending billing dispute.

After the MOM dated 14.7.2021 a Provisional Bill of Rs. 158,98,62,390 (Rs.159 Crore rounded) was generated and claimed by the Electric Executive Engineer, Daltonganj vide letter no. 1473 dated 24.9.2021 (Annexure 10 of the Memo of Appeal). But after correction, a Final Bill of Rs. 64,53,65,198 (Rs.63.5 Crore rounded) was claimed by the Electrical Executive Engineer, Daltonganj by issuing notice u/s 56 of the Electricity Act, 2003 vide letter no- 421 dt.8.3.2022.

The Consumer Appellant has failed to satisfy this Authority of Electricity Ombudsman that the Distribution Licensee has raised the final bill assuming the Contract Demand of 2267 kVA. The minutes of the meeting dated 14.7.2021 shows that as per their calculation, the Contract Demand stands 1234 kVA. The DATA available in para 15.1 of this order/award also confirms that the Licensee has generated bills on the contract demand of 1234 kVA from March 1999 to June 2011 and thereafter 800 kVA w.e.f. July 2011.

Whether the Distribution Licensee, who preferred to supply electric energy and raise bills on the basis of the capacity of installed transformer, which was 150% more of contract demand, instead of disconnect service connection, has/had committed any wrong? Whether the licensee is entitled to raise bills?

It is the case of the Distribution Licensee that the Apex Board of the Bihar State Electricity Board, Patna through the Chief Engineer (Comm. & TA) had issued directions vide letter No- 110 dated 25.02.1999 regarding billing of the Barwadih Railway. The directions read as follows :- “ The billing to the Railway should have been done as per provision of clauses 16.8 and 16.9 of Tariff Notification 1993. The unauthorized installation of D/S/S above 450 KVA for a Contract Demand of 300KVA can be termed as an unauthorized load which attracts the provision of clause 16.9. So far as billing is concerned, billing at average consumption is wrong as the meters/CT/PT always became defective due to inadequate capacity due to their undisclosed loads and the installation of unauthorized distribution transformers. In that case, **C.D. (Contract Demand) arrived at on the basis of installed capacity of the transformer should be the base** and billing of AMG units treating it as actual consumption should have been charged taking into account the provision of clauses 16.8 and 16.9 of Tariff Notification 1993.” (emphasis supplied by bolding)

I have gone through the Tariff Notification of the Bihar State Electricity Board, Patna having No-COM/TAR/1010/93 – 430 dated 21st June, 1993. There is nothing in this Tariff Notification which RESTRICTS the licensee from raising energy consumption bills on enhanced capacity of transformer, if the licensee prefers not to disconnect service connection for any reason whatsoever. Moreover a consumer can not be permitted to take advantage of non disconnection and to refrain from payment of

electric bills where there is an admitted position of use of electric energy during the billing period.

The entire billing period i.e. from April 1993 to 8.3.2023 (the date of issuance of disconnection notice u/s 56 of the Electricity Act,2003) can be divided in two parts-

(i) 1st from April 1993 to June 2011

(ii) 2nd from July 2011 to date.

For the period covered in second part, the licensee has charged a bill considering 800 kVA as Contract Demand with effect from July 2011 as per the JSEB Tariff Order for Financial Year 2011-12 effective from 1st August 2011. The consumer has not disputed billing of this period. The consumer's grievance is on the billing during the period between April 1993 to June 2011, charged on the basis of the capacity of installed transformer.

The capacity of installed transformers, as per respondent's case and as per letter of the Senior Divisional Electrical Engineer (G), Eastern Railway, Dhanbad), is as follow:

S.N.	Transformer Installed On	Capacity of Transformer	Contract Demand	Billing Demand	Remarks
1	1994 (as admitted by consumer) 30.8.1995 (as per Inspection Report of the licensee)	3400 kVA	$3400 \times \frac{2}{3} = 2266.6$ @2267 kVA	75% of 2267= 1700kVA	The Eastern Railway through the Senior Divisional Electrical Engineer (G), Eastern Railway, Dhanbad) in his letter no. EL/1218/BRWD/2320 dt. 5.10.98 has admitted that in the year 1994 3400kVA transformer was installed, at present 2650 kVA transformer are installed. (Annex. F of the Counter Affidavit)

2	October 1998 (as admitted by consumer)	2650 kVA	$2650 \times 2/3 = 1766.6$ @1767 kVA	75% of 1767= 1325 kVA	As above
3	6.8.2001 (as per Joint Inspection Report of the licensee and the consumer)	1850 kVA	$1850 \times 2/3 = 1233.3$ @ 11234 kVA	75 % of 1234= 925 kVA	

Above DATA shows that for the period between April 1993 to June 2011, altogether three different Contract Demands shall be applicable, if the capacity of the transformer is taken into account. The Distribution Licensee, in the final revised bill (generated on 10.12.2021), has charged the lowest contract demand of 1234 kVA for the entire period. It may be taken on a special relief granted to the consumer, if claiming of contract demand basing upon the capacity of the transformer is found justifiable.

The Annexure-11 of the Memo of Appeal is a copy of letter bearing number EL/1218/L-2/S-1788 dated 28.1.2022. The letter is addressed to the Electrical Superintending Engineer, Electric Supply Circle, JBVNL, Daltonganj and issued by the Sr. Divisional Electrical Engineer (G), East Central Railway, Dhanbad.

The author of the above letter i.e. the Sr. Divisional Electrical Engineer (G), East Central Railway, Dhanbad had participated in the meeting held on 14.7.2021 and had put his signature over MOM dated 14.7.2021. He has admitted the calculation as made in minutes basing upon the capacity of installed transformer (as found

installed during inspection on 6.8.2001) and calculating contract demand on the basis of the capacity of transformer.

The instant letter addressed to the Electrical Superintending Engineer, Electric Supply Circle, JBVNL, Daltonganj and issued by the Sr. Divisional Electrical Engineer (G), East Central Railway, Dhanbad (Annexure-11) has been issued after the scrutiny made by the Competent Authority of ECR/HQ. The contents made in paragraph number 12,13 & 14 of this letter are relevant for this issue. I feel expedient to quote para-12, 13 and 14 of this letter.

12.The basic contention of JBVNL of basing contract demand on installed transformer capacity was always been, the standing contention of Railway, right from the year 1999 (when the dispute started), as put forth strongly the then DRM Dhanbad and CEE/ER. The claim of JBVNL, that Railway shall make payment based on an installed transformer capacity of 1850kVA, as also referred in the MoM under ref.(1) has also been denied from the beginning since this transformer capacity was as per certain joint note drawn by one JE/Barwadih on dated: 06/08/2001, who was not competent as the HT agreement of subject connection (And all the electric connection agreements as well) has been executed by the Sr.DEE (G) of the Railway and the said JE/Barwadih was never authorized to execute any joint note or agreement and thus the veracity of this joint note as it was made by a JE level official had been earlier contested by Railway.

13. The Codal provisions (tariff order and HT agreement) prevalent at the time of start of dispute are enumerated as under.

[1]The clause on Installed transformer capacity is 16.4.1 of tariff order, which is reproduced as under: The transformer capacity of HT and EHT consumers shall not be more than 150% of the contract demand. If any consumer is found violating this provision his service connection will be disconnected.

The contentions of JBVNL to reverse calculate the contract demand based on transformer capacity has been done by the arbitrary extension / interpretation of the above clause. Even this clause has been later withdrawn as part of proceedings of JSERC. Thus, as of present, JBVNL cannot question an HT or EHT consumer on its installed transformer capacity which can be anything without any upper limit.

[2] The mechanism of billing for maximum demand has been deliberated in para:4 (b),(c) of the HT agreement, which is reproduced as under:

4(b) For the purpose of this agreement, the maximum demand of the consumer for each month shall be largest total amount of Kilo Volt Amperes (kVA) delivered to the consumer at the point of supply during any consecutive 30 minutes in the month.

4 (c) Maximum Demand Charges for supply in any month will be based on the maximum kVA demand for the month or 75% of the contract demand as mentioned in the schedule hereto, whichever is higher, subject to the minimum loads mentioned in each category of the tariff in force from time to time. For the first twelve months service, the maximum demand charges for any month, will however be based on the actual monthly maximum demand for that month. Railway has been already paying the maximum demand charges based on the above mechanism.

[3] The clause on surcharge for exceeding contract demand is 16.5 of tariff order, which is reproduced below: Surcharge for exceeding the contract demand:- If during any month the actual maximum demand of a consumer exceeds 110% of the contract demand then the highest demand so recorded shall be treated as the contract demand for that financial year and the minimum base charges, both in respect of maximum demand and energy charge shall be payable on that basis. Railway has already been paying as per the above clause and even offered to execute a fresh agreement for 800 kVA contract demand, but this revision was not carried out by then BSEB/JSEB.

14. Summarizing above, it is stated that the actual arrears, if any, due to JBVNL required to be calculated based on,

(a) the actual energy consumption

(b) the maximum demand as recorded

(c) the contract demand as deemed to have been revised based on maximum demand recorded minus the payments already done during the whole period from 1993 to till date. For periods during which the meter has been defective, the procedure for calculation of (a), (b), (c) should be as per the codal provisions (tariff order and HT agreement). Also since Railway has never delayed any genuine payment, no delay payment surcharge or any other payment should be considered for arrears.

In view of the above, calculation has been prepared in spreadsheet of already paid amount versus the payment to be done based on the HT agreement (Annexure-10) and Tariff order (Annexure-11). As per this calculation sheet, the total amount due on the part of Railway is to the tune of ₹:11,13,371

In preceding sub-para of this order/award, I have found & held that the admission made regarding capacity of installed transformer of 1850 kVA, in Inspection Report

dated 6.8.2001 and acknowledgement of the said capacity of 1850 kVA installed transformer in MoM dated 14.7.2021 are admissible in evidence.

The Competent Authority of Railway in ECR/HQ has disputed the fact that the Distribution Licensee has not adopted the codal provisions (tariff order, and HT agreement) while assessing 'Contract Demand'. According to them, the capacity of the transformer can not be the basis of calculation.

I have gone through the record thoroughly. The following facts are available and / or established:-

- A transformer of the capacity 1850 kVA was installed and the consumer was consuming electricity through it.
- The transformer was installed without the knowledge/ consent/information of the distribution licensee.
- The meter was defective/burnt
- The maximum kVA recorded was 818 kVA in the month of October 2006
- The consumer had made a request to enhance its contract demand, on 15.12.1998, from 300 kVA to 800 kVA. Though the BSEB had refused to execute an agreement for 800 kVA (It confirms the high requirement & necessity of the consumer).
- The Distribution Licensee had not disconnected Service connection in terms of Rule 16.4.1 of the Tariff Notification 1993. The consumer has also not denied consumption of electric energy during that very billing period.

In view of above facts and circumstances, I am in a considered judicial view that the consumer can not claim that since the licensee had not disconnected service connection it cannot raise enhanced electric bills. When the meter was defective

and the consumer had ventured to install a transformer of enhanced capacity the consumer cannot claim that the contract demand should remain as per old agreement, whose terms have been violated by the consumer itself.

It has been proved by cogent documentary evidence that a transformer of 1850 kVA has/had been installed by the consumer. The maximum load for a transformer is generally 75-80% of the rated capacity of that transformer. In MOM dt.14.7.2021 75% of the rated capacity of the transformer has been taken as maximum load @ Contract Demand. It comes to 1234 kVA. And 75% of the maximum load of the transformer @ Contract Demand has been assessed on Billing Demand which comes to 925 kVA. The learned counsel for the appellant consumer during argument has admitted that the High Tension Electric Meter was not working for most of the period between the period 1989 to 1995 and therefore the payment was made at 75% of the contract demand.

The consumer, who has violated the terms of agreement, can not be permitted to claim that the billing should be based upon the agreement, whose terms have been violated by the consumer, since the distribution licensee had not disconnected service connection. Moreover the record of this appeal has witnessed a fact of disconnection in the year 1999 when the distribution licensee during inspection had found one transformer having capacity 3400 kVA was found installed, the licensee disconnected the supply and raised a bill to the tune of Rs. 5,54,42,965 (Annexure 4 of Memo of Appeal). The DRM, Eastern Railway, Dhanbad through letter number - L/1218/6/ 887 dated 4.4.1999 had claimed it an illegality on the part of the licensee. The consumer had succeeded in getting the connection restored immediately even without paying a single pie.

The consumer can not be permitted to blow hot and cold simultaneously. On one hand the consumer is claiming that when the licensee had found that the transformer installed was of 150% more than the contracted demand it should have disconnected the service connection as per clause 16.4.1 of the Tariff Notification 1993. On the other hand when service connection was disconnected, the consumer had started claiming that disconnection was illegal. On 30.8.1995, the Licensee had found that a transformer having capacity 3350 kVA @ 3400 kVA was found installed. Though the consumer had denied installation of the transformer having capacity 3550 kVA at that time but subsequently on 5.10.1998 (through Annexure – F of C.A) had admitted that in the year 1994 a transformer having capacity 3400 kVA was installed.

I have gone through the Annexure-H Series of the Counter Affidavit of Respondents. A copy of the letter having Memo No. 325 dated 22.3.1999 of the Electrical Executive Engineer, Latehar (Palamau) is available in this series. The letter has been issued in response to the letter no. 592 dated 13.3.1999 issued by Electrical Superintendent Engineer Electric Supply Circle, Daltonganj regarding use of unauthorized load by the consumer. The contents of the letter reads that - “उपभोक्ता संख्या डी 1788 (H.T.) बरबाडीह रेलवे के द्वारा स्वीकृत भार से ज़्यादा ऊर्जाभार उपयोग किया जा रहा है। बिद्युत अधीक्षण अभियंता डाल्टनगंज ने उपयुक्त उपभोक्ता को दिनांक 22.3.99 के बाद किसी भी समय बिद्युत सेवा सम्बंध बिच्छेद कर देने की सूचना जारी कर दिए हैं।”

The consumer’s electricity connection was disconnected on 31.3.1999. But on assurance given by the Chief Electrical Engineer, **Eastern Railway** (consumer) and on discussion with the General Manager - cum - Chief Engineer, Area Electricity Board,

Ranchi on telephone, it was decided to restore the supply of power immediately vide Letter No. 72 / M(D) dated 8.4.1999 of the Member (Distribution)

When the service connection was disconnected for using unauthorized load by the consumer, the consumer claimed that it was illegal. When the licensee did not disconnect the service connection for using unauthorized load, the consumer claims that it was a violation of Tariff Notification 1993, the service connection should be disconnected.

The Respondents have relied upon the law laid down by the Hon'ble Apex Court in the case of **Bombay Electricity Supply & Transport Undertaking v/s Laffans (Indian) (P) Ltd & Anr.** reported in **(2005) 4 SCC 327**. It is held that “ where the meter is completely non-functional on account of any fault or having been burnt, it will not register the supply of energy at all. Since a burnt meter does not record any supply of energy, it virtually means “no meter”. Section 26(6) of the Electricity Act,1910 will have no applicability (i) if the consumer is found to have committed a fraud with the licensee and thereby illegally extracted the supply of energy preventing or avoiding its recording, or (ii) has resorted to a trick or device whereby also the electricity is consumed by the consumer without being recorded by the meter.”

So far the assessment of contract demand on the basis of installed transformer capacity, as per inspection report dated 6.8.2001, I have found at para-14 of this order/award that there is no any arithmetical error in calculation as made in MOM dt.14.7.2021 while calculating contract demand.

During the billing period, the meter remained burnt and there was no reading about energy consumption. After violating the terms of agreement and in violation

of the terms that the transformer capacity of H.T. consumers shall not be more than 150 percent of the contracted demand, the consumer ventured to install a transformer of the capacity of 3400 kVA / 2650 kVA / and finally of 1850 kVA to fetch more energy. The consumer himself has admitted the installation of the previous two transformers. The Eastern Railway through the Senior Divisional Electrical Engineer (G), Eastern Railway, Dhanbad) in his letter no. EL/1218/BRWD/2320 dt. 5.10.98 has admitted that in the year 1994 3400kVA transformer was installed, at present 2650 kVA transformer are installed. (Annex. F of the Counter Affidavit). These facts are also mentioned in the Minutes of Meeting dated 14.7.2021 and it bears signature of both the parties.

In the present scenario, to my judicial mind, the consumer appellant can not be and should not be permitted to raise a finger on the mode of calculation to assess contract demand on the basis of the capacity of installed transformers. I find and hold that in the absence of a valid contract demand agreement and when the meter remains defective, assessment of contract demand as 75 % of the capacity of the transformer is scientific. The licensee's Revised Bill is based upon the contract demand of 1234 kVA as per the capacity of the last installed transformer of 1850 kVA.

Decision: In view of my findings and comments made above and in light of the decision arrived at para-14 of this order/award, I find and hold that the assumption of contract demand of 1234 kVA is legal & valid. The consumer appellant has failed to establish that raising bills on assumption of contract demand is restricted by the

B.S.E.B. Patna Tariff Notification 1993 or by any subsequent tariff notifications of the JBVNL.



16. Crucial Issue No- VIII : Whether the electricity disconnection notice dated 8.3.2022 of the Distribution Licensee to the Consumer, in pursuance to which the electricity connection having Consumer Number - L-2/D-1788 had been disconnected, was contrary to the Electricity Act, 2003?

The consumer in his complaint having Case No. 02 of 2022 before the learned Vidyut Upbhokta Shikayat Nivaran Forum (VUSNF), Ranchi in addition to main relief had also sought for a relief for quashing of the letter dated 8.3.2022, in pursuance to which the electricity connection having- L-2/D-1788 has been disconnected, contrary to section 56 of the Electricity Act, 2003.

The Annexure-15 of the Memo of Appeal (at page - 137) in a copy of letter of the Electrical Executive Engineer, Electric Supply Circle, Daltonganj having letter No-421 dated 8.3.2022 addressed to the Divisional Electrical Engineer (G), Eastern Railway, Dhanbad regarding information of disconnection of electricity due to non depositing of dues. This letter has been issued u/s 56 of the Electricity Act, 2003. The disconnection notice was issued on 8.3.2022 by showing dues of Rs.64,53,65,198.

I have gone through the impugned judgement of the learned VUSNF, Ranchi. The learned Forum has not discussed this issue in its judgement and has not passed any order in this regard.

I feel it expedient to project the image of letter no- 421 dt.8.3.2022 of the Electrical Executive engineer, Daltonganj.

 कार्यालय विद्युत अधीक्षण अभियंता विद्युत आपूर्ति अंचल, डालटनगंज		दिनांक 08/3/2022
क्रमांक 421		
पद में	DIVISIONAL ELECTRICAL ENGINEER (G) Eastran Railway Dhanbad	
विषय:	विद्युत अधिनियम 2003 के धारा 56 के अंतर्गत बकाया राशि नहीं जमा करने के कारण विद्युत विच्छेदन की सूचना।	
महाराज,	आपको सूचित किया जाता है कि आपके विद्युत शुल्क का बकाया, जिसका विवरण नीचे दिया गया है, बाकी चला आ रहा है।	
	अतः विद्युत अधिनियम 2003 की धारा 56 के अंतर्गत आपको सूचित किया जाता है कि आप इस सूचना की 15 (पन्द्रह) दिनों के अंदर बकाये राशि का भुगतान अवश्य कर दें। अन्यथा झारखण्ड विजली वितरण निगम लिमिटेड बाध्य होकर उपरोक्त अवधि के पश्चात् विद्युत संबंध विच्छेद कर देगा।	
	ज्ञात हो कि माननीय झारखण्ड उच्च न्यायालय ने दिनांक 03.09.2003 के केस नं०-सी० डब्ल्यू० जे० सी० नं०-1793/2001 एम० एस० मित्तल बनाम झारखण्ड राज्य विद्युत बोर्ड एवं अन्य में पारित आदेश द्वारा झारखण्ड राज्य विद्युत बोर्ड को यह निर्देश किया है कि वैसे उपभोक्ताओं को जिन पर विद्युत शुल्क का बकाया चला आ रहा है, उन्हें विद्युत अधिनियम 2003 की धारा 56 के अंतर्गत सूचना दी जाये एवं इसके बावजूद भी यदि वे शुल्क का भुगतान नहीं करते हैं, तो उनका विद्युत संबंध विच्छेद कर दिया जाए।	
	<ol style="list-style-type: none"> 1. जब आप जम्मा बकाये की रकम का भुगतान करें। 2. विद्युत संबंध विच्छेद होने की स्थिति में बकाये के साथ साथ विद्युत संबंध विच्छेद एवं जोड़ने के शुल्क जमा होने के पश्चात् ही विद्युत संबंध की पुनः उर्जापिबत किया जाएगा। 	
	बकाये का विवरण:-	विश्यासभाजन
	उपभोक्ता सं० : L2(HT)	
	बकाया राशि : 645365198.00	
		 विद्युत कार्यपालक अभियंता (सी० एव० सी०) विद्युत आपूर्ति अंचल, डालटनगंज।

Section 56 of the Electricity Act, 2003 prescribes disconnection of supply in default of payment. The consumer's electrical connection was disconnected on 24.03.2022 in pursuance of notice as contained in letter no- 421 dated 8.3.2022 issued by the Electrical Executive Engineer, Electric Supply Division, Daltonganj under section 56 of the Electricity Act, 2003

The consumer had preferred a Writ Petition before the Hon'ble Jharkhand High Court having W.P.(C) No- 1445 of 2022 with I.A.No-2703 of 2022. The Hon'ble Court have been pleased to dispose of the Writ Petition and the Interim Application on 5.4.2022. The Hon'ble Court at para-5 have been pleased to observe that:- *"Having heard the learned counsel for the parties, it appears that the petitioner's electrical connection has been disconnected by the respondents for an old dispute carrying arrears of energy bills pertaining to the period from 04/1993 to 02/1999 raised against the petitioner under clause 16.4.1 of Tariff Notification,1993 issued by the erstwhile Bihar State electricity Board, Patna. In considered opinion of the Court, the said dispute can be resolved through adjudication by the VUSNF under Section 42(5) of the Act, 2003".*

The learned VUSNF, Ranchi has not decided this issue for the reasons best known to it. At this juncture the Authority of Electricity Ombudsman has got three options either- (i) to remit back the case to the learned Forum to decide the issue by setting aside the impugned judgement or (ii). to send the case to the learned VUSNF, Ranchi for decision on the issues by keeping the appeal pending or (iii). to decide the issue by this Appellate Authority. I feel it expedient to decide the issue in this appeal to avoid procrastination.

The Annexure 16 of the memo of appeal is a letter of the General Manager of the East Central Railway, Hazipur issued on 27.3.2022 regarding restoration of power supply against consumer number L-2/D - 1788 at Barwadih in response to the disconnection notice through letter no- 421 dt.8.3.2022 of the Electrical Executive engineer, Daltonganj.

The exception of the consumer is based upon the provision of subsection (2) of section 56 of the Electricity Act, 2003.

Sub-section (2) of Section 56 of the Electricity Act, 2003 reads as follows:-
“Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.”

Negligence on the part of Consumer:-

For applicability of section 56 of the Electricity Act, 2003 there must be evidence on record that the consumer neglects to pay any charge for electricity due from him to a distribution licensee. This Authority of Electricity Ombudsman is not concerned with the issue as to whether the Railway authority should ‘APPROVE’ the Resolution taken in the Meeting held on 14.7.2021.

To understand the defense of the consumer appellant, I feel it expedient to project the image of annexure 16

अनुपम शर्मा :
महाप्रबंधक
Anupam Sharma
General Manager



पूर्व मध्य रेल
हाजीपुर - 844101
East Central Railway
Hajipur - 844101

Phone : + 91-6224-274728, Fax : 271513, 274738
E-mail : gm@ecr.railnet.gov.in

Dear Shri Singh,

Sub: Restoration of power supply against Consumer No. - L-2 /D- 1788, at Barwadih.

Ref :- Letter no. 421 dated 08.03.21 of Electrical Superintending Engineer, Electric supply Division, Daltonganj

This is with regard to an action taken by M/s JBVNL in discontinuing Power Supply at Barwadih of Dhanbad Division causing severe disruption of Railway services.

Electric supply to above Railway establishment has been disconnected on 24.03.22 at around 10.00 hrs by M/s JBVNL Daltonganj invoking Section 56 of Electricity Act 2003 allegedly due to non-payment of disputed old outstanding dues of Rs. 64,53,65,198/- as per the letter and bills issued under reference. These dues pertain to old claims since 1993, initially raised by former BSEB (now taken over by JBVNL) based on installed transformer capacity. It may be mentioned that the then BSEB and JSEB had inflated the contract demand unilaterally on the basis of installed transformers capacity and **the same was not based on HT agreement and prevalent tariff orders**. Accordingly, ECR has consistently raised objection.

Dhanbad division of ECR has always been paying energy bills timely on the basis of current assessment on regular basis and the disconnection notice dated 11.2.2022 was also well responded to duly stating **the disconnection is not liable in terms of section 56(b) of Electricity Act 2003**. The present case of electric supply disconnection is therefore in violation of the said provision.

It is brought to your kind notice that this discontinuation has severely affected Railway operations of Dhanbad Division of ECR, which is one of the top coal loading divisions of Indian Railways. The disturbance caused has severely affected coal transportation which is likely to precipitate in power shortage throughout the country if the situation persists.

Considering the above, I would request you to kindly direct M/s JBVNL to restore Electric supply to Railway Establishment at Barwadih at the earliest.

With regards,

Your's sincerely

Shri Sukhdev Singh, IAS
Chief Secretary,
Govt. of Jharkhand

27/3/22

It is relevant to mention here that on behalf of the Eastern Railway, Dhanbad Mr. A.K. Singh- C.E.G.E, E.C. Rly and Mr. Aanandi Pandit Sr. DEE/G/DHN/ECR had participated in the meeting and the resolution was taken unanimously. The long pending electricity bill is for the period between April, 1993 to May, 2021. Initially the electricity bill was generated for an amount of Rs. 589,52,27,630. After Resolution in MOM dt.14.7.2021, the bill was finally reduced to Rs.64 Crore 53 Lakh (Approx). The meeting was held on 14.7.2021 and the notice u/s 56 of the Electricity Act was issued on 8.3.2022 i.e after lapse of more than seven months.

The consumer has disputed & impugned the electricity disconnection notice dated 8.3.2022 on two grounds. They are :-

- I. The alleged outstanding dues of Rs.64,53,65,198/- pertain to old claims since 1993 based on installed transformer capacity. Thethen Bihar State Electricity Board (BSEB) and the Jharkhand State Electricity Board (JSEB), now taken over by JBVNL, had inflated the contract demand unilaterally on the basis of installed transformer's Capacity and the same was not based on HT agreement and prevalent tariff orders. The Eastern Central Railway (ECR) has constantly raised objections.
- II. The outstanding dues are not recoverable in terms of section 56(2) of the Electricity Act, 2003.

The Dispute No- (1) as raised by the consumer appellant is directly associated with Issue No.- VI : whether the assumption of Contract Demand of 2267 kVA (1234kVA) is illegal, arbitrary and has been accessed without any statutory or contractual basis. At para-14 of my order/award this issue has been decided in favour of the distribution licensee and against the consumer appellant. I have found and held

that the assessment of contract demand of 1234 kVA is legal and valid and raising bills on fresh contract demand of 1234 kVA is not restricted by the B.S.E.B. Patna tariff Notification 1993. In light of the decision arrived at Issue No –VII, the instant dispute is also being decided against the consumer and in favour of the distribution licensee.

The Dispute No - (11) as raised by the consumer appellant is a legal question raised by the consumer about the recoverability of sum after lapse of two years.

Sub-Section (2) of section 56 of the Electricity Act, 2003 reads as follows: “Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.”

The rider for applicability of the provision of section 56 (2) of the Electricity Act, 2003 is that – “ Unless such (sum due from any consumer) has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.”

The Exchequer History of the long pending billing dispute has been mentioned in Annexure No. 8 i.e. the Minutes of Meeting dated 14.7.2021. The history confirms that the distribution licensee is continuously claiming the arrear of charges for electric supplies and interestingly the consumer is also denying only the quantum but not denying the arrears. The history as mentioned in this document reads is as follows :-

1. The electricity connection to Divisional Electrical Engineer (G), Railway Barwadih was energized on 16/06/1961 on 75 kVA Contract Demand.
2. In the year 1968, the contract demand was enhanced to 100kVA.
3. Again, the contract demand was increased from 100 kVA to 300 kVA on 08.06.1989.
4. ESE, Daltonganj vide letter no. 1537 dated 25.08.1998 inform GM-Cum-CE, Ranchi and apex Board Headqr. About the details Distribution Transformers connected at premises mentioned as 3350 kVA (9 nos. DTR) since 1995 and about the practice of railways, installing DTR as per their own will, in the light of their own requirement. ESE Daltonganj also mentioned in letter that Cause of burning of meter is nondisclosure of load by railway resulting installation of under capacity metering system.
5. A letter was written by Sr. Division electrical Engineer(G), ER, Dhanbad vide letter no.2320 dated 5.10.1998 regarding replacement of meter with higher capacity, as the recorded Maximum Demand was just double the contract demand of 300 kVA. He further informed that the installed transformer capacity was 3400 kVA in BRWD Railway complex in 1994, and since then almost no load had increased and in October 1998 transformer capacity was 2650 kVA and for transformer

capacity installed before 1994, records were being searched out.

6. Accordingly in view of higher transformer capacity installed by Railway, ESE, ESC Daltonganj vide letter no. 1979 dated 2.11.1998 had requested the Railway Authority for execution of agreement on 1800 kVA, if the load was to be restricted at existing 2650 kVA and 2300 kVA, if the load is likely to increase as per transformer capacity 3400 kVA, since as per clause 16.4.1, the transformer capacity of HT and EHT consumers shall not be more than 150 per cent of the contract demand, which shows violation of prevalent Tariff provision.
7. After that, a meeting was held on 15.12.1998 in the office of ESE, ESC, Daltonganj and as per MoM dated 15.12.1998. " Both ESE and ESC, Daltonganj and Sr.DE, Railway, Dhanbad were agreed to enhance contract Demand from 300 kVA to 800 kVA and the Railway agreed to limit the total capacity of installed Distribution Transformers within 1200 kVA as per tariff notification of Board. In no case the installed capacities of Distribution Transformer should be more than 1200 kVA on the contract demand of 800 kVA." But neither the agreement on 800 kVA was executed nor the Railway had limited the transformer capacity within 1200 kVA.

8. Thereafter a letter of CE(Coml. & T.A.), BSEB, Patna letter no. 110 dated 25.02.1999 had been received, according to which it was directed to revise the CD as calculated on installed capacity of transformer i.e. 3400 kVA and billing of AMG units treating it as actual consumption was to be charged.
9. Accordingly, the ESE,ESC, Daltonganj raised a provisional arrear bill of Rs.5,59,25,413.00 for 4/93 to 2/99 vide letter no. 715 dated 31.03.1999.
10. Senior D.E.E. General, Eastern Railway, Dhanbad, vide letter no. El/1218/73 dt.18.03.1999 informed that during the inspection in 1994-95, the EEE, Daltonganj has considered 2200 kVA uncharged DTR, in the calculation of 3400 kVA and requested to make agreement on basis of 800 kVA Contract Demand.
11. The Railway never agreed for 2267 kVA (2/3 of 3400 kVA) load and kept on paying regularly on only on basis of 484 kVA as demand, not on the basis of billing demand (75% of 2267 kVA=1700 kVA), based on transformer capacity 3400kVA or recorded demand, due to which the arrear amount increased month on month.
12. After that again to check installed transformer capacity, as per direction of member JSEB a committee formed comprising EEE (C&R), Daltonganj, EEE (MRT), Daltonganj, EEE, Supply

Latehar & AEE Barwadih vide O/O No.65 dated 22.06.2001. A joint inspection was carried out on 06/08/2001. In the joint inspection report (duly signed by Railway authority also) dated 06.08.2001, the capacity of installed transformers was found to be 1850 kVA which was again a violation of limiting Distribution Transformer capacity. Earlier there was no joint inspection report available regarding installed transformer capacity.

The facts mentioned in the MOM dated 14.7.2021 are admitted facts of both the parties and neither the distribution licensee has waived the arrears nor the consumer has denied the arrears.

During the course of argument, the learned counsel for the appellant Mr. Prasant Pallav has raised a question of law. He has drawn my attention towards the provision of section 26 (6) of the Electricity Act, 1910 and also the provision of section 70 of the Electricity (Supply) Act, 1948. The detailed argument of Mr. Pallav has been mentioned at para -7 of this order/award. I need not repeat the same to encumber the order/award. I have considered his submissions of Mr. Pallav and have gone through the disconnection notice i.e. Annexure – 15 of the Memo of Appeal.

The notice was issued on **8.3.2022** under **section 56 of the Electricity Act, 2003**. (emphasis supplied by bolding). The Indian Electricity Act, 1910 and the Electricity (Supply) Act, 1948 have been repealed by section 185 of the Electricity Act, 2003.

The provision of section 26(6) of the Act, 1910 and section 70 of the Act, 1948 do not come under the "Saving Clause" of the Electricity Act, 2003. The disconnection notice (Annexure 15 of the Memo of Appeal) was issued under the provision of section 56 of the Electricity Act, 2003. The repealed provisions of section 26(6) of the Electricity Act, 1910 and section 70 of the Electricity (Supply) Act, 1948 have got no binding effect upon this notice.

In a case of **K C Ninan v/s Kerala State Electricity Board** reported in **2023 SCC Online SC 633**, the Hon'ble Supreme Court has ruled that the period of limitation under section 56 (2) is relatable to the sum due under section 56. The sum due under Section 56 relates to the sum due on account of the negligence of a person to pay for electricity, Section 56 (2) provides that sum due would not be recoverable after the period of two years from when such sum became due. The means of recovery provided under section 56 relate to the remedy of disconnection of electric supply. The right to recover still subsists.

Decision: In view of my findings and comments made above I find & hold that the consumer appellant is not entitled to get relief under Section 56(2) of the Electricity Act, 2003. The licensee has rightly inflated the contract demand on the basis of the installed transformer's capacity.

I find and hold that the electricity disconnection notice dated 8.3.2022 was NOT CONTRARY to the Electricity Act, 2003.

Accordingly this issue is being decided in favour of the distribution licensee and against the consumer appellant.

17. Options available to the Electricity Ombudsman while deciding this Appeal / Representation :

The Hon'ble Jharkhand High Court in W.P.(C) No.1445 of 2022 vide Order dated 5.4.2022 have been pleased to direct the learned V.U.S.N.F. Ranchi to consider the complaint of consumer complainant **on merit and pass appropriate order in accordance with law.**

The learned VUSNF Ranchi should have formulated issues as to - (i). Whether the Inspection Report of installed capacity of 11/0.4 KV transformer at Eastern Railway Barwadih Consumer No. HT/D - 1788 at Barwadih on 6.8.2001 is binding upon the consumer? (ii). Whether the assessment of Contract Demand of 2267 kVA (1234 kVA) is illegal, arbitrary and has been assessed without any statutory or contractual basis? and (iii). Whether the electricity disconnection notice dated 8.3.2022 of the Distribution Licensee to the Consumer, in pursuance to which the electricity connection having Consumer Number - L-2/D-1788 had been disconnected, was contrary to the Electricity Act, 2003?

The learned VUSNF Ranchi should have decided the formulated issues on merit of the case. But the learned VUSNF, Ranchi has not passed the Judgement / Order on the merit of the case and erred to direct the parties to adhere to the guidelines as agreed upon through MOM dated 14.07.2021 and erred to direct the Board of Directors of the JBVNL & the Competent Authority of Railway **to approve** the resolution taken in MOM dated 14.7.2021.

The Authority of the Electricity Ombudsman was left with three options in present scenario :-

- A. To remand / remit back the record to the learned VUSNF Ranchi, by setting aside the impugned order, with a direction to pass appropriate order on merit in accordance with law.
- B. To send the case to the learned VUSNF, Ranchi for decision on additional issues, framed by the Authority of Electricity Ombudsman, for determination, by keeping the appeal pending for disposal by appellate authority.
- C. To decide the case on merit, where the materials upon the records are sufficient to pass order/award, by framing issues & deciding the same, without passing an order of remand.

In this appeal neither the Appellant in its memo of appeal nor the Respondents in their counter affidavit has made a prayer to remit back the case. Furthermore, the appellant has raised the issues in memo of appeal, based on the merit of the case, with a request for adjudication.

The Hon'ble Jharkhand High Court in W.P.(C) No.1445 of 2022 vide Order dated 5.4.2022 had been pleased to direct the learned V.U.S.N.F. Ranchi to dispose of the case within a period of three months from the date of filing of the complaint. The spirit of this direction is to get the long pending dispute resolved within a shortest possible time. This Authority of Electricity Ombudsman preferred the third option to decide the case on merit by framing issues & deciding the same, without passing an order of remand. I felt it expedient to decide the issues on merit of the case, in this appeal to avoid procrastination.

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

ORDERED

that the appeal be and the same is

PARTLY ALLOWED

on contest in favour of the Consumer Appellant (Consumer Number L-2/D1788) Union of India through East Central Railway Zone and against the Distribution Licensee i.e. the Respondents Jharkhand Bijli Vitran Nigam Ltd. (JBVNL) and its Officers.

The impugned order passed by the learned Vidyut Upbhokta Shikayat Niwaran Forum (VUSNF), Ranchi directing therein to adhere the guidelines of the Minutes of Meeting (MOM) dated 14.7.2021 and directing the Board of Directors of the JBVNL & the Competent Authority of Railway to “Approve” the Resolution taken in MOM dated 14.7.2021 is hereby set aside.

BUT

the Reliefs as sought for, before the Learned Vidyut Upbhokta Shikayat Niwaran Forum (VUSNF), Ranchi by the Consumer Complainant in Case Number 02 / 2022 , be and the same is

DISMISSED

on merit of the case, on contest, against the Consumer Appellant (Consumer Number L-2/D1788) Union of India through East Central Railway Zone and in favour of the Distribution Licensee i.e. the Respondents Jharkhand Bijli Vitran Nigam Ltd. and its Officers.

The Distribution Licensee Jharkhand Bijli Vitran Nigam Ltd. is unerring in raising bills on assumption of Contract Demand of 1234 kVA for the period in between March 1999 to June 2011 basing upon the capacity of the installed transformer 1850 kVA and in raising bills on Contract Demand of 800 kVA with effect from July 2011. The Consumer /Appellant is liable to satisfy the bills, so raised, by making payment.

The provision of Section 56 of the Electricity Act, 2003 (Act No. 36 of 2003), which prescribes disconnection of supply in default of payment, shall remain available to the Distribution Licensee.

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

(Dictated & Corrected by me)

Pronounced by me

(G.K.ROY)

(GOPAL KUMAR ROY)

Electricity Ombudsman : Jharkhand