

Territorial Jurisdiction: State of Jharkhand

**AUTHORITY OF THE ELECTRICITY OMBUDSMAN: JHARKHAND**

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

Dated- Ranchi, the 4th day of November, 2024

**Appeal No. EOJ/05 of 2023**

(Arising out of the Order passed in Case No. 96 of 2022 by the Ld. VUSNF, Hazaribagh)

M/S Ambay Cements, a proprietorship firm of M/S Jai Ambe Mata Cement Pvt. Ltd., having its Unit at Rangdih, P.O & P.S.- Govindpur, Dhanbad through its Director, Shri Balram Kumar Agarwal, Son of Shambhunath Agarwal, Aged about 42 years, resident of G.T.Road, Near Police Station, P.O. and P.S.- Govindpur, Town & District – Dhanbad (Jharkhand) -----Appellant

**Versus**

- 1.Jharkhand Bijli Vitran Nigam Ltd., having its head Office at Engineering Building, Dhurwa, P.O. & P.S. – Dhurwa, District – Ranchi 834004, through its Managing Director.
2. General Manager - cum - Chief Engineer, Jharkhand Bijli Vitran Nigam Limited, Dhanbad Electric Supply Division, Dhanbad.

3. Electrical Superintending Engineer, Electric Supply Circle, Dhanbad.
4. Electrical Executive Engineer (Commercial & Revenue), Jharkhand Bijli Vitran Nigam Limited, Electric Supply Circle , Dhanbad. -----Respondents

Counsel/Representative

On behalf of Appellant: Mr. Nitin Kumar Pasari, Advocate  
Ms. Sidhi Jalan, Advocate  
Mr. Shubham Choudhary, Advocate  
Mr. Gaurav Kaushlesh, Advocate  
Mr. Sudhir Kumar Singh, Advocate

On behalf of Respondent: Mr. Mohan Kumar Dubey, Standing Counsel  
Mr. Utpal Kant, A.C.to the Standing Counsel

**ORDER / AWARD**

**1.** M/S Ambay Cements, a proprietorship firm of M/S Jai Ambe Mata Cement Pvt Ltd. through its Director Shri Balram Kumar Agarwal has filed this appeal being aggrieved & dissatisfied with the Order dated 28.11.2023 passed by the Learned Vidyut Upbhokta Shikayat Niwaran Forum (hereinafter shall be referred as VUSNF), Hazaribagh in Case No – 96/2022 under Clause 15 of the J.S.E.R.C. (Guidelines for Establishment of Forum for Redressal of Grievances of the Consumer, Electricity Ombudsman and Consumer Advocacy) Regulations, 2020.

**2.** It is relevant to mention here that during the pendency of the above case before the learned VUSNF, Hazaribagh the parties to the case had entered into an “Agreement” that too without seeking leave from the Forum or even without

informing the learned Forum. (Relevant para-3 of the impugned Order of the learned VUSNF, Hazaribagh).

The parties to the agreement, who are also the parties to the case, had started performing as per the terms & conditions of the agreement during pendency of the case before the Learned Vidyut Upbhokta Shikayat Nivaran Forum, Hazaribagh. The parties remained attending Forum for months together after agreement and disclosed the fact after rolling a year only at the stage of final hearing.

### **3. The operative portion of Order of the learned VUSNF, Hazaribagh :**

- I. Both the parties are directed to follow the terms and conditions of the agreement as the same has already been acted upon by the parties.
- II. Respondents are further directed to provide rebates as applicable as per the then tariff. Hence, this case is disposed of in terms and conditions of the mutual agreement. The agreement will form the part of the Order.

### **4. Appellant's Case :**

The Appellant is a consumer of the Licensee, since long and without fault has been paying the energy consumption bill, as and when the same fell due without any dispute and demur. The Appellant is having a Contract Demand of 500KVA under High Tension Service Tariff and at any given point of time, the Appellant runs its industry as per the demand / requirements of its product in the open market. Sometimes around May 2020, the energy meter of the Appellant was replaced and at that point the monthly energy bill on an average was within Rs.3.00 to Rs.5.00 Lakhs per month. The copy of the energy meter replacement report was never made over to the Appellant, which has been given only recently. Further, after the energy meter was replaced, on an average the monthly energy bill was stable, however suddenly, in the month of June 2022, an inspection was carried out in the factory premises of the Appellant and although all the parameters were found to the satisfaction of the

Department, however a remark was made that billing should be done on multiplying factor of 1200, whereas it was billed on the basis multiplying factor of 400. Based upon the inspection report for the month of June 2022, when the energy bill served upon the Appellant, the Appellant was surprised to note that an amount to Rs.1,52,07,277 was imposed in the energy bill and the Appellant was surprised to note that as on the date of raising bill there was no dues of such a volume as against the electrical connection of the Appellant. Aggrieved thereof the Appellant on adhoc basis deposited a certain amount with the Licensee. However, the same was never considered by the Licensee and on the dispute amount of Rs.1,52,07,277, the Licensee kept on levying Delay Payment Surcharge and stopped granting rebates to the Appellant. Resultantly, the Appellant wrote to the Licensee on numerous occasions for re-inspection and change of meter, but the same has never been considered by the Licensee and the request of the Appellant has been kept dormant. Since no action was being taken by the Licensee, the Appellant approached the Licensee personally and requested for the copy of the meter replacement report of 2020, the same was ever made to the Appellant. However, a perusal of the same transpired that so far the multiplying factor is concerned, the meter replacement report is silent on the issue. It is not understood as to how the figure of 1200 has been plucked which is not evident from the meter replacement report issued by the Licensee to the Appellant. Not even is the fault of the Appellant, since after almost 2 years the bills are sought to be revised. Aggrieved of the same, the Appellant raised its objection with the Licensee vide notice dated 19.08.2022 and again 13.10, 2022. That in terms of the Scheme of the Act of 2022, more fully Electricity Act, 2003; Section 50, read with Section 181(2)(x) of the Electricity Act, 2003, provides for the power of the State Electricity Regulatory Commission to frame the terms and conditions of the Supply in order to give effect to the provisions of Electricity Act, 2003. The Electric Supply Code Regulations which are effective are the Supply

Code Regulations of 2015 and Appendix 9 of the same provides for metering including the exigencies of the meters.

A perusal of the aforesaid would manifestly make it evident that the power to revise the energy bills on the basis of purported wrong multiplying factor is not covered under the Supply Code Regulations for the simple reason that an industrial consumer when consumes electricity, the same forms integral part of the cost of production and anything which is not levied in the monthly energy bill cannot be part of Cost of production and as such, over and above the monthly energy bill nothing is leviable since not contemplated under the Act of Supply Code Regulations. The Appellant reserves its right to refer and rely upon the cost analysis taking into consideration the monthly energy bill so as to satisfy that the imposition of Rs.1,52,07,277, is an absolute loss to the running industry and would lead to closure of the industry, if the same is fastened upon the Appellant. Aggrieved thereof, the Appellant filed a Complaint Petition before the Ld. Vidyut Upbhokta Shikayat Niwaran Forum, which was registered as Complaint Case No. 96/2022. The aforesaid complaint was filed on 09.11.2022. During the pendency of the aforesaid complaint, Appellant entered into an agreement with the Licensee on 28.03.2023, seeking installment of the supplementary bill and the only reason seeking installment was to avoid electrical disconnection, since notice of electrical disconnection was issued upon the Appellant and the request was made in January,2023. After filling of the aforesaid complaint, the Respondents appeared before the Hon'ble Forum and filed their parawise statement in February, 2023 and again in August, 2023. The application was heard and during the course of hearing the Appellant furnished an order of this Hon'ble Court passed in W.P.(C) No. 1149 of 2015 dated 24.04.2015, invoking the same issue and relief upon the same, wherein the Appellant through had approached without invoking any agreement for grant of installment. The Ld. Forum heard the parties and vide order dated 28.11.2023, partly allowed the claim of the Appellant only to the

extent of grant of rebates, however holding that the Appellant is liable to pay the Delay Payment Surcharge on the installment so granted.

## **5. Ground of Appeal:**

1. The Ld. Electricity Forum did not apply its mind judiciously and based upon the statements made before the Forum by way of affidavits, the Forum just copied it and without recording any finding as to why the order of the Hon'ble Court in the matter of M/S. AMI Enterprises is not applicable in the fact of the present case, went ahead to dismiss the claim of the Appellant concerning deletion of Delay Payment Surcharge, on account of supplementary bill.
2. The Ld. Forum failed to appreciate the dictum of Section 56 of the Electricity Act, 2003, read with the provisions of Supply Code Regulations, 2015, in terms of which levy of Delay Payment Surcharge is only on leviable account of default in payment of regular energy bills and not on the supplementary energy bills raised for covering up the lapses of the Licensee and allowing to continue levy Delay Payment Surcharge on supplementary energy bills, would amount to giving premium to the wrong done by the Licensee.

## **6. Respondent's Case:**

A routine inspection was carried out in the premises of M/S Ambay Cement Pvt. Ltd. by an anti power theft team constituted by JUVNL on 23/06/2022 and in the inspection, it was observed that the multiplying factor being used for billing is 400 instead of 1200. Thus, the energy consumed being calculated was just one third (1/3) of the actual energy bill consumed by the petitioner. Accordingly, the petitioner was informed regarding actual consumption and its corresponding bill value. The submission of the petitioner to carry out a fresh inspection is irrelevant as the matter is related to multiplying factors and not regarding the accuracy of the meter. The multiplying factor of any consumer is calculative and is w.r. to the rating of the meter

and metering unit installed. It is also pertinent to mention here that the petitioner has also signed and accepted the inspection report made by the respondents. An amount of Rs. 1,52,07,277 (One Crore Fifty two Lakhs Seven Thousand Two Hundred and Seventy seven Rupees) was added to the energy bill of June 2022 and the amount was arrived as a differential of actual energy consumed and billing done, also the amount is completely payable and the petitioner is liable to pay for the energy that has been consumed. It is also being submitted that the petitioner was made well aware of the amount added to the energy bill of June 2022 vide letter no. 1390 dated 17/08/2022. All the records pertaining to the inspection and installation are already available to the petitioner. The bill demanded by the Respondent is based on the actual energy consumed and the petitioner is liable to pay the demanded bill as the Respondent has acted strictly as per the established norms. The petitioner has failed to pay the bill demanded against the energy consumed, the DPS (Delay Payment Surcharge) has been levied which is strictly as per the applicable Tariff. The petitioner is supposed to pay the bill against the energy consumed and in case of non-payment DPS (Delay Payment Surcharge) is charged as per Tariff, so the deletion of any amount is impossible and shall be against the Tariff. At the inspection, some points observed by the inspection team, out of which some main points are as follows:- **a)** The metering arrangement was not found adjacent to the main gate of the premises. The main metering arrangement was not installed inside the metering room and it belongs to the 2 CT type, so supply officials were requested by the team to arrange for the Installation of a main metering arrangement of adequate capacity and configuration in a proper metering room as per prevailing norms near the main gate at the earliest. **b)** Phase 11 KV overhead bare conductor was found running surrounding the boundary of the consumer premises, so supply officials were requested by the team to immediately remove the 11 KV overhead bara conductors surrounding the premises. **c)** Monthly energy billing of the consumer is metering

arrangement, it should be M – 1200, after noticing it the inspecting team directed the supply officials to Issue an energy bill as per JBVNL norms.

As per the record, meter replacement was carried out on 09/05/2020 and the multiplying factor (MF) thereafter should have been 1200 instead of 400. The billing continued on MP – 400, which means that billing was done on less than what was consumed. The matter was noticed in the scrutiny by the AG Auditor, the Government of Jharkhand and the calculation sheet of factual position about this, already Informed to the consumer vide letter no. 1390 dated 17.08.2022. As per the calculation sheet (From the period May 2020 to May 2022).

**(a)** The payable amount against the energy charge is Rs.1,34,52,472.00

**(b)** The payable amount against the demand charge is Rs.12,99,200.00

**(c)** The payable amount against electricity duty is Rs.4,55,605.00

It was already informed to the petitioner that the total amount payable and which was being charged in the monthly energy bill of the petitioner for the billing month of June 2022 was  $1,34,52,472.00 + 12,99,200.00 + 4,55,605.00 = 1,52,07,277.00/-$  (One Crore Fifty two Lakhs seven thousand two hundred and seventy seven Rupees). The petitioner has paid the amount of 9,96,532.00/- (Rs.Nine Lakh Ninety six thousand five hundred and thirty two rupees) and same was deposited through the Cheque No. 482641 which was dishonored by the bank with the reason mentioned as “Alteration In Words” and same was informed to the petitioner vide letter no. 1161 dated 01.12.2023 issued by the Assistant Electrical Engineer, Electric Supply Division, Barwadda. There is no irregularity in the raised bill by the Respondents, any contention made by the petitioner about irregularity if the bill is baseless and this case amounts to dismissal.

## **FINDINGS**

**7.** The learned Forum has disposed of the case acknowledging the agreement executed between the Consumer and the Distribution Licensee. The learned Forum



has found that the parties to the agreement have already acted upon the agreement as per its terms and conditions.

The appellant in its memo of appeal has not even whispered as to why their agreement should not be acknowledged by the Learned Vidyut Upbhokta Shikayat Nivaran Forum, Hazaribagh in Case No. 96/2022

### **8. Of Agreement :**

An agreement is a manifestation of mutual assent by the parties to one another. The Annexure 6 of the Memo of Appeal in a copy of agreement. It bears the signature of Shri Charan Mandal, the Director/Proprietor of Ambay Cements and the Electrical Superintending Engineer, Electrical Supply Circle, Dhanbad. The agreement is purported to have been executed on 28.3.2023. The agreement confirms that the consumer had approached the Nigam with a request to deposit the dues in installment and the Nigam had been allowed to pay the entire amount of dues of Rs.1,49,47,983/- in 15 (fifteen) installments.

The agreement discloses an undertaking of the consumer. The undertaking reads that- "The consumer hereby undertake to pay energy amount of Rs.1,49,47,983.00 (One Crore Forty Nine Lacs Forty Seven Thousand Nine Hundred Eighty Three) & (dues up to bill month Feb-2023) amount as applicable as per norms in the office of Assistant Electrical Engineer, Electric Supply Sub-Division Barwadda.

As mentioned above and with further stipulation that in case consumer fails to pay of these instalment the entire amount shall recoverable by the Nigam shall further be entitled to Disconnect the supply line for Non-payment of the assure in accordance with Law."

I have gone through the record of Case No. 96/2022 of the learned VUSNF, Hazaribagh. The following facts are apparent :-

- I. The case was filed on 10.11.2022 by the consumer before the learned VUSNF, Hazaribagh.
- II. The Respondent appeared before the learned Forum on 23.2.2023 and sought adjournment for filing counter affidavit.
- III. The Counter affidavit was filed on 5.4.2023.
- IV. A Supplementary Counter Affidavit was filed on 25.8.2023 on behalf of the Respondents.
- V. Para 9 of the Counter Affidavit dated 5.4.2023 filed on behalf of the defendants reads that:- "That it is stated and submitted that the consumer already submitted application for installment in the office of concerned field officer. And in reference or their recommendation for installment of dues amount of Rs.1,62,52,162.00 (Arrear up to billing month Nov-2022) vide this office letter no. 248 dated 23/01/2023 the application form already forwarded to higher officials form already forwarded to higher officials for grant of installment as per DOFP (Delegation of Financial Power) Part V Revenue Clause 3-E i.e. grant of installment to consumer for payment of arrear amounts due for supply of energy of above mentioned amount in 20 nos. installments including current energy bill and applicable DPS on balance amount as per Norms/Tariff/Regulation etc".
- VI. Neither the Counter Affidavit dt. 5.4.2023 nor the Supplementary Counter Affidavit dt. 25.8.2023 discloses the fact that – "An agreement had already been executed on 28.3.2023." Moreover, by that time, the JBVNL must have encashed a few A/C Payee Cheques of Rs.9,96,532 each, in terms of agreement.

## 9. Doctrine of Lis Pendens :

The doctrine of “ *lis pendens* ” is based on the maxim “*pendente lite nihil innovetur*”.

This means that pending litigation, nothing new should be introduced.

It is expedient to reproduce para 3 of the ‘Findings’ of learned VUSNF, Hazaribagh of the impugned Order.

The para 3 reads as follows:- “That at the time of hearing we also find that there is an **Agreement** between the parties i.e. (the) petitioner and the Respondents after the filing of this Complaint Case without informing the Forum and copy of that agreement containing terms and condition as well as the installments of payment of the total amount of supplementary bill raised and served on petitioner by the Respondents and the same has been admitted by the party before the Forum during the course of hearing at the fag and of the case and in consequence thereof the actual payment schedule indicating the fact of regular payment by submitting post dated cheque and the same has not been denied by the respondents during course of finalus (final) hearing/argument. In this view of matter and admitted position regarding the agreement between the parties this Forum has got no alternative except to go by the terms and condition of the agreement as the vary (very) agreement will be considered to be the magna carta for the parties regarding the supplementary bill and its payment in terms of agreement. In that Agreement, there is clearly mentioned in this complaint case in the ir.stallments(in installments) and the petitioner are (is) also ready to pay the DPS on the balance amount wich (which)is also in accordance with rules. **Meaning thereby this complaint case can be considered to have become virtually infructuous after coming into effect of the very agreement between, because both**

**the parties cannot be allowed to go and say beyond the terms and condition of the agreement.**” (emphasis supplied by bolding)

I find that the parties to the case, having Case No. 96 of 2022 pending before the learned Vidyut Upbhokta Shikayat Nivaran Forum (VUSNF), Hazaribagh, during pendency of the Case, without obtaining leave from the Forum, with respect to the grievances / complaints of the consumer, entered into a written agreement and proceeded to perform the terms of the agreement. The said consumer after that agreement and after performance of the terms & conditions of the agreement cannot say that its grievance still persists.

The parties to the case can not be and should not be permitted to thumb their nose at the Forum constituted for Redressal of Grievances of the Consumers.

#### **10. Status of the Vidyut Upbhokta Shikayat Niwaran Forum :**

Section 42 (5) of The Electricity Act,2003 reads that – “ Every distribution licensee shall, within six months from the appointed date or date of grant of license, whichever is earlier, establish a forum for redressal of grievances of the consumer in accordance with the guidelines as may be specified by the State Commission.”

Section 181 of The Electricity Act, 2003 empowers the Hon’ble State Electricity Regulatory Commission to make regulations. The Forum for Redressal of Grievances of the Consumers have been constituted, in the State of Jharkhand, in compliance with The Jharkhand State Electricity Regulatory Commission (Guidelines for Establishment of Forum for Redressal of Grievances of the Consumer, Electricity Ombudsman and Consumer Advocacy) Regulations, hereinafter shall referred as These Regulations.

The ‘Forum’ constituted under These Regulations is an adjudicating body. The directions and orders passed by the Forum have got binding effect upon the

Distribution Licensee and the Consumer subject to their right to challenge the Order/Directions before Appropriate Authority.

It is high time to restrict the Distribution Licensee to consider the 'Forum' as one of its departments under its dominance. The Distribution Licensees must have an effective Internal Grievance Redressal Cell to record and redress grievances, in **Tier I** for grievance redressal of a consumer, as per These Regulations. This Cell may be under the dominating control of the Distribution Licensees but the 'Forum' which falls within **Tier II** for Grievance Redressal of a consumer, as per These Regulations, functions as an independent Adjudicatory Authority.

It is not appreciable that the parties to the case during pendency of the case, entered into an agreement with respect to the same matter of dispute pending for adjudication, without taking leave of the Forum and even after execution of agreement without informing the Forum about the said agreement, proceeded with the case till final hearing as if nothing new has been introduced.

**11. Clause 12 (7) of These Regulation, 2020 :**

Clause 12(7) of These Regulations, 2020 reads as follows:- " 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 order."

Though the parties had entered into a written agreement and started performing as per the terms & conditions of the agreement and had not took pain to inform the learned VUSNF, Hazaribagh, the Learned Vidyut Upbhokta Shikayat Niwaran Forum has committed no error to acknowledge the agreement and pass direction to the parties to follow the terms and condition of the agreement. I don't find any error in impugned order and it doesn't require any interference by the Appellate Authority.

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

**ORDERED**

that the representation/appeal be and the same is

**DISMISSED**

on contest in favour of the Respondents Jharkhand Bijli Vitran Nigam Limited & its Officers and against the Appellant M/S Ambay Cements. The impugned Order of the learned VUSNF, Hazaribagh is hereby confirmed.

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