

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

Case No. EOJ/05/2013

M/s Jai Shree Bhairav Nath Jee Industry Appellant(s)

Versus

JSEB & Others Respondent(s)

Present:

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

ORDER

(Order passed on this 19th day of September, 2014)

By this Petition under Rule 13 of the (Guidelines For Establishment of Forum For Redressal of Grievances of The Consumers And Electricity Ombudsman) Regulation,2005 , the appellant has challenged the order of the Vidyut Upbhokta Shikayat Niwaran Forum, Hazaribagh (herein referred to as VUSNF for short) dated 24/03/2013 dismissing his grievances bearing Case No.12/09.

2. Brief of the Case:

The Appellant established an industry a proprietorship concern at village Rauta, Ramgarh Cantt, Ramgarh for production of steel ingots in the month of May 2005 and took electricity connection from

Jharkhand State Electricity Board (here in after referred to as Board) bearing Connection No.RRH-10146 in the month of May, 2005 and the commercial production also started in the same month. In the midnight of 1st August, 2005 a team of Board's officials visited the premises of the Appellant. The Inspecting Team found that the Appellant was committing theft of energy by shorting the R-Phase outgoing & B-Phase outgoing of CTPT unit by a foreign wire without tampering the seals of the meter box, meter reset and meter door because meter was installed in meter box and metering unit (CTPT unit) was pole mounted and had illegally restricted the accurate/actual registration of consumption of electrical energy in the meter. Accordingly, after finding the evidence of pilferage of electricity, FIR was lodged under section 135/138 of the Electricity Act, 2003. A tentative loss of Rs. 22,84,000/- caused to the Board on account of the said pilferage was also mentioned in the body of FIR itself. On allegation of theft of energy the Respondent Board disconnected the electric connection of Appellant.

3. Prayer of the Appellant:

3.1) Without complying the mandatory provisions of the Electricity Act, 2003, disconnection of the electricity supply of the appellant on allegation of theft of electricity is bad in law and illegal.

3.2) Award compensation of Rs.3 Crore by way of loss sustained due to enforced closure of the industry by way of loss of production just two months after its commencement of commercial production.

4. Submissions of the appellant:

4.1) The learned counsel submitted that for running its plant the Appellant took an electrical connection bearing consumer no RRH-

10146 under commercial HTSS category having contract demand of 900 KVA at 11 KV power supply. The electrical connection was energized in the month of May 2005 and came into commercial production from May, 2005 itself. As per the Rules and Regulations the Respondents installed entire metering arrangement/system and affixed the seals at all appropriate places. Every month Board's officials use to visit the premises of the appellant for taking meter reading after making detailed check/inspection of the entire metering system and during course of checking/inspection at no point of time any fault or irregularities were found against the appellant. The last such inspection was made on 30.07.05 by a team of 6 senior officers of the Board and everything was found O.K.

4.2) He further submitted that as per prevailing applicable law Board was not at all entitled to disconnect the electric connection of the appellant on the allegation of theft of energy without complying the mandatory provisions of Section 56 of the Electricity Act, 2003. Moreover, in the original Electricity Act, 2003 no provisions was there to straight way disconnect the electric connection on allegation of theft of energy. However, later on in June, 2007 amendment was made in section 135 of the Electricity Act by inserting Sub-Section (1A) authorizing the licensee to disconnect the electrical connection and lodge FIR in case of detection of the theft of electricity. The Appellant time and again requested the concerned authorities of Board for restoration of electrical connection but was not restored.

4.3) The learned counsel further submitted that in the same circumstances on the allegation of theft of energy the Respondent

Board disconnected the electric connection of one induction furnace consumer namely M/s Stan Commodities Pvt. Ltd. The said consumer approached the Hon'ble High Court, Jharkhand against the illegal disconnection vide W.P.(C) No. 109/07 and the Hon'ble High Court vide order dated 01.02.07 held that the action of the Respondents in disconnecting the electric connection of the consumer as illegal, arbitrary and violative of principles of natural justice and further directed to restore their connection forthwith. Against the order dated 01.02.07 the Respondent Board moved in appeal vide L.P.A. No. 60/07 and the matter was admitted for hearing and after hearing in detail the Division Bench of the Hon'ble High Court vide order dated 04.03.09 dismissed the appeal filed by the Respondent Board with following observation:-

“After having considered relevant provisions of the act, regulation and tariff, we are of the view that in the facts and the allegation made against the consumer in the instant case, the action of the Respondent Board cannot be justified.

In the facts and circumstances of the case, we do not find any reason to differ with the view taken by the Learned Single Judge in the impugned Judgement. For the reasons aforesaid we do not find any merit in this appeal, which is accordingly dismissed.”

4.4) The learned counsel submitted that after disconnecting the electric connection, Board's authorities slept over the matter and did not pay any heed to the request of the Appellant. Finally after more than two months noticed the appellant on 10.10.2005 and directed to participate in the assessment proceedings on 20.10.2005. The matter was heard by the Electrical Superintending Engineer on different

dates and after due participation of all the concerned parties the final assessment order was passed on 31.01.2006 i.e. after about half years from the date of disconnection of the electrical connection of the certificate debtor. Against the final assessment order passed under section 126 of the Appellant approached learned VUSNF vide Case No. 4/06 wherein the Board filed counter affidavit taking the plea that order passed u/s 126 is appealable u/s 127 and hence, the only remedy lies before the Appellant Authority. The Learned Court of VUSNF vide order dated 28.08.2006 disposed of the matter with a direction to prefer appeal before the Appellate Authority.

4.5) The learned counsel further submitted that the Appellant being tired with the litigation and in urgent need of electricity decided to accept the order dated 30.01.2006 and approached the Electrical Superintending Engineer to issue final bill so that the same may be paid, but the Board's authorities neither issued final bill as per order dated 31.01.2006 nor restored the electric connection even after being ready and willing to pay the punitive loss amount. The electrical connection of the Appellant could not be restored for complete span of more than 2 (two) years. In this situation reference of Section 56 (2) of the Electricity Act, 2003 may be taken which very categorically 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 sum 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.”

To utter surprise of the Appellant, all on a sudden Board recalled/withdrew the assessment order dated 31.01.2006 passed by the Electrical Superintending Engineer, Electric Supply Circle, Hazaribagh and another assessment dated 10.05.2008 was passed by the General Manager Cum Chief Engineer, Area Board, Hazaribagh behind the back of the Appellant which is absolutely impermissible and without jurisdiction as per the applicable law provided under the Electricity Act, 2003.

4.6) The learned Counsel relied upon the order dated 18/07/2008 of the Hon’ble High Court, Jharkhand in W.P.(C) No. 1387/08 in the matter of M/s Raj Steel & Ferro Alloys Pvt. Ltd. Vrs. JSEB vide W.P.(C) No. 1387/08 wherein the Hon’ble Court vide order dated 18.07.08 held and settled that the Board being a party to the assessment proceeding could not withdraw the order passed by the Superintending Engineer of its own, even it was without jurisdiction.

4.7) The learned counsel further submitted that the order dated 10/05/2008 passed by the General manager cum Chief Engineer, Hazaribagh wherein the loss caused to the Board has been reassessed to the tune of Rs. 18,18,200/- The same has been challenged by the Appellant before the Hon’ble High Court vide W.P.C. No. 5439/08 and is still pending before the Hon’ble High Court.

The learned counsel made reference of Section 135 of the original Electricity Act, 2003 wherein there was no provision to disconnect the electrical connection immediately. However, provision for disconnection of electrical connection in case of detection of theft

of energy has been inserted by the Electricity Amendment Act, in the year 2007 and Sub-sec.(1A) in Sec. 135 has been added whereby and where under the licensee has been empowered to disconnect the electrical connection on detection of theft of energy. Moreover, it is pertinent to mention here that against the order dated 01.02.2007 passed in W.P.C. No. 109/07 in the matter of M/S Stan Commodities Pvt. Ltd Vs JSEB the respondent Board moved in appeal before the division bench of the Hon'ble High Court vide L.P.A. No. 60/70 and the Hon'ble High Court vide order dated 04.03.2009 dismissed the appeal filed by the respondent Board as not justified and further direction was given to restore the electricity connection of the consumer.

4.8) The learned counsel further submitted that since the unit of the Appellant was closed due to disconnection of electric supply so, it became very difficult to maintain the plant. The entire civil work including boundary wall, Industrial shed (main), industrial shed (auxiliary), furnace platform, underground water tank, overhead water tank etc. were ruined. The total cost of the Appellant's industrial unit in the name of M/s Jai Shree Bhairav Nath Jee Industry is of about Rs. 8940000/-. After its closure the Appellant was burdened with loan resulted into sell of the entire unit alongwith land at the cost of 39 lacs for the purposes of payment of loan taken from bank thereby incurring a huge loss of about Rs. 50.00 lac. As such the Appellant is claiming the same and is entitled for damages to the tune of 89 (eight nine) lacs. Therefore, the Respondent Board must be directed to compensate the Appellant for the damages/loss caused due

to illegal disconnection of electricity and further not restoring electric connection in spite of repeated requests and reminders.

5) Submission of the Respondent Board:

5.1) The learned counsel submitted that the Appellant has an efficacious and statutory remedy under section 127 of the Electricity Act, 2003, as the final assessment order has already been passed by the Assessing Officer, the General Manager cum Chief Engineer, Hazaribagh on 10.05.2008 which the Appellant has wilfully ignored.

5.2) The learned counsel submitted that on dated 01.08.2005, an inspection was carried out by a team of officers of Board in the factory premises of the Appellant. During the said inspection the Appellant was found committing theft of electricity by tampering the technical parameters of supply line of electricity and illegally restricted the consumption of electrical energy in the meter and based on the evidences of pilferage of electricity, an FIR was lodged under Section 135/138 of the Electricity Act, 2003 and further electricity line was disconnected.

5.3) The learned counsel further submitted that pursuant to the said inspection, provisional assessment was done and the Appellant was sent notice dated 10.10.2005, 08.12.2005 & 07.01.2006 for filing objection, if any, against the proposed assessment. At last the Appellant consumer submitted written objection petition on 19.01.2006. Subsequently, the then Electricity Superintending Engineer, Electric Supply Circle, Hazaribagh passed an order of assessment dated 31.01.2006 purportedly exercising his jurisdiction under Section 126 of the Electricity Act, 2003. However, the aforesaid assessment order was withdrawn by the Apex Board vide Order

No.306 dated 14.02.2008 because it was without jurisdiction in view of notification no.1731 dated 26.08.2004 issued by the Energy Department, Govt. of Jharkhand. The matter was heard a fresh by the General Manager cum Chief Engineer, Hazaribagh who finally passed assessment order on 10.05.2008 which came to the tune of Rs.18,18,200.00. It took more than five months to file the objection from the date of disconnection and three months from the date of first notice i.e.10.05.2005 served on the Appellant. Hence, the appellant himself is responsible for such delay and latches. As per clause I (b) of the HT agreement between Board and consumer, the date of disconnection will be treated as notice and as per clause I (a) and the MMC will be chargeable in case consumer is indulged/found in theft of energy. Therefore, MMC is not payable as per as per HT agreement to the Appellant (consumer).

5.4) The learned counsel for the Respondent Board further submitted that disconnection of electric supply of the Appellant was absolutely legal, as the appellant consumer was found indulged in pilferage/theft of electricity in an unauthorized manner and the Hon'ble Supreme Court of India vide the Judgement reported in 1996(2), BLJR 1487S.C.(DB) specifically mention that "*disconnection notice is not required when electricity theft has been detected for disconnection of supply line*".

5.5) The learned counsel while defending the stand of the respondent Board on recalling the assessment order dated 31.01.2006 passed by the then Electrical Superintending Engineer, Hazaribag circle acting as an assessing officer, placed that the said assessment order passed by the Electrical Superintending Engineer, Hazaribag was wholly

without jurisdiction under provisions of section 126 of the Electricity Act,2003 and further against the point of reliance of the Appellant on the order dated 18.07.2008 passed by the Hon'ble High Court, Jharkhand in the matter of M/s Raj Steel Pvt. Ltd. vs. JSEB, order dated 26.04.2012 passed by the double bench of the Hon'ble High Court in L.P.A. No. 316 of 2008 have been placed wherein the Hon'ble Court of Chief Justice, Jharkhand High Court has set aside the order dated 18.07.2008 given by the learned Single Judge, Hon'ble High Court, Jharkhand and dismissed the Writ Petition of the said order that the General Manager is the only competent authority to pass an assessment order u/s 126 of the Electricity Act,2003 in the relevant matter and directed the consumer to appear before the actual assessing officer for hearing in the matter.

6) Delay in Award:

The delay in passing this award beyond the period specified in the Electricity Ombudsman Regulation was due to vacancy of the Electricity Ombudsman with effect from 12/01/2014 to 04/06/2014.

6) Issues:

6.1) Whether the instant Appeal is maintainable?

6.2) Whether disconnection affected on 01/08/2000 on allegation of theft of electricity was against the applicable Law at the relevant time?

6.3) Whether damages to the tune of Rs. 3 Cr which the Appellant has stated to have suffered due to illegal disconnection is admissible?

Findings of Issue No.6.1:-

The respondent Board has raised the issue of maintainability of the instant appeal which is categorically dealt here in after as under:

The Appellant has moved the instant appeal before the Electricity Ombudsman arising out of VUSNF Case No.12/2009 within the ambit of (Guidelines for Establishment of Forum for Redressal of Grievances of The Consumers and Electricity Ombudsman) Regulation, 2005.

Rule 13 of the aforesaid Regulation reads as follows:-

“13. Appeal

The licensee or any consumer aggrieved by an order made by the Forum or non implementation of the order of the Forum by the Licensee may prefer an appeal against such order to the Electricity Ombudsman within period of thirty days from the date of the order in such form and manner as may be laid down in these regulations made by the Commission.

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

Provided further that the Electricity ombudsman shall entertain no appeal by any consumer, who is required to pay any amount in terms of an order of the Forum, unless the appellant has deposited in the prescribed manner, at least fifty percent of that amount.

Admittedly, in Case No.12/2009, the VUSNF, Hazaribagh had passed the Judgment on 24/8/2013 and the aggrieved party (appellant in instant case) preferred this appeal before Electricity Ombudsman on 23/9/2013 i.e. well within the stipulated period of 30 days.

The learned Forum was pleased to pass the Order in Case No.12/09. Which reads as follow-

“ In view of the above discussion, we are of the opinion that the insertion of Section 135(1A) by way of Electricity (Amendment) Act, 2007 shall operate retrospectively and as such the disconnection effected by the Respondent Board on 01.08.2005 against the detected theft of energy committed by the Petitioner cannot be said to be illegal.

Accordingly, we are of the further opinion that the claim of Monthly Minimum Charges (MMC) raised by the Respondent Board pursuant to the disconnection dated 01.08.2005 also cannot be said illegal. Thus all the prayers of the Petitioner including demand of compensation against illegal disconnection do not carry merit.”

On perusal of the aforementioned Order, it transpires that the appellant was not required to pay any punitive amount therefore, question of depositing fifty percent against that amount does not arise. Hence, it can be said that the Appellant has not violated the provisions made in the (Guidelines For Establishment of Forum For Redressal of Grievances Of The Consumers And Electricity Ombudsman) Regulation, 2005.

As such, it is held that the appeal is maintainable under clause 13 of (Guidelines for Establishment of Forum for Redresses of Grievances of The Consumers and Electricity Ombudsman) Regulation, 2005.

Hence, the first issue is resolved.

Findings of Issue No.6.2:-

6.2.1) The learned counsel for the Respondent Board submitted that on 15/6/2007, an amendment was carried out in the Electricity Act, 2003 wherein Section 135(1A) was inserted. Therefore, the aforesaid insertion is a procedural amendment, which was brought into the Act in the nature of a curative amendment by legislature. To put emphasis the learned counsel placed the following Judgments -

- Ashish Kumar Jain Vs. State of Jharkhand and others, reported in 2009(4) JLJR 457(Cr. M. P. No. 1414 of 2004) and the date of Judgement was 03.08.2009. The Hon'ble High Court, while considering section 151 of the Act, has been pleased to hold that amendment of Section 151 [amended by Electricity (amendment) Act, 2007] is purely procedural in nature and thus the same would apply retrospectively in all the pending cases.
- State of Madras vs. Latif Hamid and Company (1971),3 SCC 560 their Lordship of Supreme Court has held that it is well settled that the new procedure prescribed by the law governs all pending cases.”
- In Zile Singh v/s State Of Haryana, A.I.R. 2004 SC 5100 Hon'ble Supreme Court held that – “.....if new Act is ‘to explain’ an earlier Act, it would be without object unless construed retrospectively. An explanatory Act is generally passed to supply an obvious omission or to clear up the doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law, retrospective operation is generally intended.....”

It is clear from the aforesaid Judgment that the procedural amendments are to be treated with retrospective effect in nature and would apply retrospectively in all the pending cases. Insertion of

section 135 (1A) by way of the Electricity (Amendment) Act, 2007 is also a procedural amendment and thus considering the aforesaid ratio laid down by the Hon'ble High Court, the same would apply retrospectively.

The Judgment relied upon by the Appellant rendered by the Hon'ble High Court, Jharkhand in LPA No. 60 of 2007 (Jharkhand State Electricity Board & others Vs. M/s Stan Commodities Pvt. Ltd.) would not apply in the present circumstances and in the instant case as the Electricity (Amendment) Act, 2007 and its retrospective effect was neither raised nor decided in the said judgment.

6.2.2) There is no dispute regarding theft of electrical energy as the Appellant has admitted in the application/petition itself of being ready to deposit impugned assessed amount with the respondent Board.

After repealing of Indian Electricity Act,1910, and substituted by Electricity Act,2003,the power for institution of case has been identified which would be seen under Section 151 of the Act which reads as follows:-

“151. Cognizance of offences; No court shall take cognizance of an offence punishable under this Act except upon a complaint in writing made by appropriate government or Appropriate Commission or any of their officer authorized by them or a Chief Electrical Inspector or an Electrical Inspector or licensee or the generating company, as the case may be, for this purpose:

1[provided that the court may also take cognizance of an offence punishable under this Act upon a report of a police officer filed under section 173 of the Code of Criminal Procedure,1973:

Provided further that a special court constituted under section 153 shall be competent to take cognizance of an offence without the accused being committed to it for trial.]”

At this juncture, it would be proper to see applicability of Section 185 of the Electricity Act,2003 whether the Indian Electricity Act,1910 entrusting the Board to disconnect the power supply in case of theft of electricity is detected will survive or not and for that Section 185(2) (a) could be referred to which reads as follows:

“Section 185(2)(a)- any thing done or any action taken or purported to have been done or taken including any rule,notification,inspection,order or notice made or issued or any appointment, confirmation or declaration made or any license, permission, authorization or exemption granted or any document or instrument executed or any direction given under the repealed laws shall ,in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act;”

6.2.3) In order to have wider horizon to deal with the instant case, the Electricity (Removal Of Difficulties) Order, 2005 which was published in the Gazette of India, Extra, Pt. II, Sec.3(ii),dated 8th June,2005) and came in to force on 8-6-2005,may be referred which reads as fallow:

“The following order in respect of electricity supply code in terms of Section 50 of the Act, not in consistent with the provisions of the Act, to remove the difficulties, namely:-

1. Short title and commencement.-

(1) This order may be called the Electricity (Removal of Difficulties) Order, 2005.

(2) It shall come into force on the date of publication in the Official Gazette.

2. Inclusions of measures to control theft in Electricity Supply Code:-(1) The Electricity Supply Code as specified by the State Commission under section 50 of the Act shall also include the following, namely:-

(i) method of assessment of the electricity charges payable in case of theft of electricity pending adjudication by the appropriate court;

(ii) disconnection of supply of electricity and removing the meter, electric line, electric plant and other apparatus in case of theft or unauthorized use of electricity; and

(iii) measures to prevent diversion of electricity, theft or unauthorized use of electricity or tampering, distress or damage to electrical plant, electric line or meter.

(2) The above provisions in the Electricity supply Code shall be without prejudice to other right of the licensee under the Act or any other applicable laws to recover the sum due and to protect the assets and interest of the licensee.

In exercise of the power conferred by clause(x) of sub-section (2) of Section 181 read with Section 50 of the Electricity Act, 2003 (36 of 2003) and all power enabling it in this behalf, the Jharkhand State Electricity Regulatory Commission made the following Regulations, which was notified vide No. JSERC/Regulation/64/268, dated 28.07.2005,

Namely:-

“15.4 Where ever un-authorized use of electricity is being indulged in or theft of electricity is being committed, the licensee shall discontinue the electricity supply so long as such un-authorized use of electricity is being done or theft of electricity is being committed without prejudice to the right of the licensee to take action under law including Section 126 and 135 of the Act respectively.

15.6 Where ever un-authorized use of electricity is detected and the assessing officer issues a final order, the consumer shall be entitled to file an appeal to the appellate authority under Section 127 of the Act.”

Thus after analyzing and scrutinizing relevant factual aspects coupled with relevant legal aspects as now so emerges after enforcement of the Electricity (Removal Of Difficulties) Order, 2005, the allegation so leveled by the Appellant appears to be non maintainable.

Hence, this issue is also not in favor of the Appellant.

Findings of Issue No.6.3:-

The prayer of the Appellant to award damages to the tune of Rs.3 Crore sustained due to enforced closure on account of illegal disconnection made by the Respondent Board on 01.8.2005 does not fall under the purview of this Authority. The Appellant is free to seek legal remedy before the appropriate Authority.

Hence, this issue is also resolved.

Conclusion:-

Based on the findings as above the appeal petition is dismissed.

No order as to costs.

Thus, this appeal stands disposed of.

Let a copy of the order be served on both the parties for information and compliance.

Sd/-
Electricity Ombudsman