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

Case No. EOJ/07/2014

M/s Indian Oil Corporation Ltd. …….. Appellant(s)

Versus

JUVNL & Others …….. Respondent(s)

Present:

Shri Ramesh Chandra Prasad : Electricity Ombudsman
For the Appellant : Sri. V.Shivnath, Sr. Advocate
: Sri.Amar Nath Gupta, Advocate
For the Respondent : Sri. Rahul Kumar, Advocate
: Sri. Prabhat Singh, Advocate

O R D E R

(Order passed on this 21st day of April, 2015)

This Representation under Rule 20 of the JSERC (Guidelines For Establishment Of Forum For Redressal Of Grievances Of The Consumers And Electricity Ombudsman) Regulation, 2011 is directed against the order of the Vidyut Upbhokta Shikayat Niwaran Forum, Ranchi (herein after referred to as Forum for short) dated 14.04.2012 dismissing the Grievance of the appellant bearing Case No.03/2013.

1.) Brief of the case:

1.1)The appellant, Indian oil Corporation Limited, Government of India undertaking is the High Tension Consumer of the respondent having Electrical Connection No.MKU119 since 1992 prays to set aside the order passed by the Hon'ble V.U.S.N.F. on 19.12.2013 resulting thereby quashing

part of the order passed on 14.04.2012 by the General Manager-cum-Chief Engineer, Ranchi which has been communicated to the petitioner by letter No. 1145 Ranchi, dated 14.04.2012, whereby the decision with regard to the settlement of claims under Clause 13 of High Tension Agreement for financial year 1999-2000, 2000-01, 2001-02, 2002-03 and 2003-04, wherein after giving remission, direction was issued to raise fresh bills after adjusting the amount deposited and for quashing the consequent revised electrical bills raised accordingly dated 25.04.2012, whereby the respondent Board has directed the petitioner to pay a sum of Rs. 21,18,924.00 which includes a sum of Rs. 14,86,610/- as Delayed Payment Surcharge and for a direction commanding upon the respondents to pass a fresh order on the petition filed under Clause 13 of High Tension Agreement by the petitioner and revise the bills accordingly without charging Delayed Payment Surcharge over it after correcting all subsequent bills.

1.2) The appellant has paid its entire electricity bill, since the inception of the establishment and no default has been made with respect to current payment as well. Under Clause 13 for the remission of units for the year 1999-2000 was filed on 31st July, 2001 for the year 2001-02 was filed on 09.10.2002, for 2002-03 was filed on 31.07.2003, for the period 2003-04 petitioner has filed the claim on 27.08.2004. Aforesaid remission under Clause 13 was deposited after depositing 50% of the bill raised by the petitioner, which is not disputed. The appellant was communicated vide letter no. 1145 dated 14.05.2002 that all the claims of the petitioner have been decided competitively with a direction to revise the bill. Subsequently, the petitioner was served with revised energy bill demanding a sum of Rs. 21,18,924/- by supplementary revised bill which was served upon the petitioner on 26.04.2012.On receipt of the supplementary bill dated

25.04.2012, the appellant filed its objection dated 15.05.2012 to the concerned authority stating therein that the Delayed Payment Surcharge charged in the bill is not reasonable and legal, as the delay in deciding the claim, under Clause 13 of the High Tension Agreement is attributed to the respondent, Jharkhand State Electricity Board and the petitioner cannot be said to be liable for the delay caused.

The respondent Jharkhand State Electricity Board by its letter dated 11.06.2012 has responded the petitioner that the charge of Delayed Payment Surcharge was levied on the balance minimum guarantee payable by the petitioner and keeping the unpaid amount in abeyance, the Delayed Payment Surcharge is chargeable over the said amount.

The respondent again issued the bill for the month of April, 2012 and included the said amount in the subsequent month's bill and added the same in all subsequent bills. The respondent Electricity Board has also issued notice to the petitioner dated 11.06.2012 contained in letter no. 2236, that for non-payment of the said dues of Rs. 21, 18,924/-, the electrical connection may be disconnected. The appellant's objection to the Delayed Payment Surcharge was not addressed by the concerned authority. However, the monthly bills raised by the Jharkhand State Electricity Board is stated to be paid regularly within time by the petitioner and there is no dues whatsoever with regard to its current payment.

2) Submission of the Appellant:

2.1) The learned counsel submitted that in view of tariff issued by the Bihar State Electricity Board in the year 1993, the charge of Delayed Payment Surcharge has been elaborated in Clause 16.2 wherein all categories of consumers including E.H.T., Railway Traction, H.T., I.T.I.S. & L.T. consumers have been covered with a specific direction stating therein that if

the consumer does not pay the bill in full by the due date indicated on the bill, he shall have to pay interest, surcharge on the outstanding amount. The interest/surcharge will be at the rate of 2 (Two) percent per month or part thereof for the delay made, irrespective of the period of delay. The interest/surcharge will be leviable from the date immediately following the due date in all cases. No. interest/surcharge will be charged on the interest/surcharge already accrued. As far as Compensation Charge is concerned the Jharkhand State Electricity Board will charge a compensation to be paid by the consumer at an uniform rate of 2 (Two) percent per month or part thereof chargeable to all type of consumers who are allowed to pay the arrears in installments and rebate admissible on current dues shall be allowed if the consumers pay the installments and current dues on or before the due dates specified in the bill.

2.2) The learned counsel further submitted that the General Manager-cum-Chief Engineer, Ranchi should have passed the order under Clause 13 from the date of receipt of the claim of the petitioner and the revised bill should have been raised accordingly. But, delay in passing impugned order almost after 8 plus years and charging of Delayed Payment Surcharge would cause great prejudice to the appellant. The impugned order is bad in law because the respondent has denied the relief for the 2002-03 and 2003-04 on the ground that 50% of the amount has not been deposited for preparing the claim, though at least 50% of the amount was deposited on 31.07.2003 and 30th August, 2004, and the receipt of payment was received by the Board vide Receipt No. 57176 dated 31.07.2003 and Receipt No. JJ676864 dated 30.08.2004, but the General Manager cum Chief Engineer, Ranchi has rejected the representation of the year 2002-03 and 2003-04 on the ground

that 50% of the amount for the aforesaid period was deposited before making representation under Clause 13.

2.3)The learned counsel submitted that due to intermittent supply of electricity the appellant was prevented from receiving the electrical energy which was not disputed by the respondents under Clause 13 of the remission of units for the year 1999-2000, 2000-01, 2001-02, 2002-03 and 2003-04 which has been communicated, to the appellant wherein after giving remission, direction was issued to raise fresh bill after adjusting the amount deposited and for quashing the consequent revised electrical bills raised accordingly dated 25.04.2012, whereby the respondent Board has directed the petitioner to pay a sum of Rs. 21,18,924.00 which includes a sum of Rs. 14,86,610/- as Delayed Payment Surcharge and for a direction commanding upon the respondents to pass a fresh order on the petition filed under Clause 13 of High Tension Agreement by the petitioner and revise the bills accordingly without charging Delayed Payment Surcharge over it after correcting all subsequent bills.

2.4)The learned counsel submitted that the provisions contained in Clause 4(b) and 4(c) of the aforementioned Notification are mandatory in nature therefore, the provision contained in clause 6(a) of the said Notification requiring the competent authority to dispose of a claim under clause 13 of the HT Agreement within a period of 4(four) months should also be treated as mandatory, and therefore, the appellant is liable to pay D.P.S. on the un-remitted amount only for 4(four) months and not more, hence the impugned energy bill is liable to be quashed to the extent it relates to D.P.S. for more than 4(four) months. As per the agreement the delay in disposal is attributed to the General Manager-cum-Chief Engineer, Ranchi and the appellant

cannot be saddled and held to be liable to pay DPS against the impugned bill.

For supporting his argument, the learned counsel has relied on the following decisions mentioned in the written submissions filed in this case on behalf of the appellant:-

a) 1991 (4) SCC 699, para 85, 86 and 89.

b) 1963 SC 1681 para-16, 20

c) 2004 (12) SCC 645, para-62

3) Submission of the Respondents: -

3.1) The learned counsel submitted that the appellant in the present appeal has prayed for quashing the order dated 19.12.2013 passed by the Vidyut Upbhokta Shikayat Niwaran Forum, in Case No.03/2013.In fact, the appellant is aggrieved by energy bill dated 25.04.2012 being raised in pursuance of rejection order passed by the General Manager-cum-Chief Engineer, Electric Supply Area, Ranchi, under clause 13 of the HT agreement for the Financial Year 1999-2000, 2000-01, 2002-03 and 2003-04.

3.2)He further submitted that in the instant case the consolidated AMG charges of Rupees 756328/- for the financial year 1999-2000, 2000-01, 2002-03 and 2003-04 was kept under abeyance subject to final decision to be taken under clause 13 of the Agreement by the General Manager cum Chief Engineer, Electric Supply Area, Ranchi who decided the claim of the appellant under clause 13 of HT Agreement on 14.04.2012 and so the DPS amount was levied on balance amount as per the Rule of the Jharkhand State Electricity Board. Moreover, the 50% of the balance amount on AMG for the period 1999-2000 amounting to Rs. 153384.00, balance amount on AMG for the period 2000-01 Rs. 216006.00, balance amount on AMG for the

period 2002-03 Rs. 184539.00 were kept under abeyance subject to final decision. Apart from this the Appellant had not paid 50% of the AMG within due date for the period 2003-04 and therefore the claim of appellant is beyond consideration. In this regard Notification No. 810 dated 29.07.1994 issued by the Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna stipulates that if the consumer deposits a sum representing 50% of the amount in the bill for the shortfall in the charges within due date and informs that he intends to file claim for remission, then his electric line will not be disconnected for the dues relating to this bill, whereas DPS will be charged for the balance payable amount as settled under the clause. The General Manager cum Chief Engineer, Electric Supply Area, Ranchi after taking into account the relevant provision and also giving adequate opportunity of being heard to the appellant on dated 14.04.2012 decided the matter rejecting the claim of the Appellant under Clause-13 of the HT Agreement. Subsequently, supplementary bill on AMG was served to the consumer vide letter no. 1487 dated 25.04.2012.

3.3) The learned counsel appearing for the respondents based their entire pleading on the decision taken in Cattle Feed Plant Case (Case No10/2012). It was submitted that exactly the same issue has been raised in the present case which has already been decided earlier in Case No.EOJ/01/2014 which is binding on the instant case also and consequently, the present case is liable to be dismissed and the petitioner is not entitled to any relief.

3.4) The learned counsel further submitted that plain reading of the Clause 6(a) of the aforesaid Notification is directory and suggestive and not mandatory. Accordingly, the application of the Appellant is liable to be rejected.

4) **Issue:**

“ Whether the appellant company was liable to pay DPS on the energy charges revised after settlement/decision of all the claims preferred under Clause 13 of the HT agreement to the extent of four months or for the entire period during which the proceeding of the claim under clause 13 of the HT agreement lasted.’’

5) Findings of the Issue:

The provisions contained in Clause-4(b) and 4(c) of the Bihar State Electricity Board, Vidyut Bhawan, Patna Notification No. 810 of 1994 reads as follows:

“4(b) The bill served for the full amount of shortfall in AMG charges shall contain a clause that “if the consumer challenges the demand made, he may submit acclaim under appropriate clause of agreement within a period of three months (90 days) after due date of the bill with details on the basis of which relief has been claimed in Board’s prescribed proforma.”

“4(c) If the consumer deposits a sum representing 50%(fifty) of the amount in the bill for the shortfall in the charges within due date and informs that he intends to file claim from remission, then his electric line will not be disconnected for the dues relating to this bill, internal/D.P will charged for the balance payable amount as settled under the clause.”

A plain reading of Clause 6(a) of the aforesaid notification clearly indicates that the direction contained therein regarding the period within which a claim under Clause 13 of the H.T. Agreement is to be decided is directory and suggestive and not mandatory in form.

The delay in deciding the issue is not arising on account of any act on the part of appellant but because of the latches on the part of authority concerned. Therefore, the provisions contained in claues 6(a) of the said

Notification requiring the competent authority to dispose of a claim under clause 13 of the HT Agreement within a period of four months has also not been treated as mandatory by the concerned authority resulting into inordinate delay in disposal of the concerned issue.

The petitioner has referred the following decisions as well as mentioned the same in the written submissions filed in this case on behalf of the petitioner:-

(a) 1991(4) SCC 699 para 85, 86 and 89

(b) 1963 Supreme Court 1618 para 16 and 20 and

(c) 2004 (12) SCC 645 para 62.

It transpires from the pleadings and written submission on record that the appellant company had preferred five (5) claims under Clause-13 of the HT agreement for financial years 1999-2000, 2000-01, 2001-02, 2002-03 and 2003-04, and the impugned decision was delivered by the competent authority on 14.04.2012 after lapse of more than a decade. Thus, it is apparent that the decision making process lasted for about more than 8 plus years.

The decisions of the Hon'ble Apex Court cited in the written submission filed by the appellant contained in para 62 of 2004(12) SCC 645 simply declares that according to Article 142 of the constitution of India, the judgements and orders of the Hon'ble Apex Court are binding on all Courts and authorities throughout India.

In the instant case, as this Forum perceives, the authority concerned took eight plus long years to decide the claim of the appellant. It appears that the concerned authority involved in disposal of the claim has not shown diligence so that controversy in regard to the claim is put to rest. Shifting blame is not the cure. Concerted effort is bound to give result in order to

avoid inordinate delay in matters which can really be dealt with in an expeditious manner.

The learned VUSNF, Ranchi in its order in Case No.03/2013 has categorically addressed the issue of the provision contained in clause 6 (a) of the aforesaid Notification and this requires no further elaboration.

I have perused the above noted decisions as well as Order of Cattle Feed Plant (Case No.EOJ/01/2014) and written submissions made by both the parties along with material on record.

In view of the aforesaid facts and circumstances of the instant appeal, I am not inclined to interfere with the impugned order passed on 19/12/2013 by the learned VUSNF, Ranchi in Case No.03/2013. Consequently, I affirm the view taken by the learned VUSNF, Ranchi.

Hence, the sole issue under consideration stands accordingly decided in favour of the respondents and against the petitioner.

ii) No order as to cost,

This petition/appeal is accordingly disposed of.

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

Sd/-

Electricity Ombudsman