

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

Appeal No. EOJ/14/2009

Dated- 19th July, 2010

JSEB through its Chairman & others	Appellant(s)
	Versus	
M/s Jagdamba Ingo-Tech Steel Pvt. Ltd.	Respondent(s)
	With	

Appeal No. EOJ/16/2009

M/s Jagdamba Ingo-Tech Steel Pvt. Ltd.	Appellant(s)
	Versus	
JSEB through its Chairman & others	Respondent(s)

Present:

Shri Arun Kumar Datta	Electricity Ombudsman
Shri Rajesh Shankar	Counsel for JSEB & others
Shri Abhay Prakash	Addl. Counsel for JSEB & others
Shri Ajit Kumar	Counsel for M/s Jagdamba Ingo-Tech Steel (P) Ltd.
Shri Vijay Gupta	Advocate for M/s Jagdamba Ingo-Tech Steel (P) Ltd.

J U D G E M E N T

1. These aforesaid two appeals No. EOJ/14/2009 of JSEB & others (Appellants) Vrs. M/s Jagdamba Ingo-Tech Steel Pvt. Ltd. (Respondent) as well as EOJ/16/2009 of M/s Jagdamba Ingo-Tech Steel Pvt. Ltd. (Appellant) Vrs JSEB & others (Respondents) arises from the same Judgement/order of Learned Vidyut Upbhokta Shikayat Niwaran Forum (In short to be referred as VUSNF) of JSEB, Ranchi dated 18/11/2009 passed in case no. 10/2009, therefore both the aforesaid two appeals are taken up together by this common Judgement.

2. The brief fact of this case is that the consumer/ M/s Jagdamba Ingo-Tech Steel Pvt. Ltd. was granted an electrical connection for 2400 KVA load at 33KV supply for running induction furnace under HTSS category of tariff bearing Consumer NO. HJAP-208 under HTSS mode of tariff, 2003-04 effective from 01/01/2004 and the electrical connection of the consumer was energized on 09/06/2006. According to the consumer/ M/s Jagdamba Ingo-Tech Steel Pvt. Ltd. the JSEB has charged as electrical bills from June, 2006 and onwards on the basis of 100% of the contract demand instead of maximum demand KVA charges per month as per actual maximum demand recorded in the meter for that month and not on the basis of 100% of the contract demand. Further case of the consumer/ M/s Jagdamba Ingo-Tech Steel Pvt. Ltd. that the old tariff of Bihar State Electricity Board (In short to be referred as BSEB) dated 24/09/1999 and 07/05/2001 have been replaced after the enforcement of new tariff schedule of Jharkhand State Electricity Regulatory Commission (In short to be as JSERC) effective from 01/01/2004 which is proved from the letter of the JSERC dated 19/12/2005. Therefore the consumer/ M/s Jagdamba Ingo-Tech Steel Pvt. Ltd. has prayed to revise the energy bills issued by the JSEB from June, 2006 and onwards on the basis of actual recorded monthly KVA as maximum demand and to refund/adjust the excess amount realized from the consumer with interest as per the Electricity Supply (Code) Regulations.

3. The case of JSEB in brief is that the billing of the consumer/ M/s Jagdamba Ingo-Tech Steel Pvt. Ltd. on account of demand charges have been done on the basis of 100% of the contract demand of the consumer because the JSERC in its tariff order 2003-04 has dealt with design of tariff structure and analysis of tariff in Section 5 of the tariff order and the terms and conditions of supply have been dealt in Clause 5.30 of the tariff order of 2003-04 which reads as follows:-

“The JSEB has submitted a number of clauses of the existing terms and conditions of supply for the consideration of the Commission. The Commission has dealt with the power factor surcharge (rebate and penalty) and delayed payment surcharge in this section. The JSEB has submitted a number of other clauses, while, the others would have to be dealt with a later state. This is due to the reason that a detailed and in-depth analysis of the issues involved is herewith required and hence they have not been dealt with in this tariff order”

The Clause 1.4 of the terms and conditions of supply (page 148)of the tariff order, 2003-04 which reads as follows:-

“All other terms and conditions in respect of meter rent, supply at Lower Voltage, capacitor charge, circuit-Breaker charge, electricity duty, rebate, security deposit, surcharge for exceeding contract demand etc. shall remain the same as existing in the state”. Thus other terms and conditions will remain the same as were existing prior to the order/tariff.

Further the JSERC in Clause 3.6.1. of the tariff order, 2003-04 (at page 25) also reads that

“It is to be noted that HTSS is meant for a specific category of consumers, and is highly power intensive and its tariff takes into account the tonnage capacity also. The existing tariff of induction furnace was decided at the request of Induction Furnace Association by the BSEB. However, this tariff is being proposed for consideration and approval of the Commission. The Commission has invited objections from everybody and the process is fully transparent so there is not question of any discussion with Induction Furnace Association. The existing tariff of Induction furnace came into force w.e.f. April, 2001, i.e. after a lapse of more than two year, therefore there is bound to be some increase in tariff has been nominal”.

Further case of JSEB is that prior to the tariff order of JSERC the tariff for induction furnace consumer was issued vide tariff notification dated 15/03/2000 issued by BSEB published in Bihar Gazette on 06/04/2000, which was adopted by the JSEB on 20/03/2001. As per Clause 5 of the tariff notification dated 15/03/2000 of BSEB the demand charge for the Induction Furnace Consumer has to be raised on the basis of actual maximum demand recorded in the meter during the month or 100% of the contract demand whichever is higher.

The case of the JSEB is that the tariff order of 2003-04 issued by the JSERC, the unit charge has been enhanced from Rs. 1.25/- to Rs. 2.50/- but the rate for demand charges have been reduced from Rs. 700/- to Rs. 300/- per KVA/month and Minimum Monthly Charges (MMC) charges have been reduced from the existing rate of Rs. 1015/- to Rs. 400/- per KVA/month, therefore the letter dated 19/12/2005 issued by the Secretary of JSERC is completely out placed without jurisdiction and illegal.

4. The case of the respondent in both the aforesaid cases no. EOJ/14/09 and EOJ/16/09 is the same as stated in their respective memo of appeals, therefore to avoid repetition the case of respondents in both the aforesaid two appeals is not being mentioned here.

FINDINGS

5. Sri Rajesh Shankar, Learned Standing Counsel appearing on behalf of the JSEB has based his arguments as stated in the memo of appeal which have been earlier mentioned in this Judgement and he has further referred Section 5 and 5.30 of the tariff order 2003-04 and Clause 1.4 of the terms and conditions of supply and Clause 3.6.1 of the tariff order of 2003-04. He has further submitted that prior to the tariff order of JSERC the tariff for induction furnace consumers was issued vide tariff notification dated 15/03/2000 issued by the BSEB published in Bihar Gazette on 06/04/2000 which was also adopted by the JSEB on 20/03/2001. According to Clause 5 of the tariff notification dated 15/03/2000 demand charges for the induction furnace consumer has to be raised on the basis of actual maximum demand recorded in the meter during the month or 100% of the contract demand whichever is higher. The Learned Standing Counsel of JSEB has also submitted that the new tariff order 2003-04 issued by the JSERC does not contain any specific terms and conditions of supply for induction furnace consumer and therefore the JSEB is constraint to resort to the terms and conditions of supply as enumerated in the induction furnace tariff notification dated 15/03/2000. Besides it Clause 1.4 of the terms and conditions of supply of new tariff order of 2003-04 also provides a saving clause so far as the terms and conditions of supply which are existing in the State of Jharkhand. The new tariff order of 2003-04 issued by the JSERC for HTSS consumers the unit charge has been enhanced from Rs. 1.25/- to Rs.2.50/- but the rate for demand charges have been reduced from Rs. 700/- to Rs. 300/- per KVA/month and Minimum Monthly Charges (MMC) have been reduced from the existing rate of Rs. 1015/- to Rs. 400/- per KVA/month and therefore the bill of the consumer/M/s Jagdamba Ingo-Tech Steel Pvt. Ltd. have been rightly raised under the aforesaid provisions of the induction furnace tariff dated 15/03/2000 and there is no illegality in it and it is also justified. On the aforesaid ground the JSEB has prayed for setting aside the Judgement/order of the learned VUSNF of JSEB, Ranchi dated 18/11/2009 passed in case no. 10/2009 by which the JSEB has

been directed to raise the monthly bills on account of demand charges against the consumer/ M/s Jagdamba Ingo-Tech Steel Pvt. Ltd. on the basis of actual maximum demand recorded in the meter or 75% of the contract demand whichever is higher in each month as maximum demand and to give adjustment to the respective consumer against the bills raised earlier on account of demand charges. The findings of the learned VUSNF of JSEB, Ranchi is also fit to be set aside in which the learned VUSNF has held that the JSEB can not raise the bills of consumer/ M/s Jagdamba Ingo-Tech Steel Pvt. Ltd. on account of demand charge on the basis of 100% of the contract demand.

6. On the other hand, it has been submitted by Sri Vijay Gupta, appearing on behalf of the consumer/ M/s Jagdamba Ingo-Tech Steel Pvt. Ltd. that the JSEB is raising the bills of the consumer on the repealed /lapsed tariff schedule of erstwhile BSEB dated 24/09/1999, 15/03/2000 and 07/05/2001 against the tariff order of JSERC of 2003-04 and the JSEB is going on charging the consumer/ M/s Jagdamba Ingo-Tech Steel Pvt. Ltd. on the basis of 100% of the contract demand.

It has been further submitted that according to tariff order, 2003-04 of JSERC, JSEB can only charge the consumer/ M/s Jagdamba Ingo-Tech Steel Pvt. Ltd. only one guarantee charge namely Minimum Monthly Charges (M.M.C.) and also raised the monthly KVA charges on the consumer as a guarantee of 100% of the contract demand. The minimum monthly charges has been charged by the JSEB in accordance with the provisions of JSERC tariff order but at the same time JSEB has also charged 100% KVA charge on the basis of repealed/lapsed tariff of erstwhile BSEB and thus the JSEB has violated and flouted the provisions of the tariff order of 2003-04.

According to the learned Advocate of consumer/ M/s Jagdamba Ingo-Tech Steel Pvt. Ltd. the JSERC tariff order, 2003-04 which is applicable from 01/01/2004 prescribed for only one minimum guarantee amount in the name of MMC in terms of Rs. 400/KVA/month and no other minimum guarantee units/ maximum demands have been prescribed and therefore on the aforesaid guarantee amount the bills are to be charged only one on the basis of actual consumed units and actual recorded/consumed maximum demand (KVA).

According to the learned Advocate of consumer/ M/s Jagdamba Ingo-Tech Steel Pvt. Ltd. the JSEB can charge the bills at the rate of Rs. 2.50/-Kwh on actual

consumption of units and Rs. 300/ KVA on actual consumption of maximum demand both subject to a Minimum Monthly Charges (M.M.C.) of Rs. 400/KVA for the full contract demand. Therefore the bills of the consumer/ M/s Jagdamba Ingo-Tech Steel Pvt. Ltd. raised on 100% of the contract demand against JSERC regulations and it is fit to be set aside and the JSEB be directed to issue the revised bills of the consumer/ M/s Jagdamba Ingo-Tech Steel Pvt. Ltd. on the basis of aforesaid stated tariff order of JSERC of 2003-04.

It has also been submitted on behalf of the consumer/ M/s Jagdamba Ingo-Tech Steel Pvt. Ltd. that the letter of JSERC dated 19/12/2005 has held that the tariff schedule of 2001 as non applicable documents with effect from 01/01/2004 and in recent letter dated 21/03/2009 the JSERC has reiterated and reemphasized its stand as stated in its letter dated 19/12/2005 which has also been held that the Hon'ble Jharkhand High Court in the case of JSEB & others Vrs. M/s Kumardhubi Steels Pvt. Ltd.

7. The letters dated 19/12/2005 and 21/03/2009 of the JSERC goes to show that after passing of the JSERC tariff order of 2003-04, the old tariff schedule issued by the erstwhile BSEB can not be applicable in the Jharkhand State and therefore the JSEB can not raise the demand charge of the consumer/ M/s Jagdamba Ingo-Tech Steel Pvt. Ltd. on the basis of old tariff schedule and JSEB also can not charge 100% of the contract demand from the consumer/ M/s Jagdamba Ingo-Tech Steel Pvt. Ltd. Therefore the prayer of the JSEB in its appeal no. EOJ/14/2009 is fit to be rejected and in its appeal no. EOJ/14/2009 is also fit to be dismissed on this ground.

8. Now the question arises as to whether the prayer of the consumer/ M/s Jagdamba Ingo-Tech Steel Pvt. Ltd. in its appeal no. EOJ/16/2009 can be allowed or not and whether it can be held that the bills of the consumer/ M/s Jagdamba Ingo-Tech Steel Pvt. Ltd. from June, 2006 and onwards on the basis of actual consumed units and on actual recorded/consumed maximum demand (KVA) can be allowed or not.

9. In this regard, it is stated on behalf of the JSEB that the minimum monthly charges (M.M.C) is not a substitute for the maximum KVA demand for the month nor the new tariff order of JSERC effective from 01/01/2004 has done away with the introduction of minimum monthly charges. Because M.M.C. is not concerned with demand charges rather MMC is concerned with energy charges. I find force in the

aforesaid submission made on behalf of JSEB because the tariff order of 2003-04 of JSERC (at page 115) which reads as follows:-

“Commission would like to explicitly mention that if the consumption exceeds the mentioned load factor, no minimum charge would be applicable”.

Further, Clause 5.4 of the JSERC tariff order of 2003-04 (at page 83 & 84) goes to show that there are two parts of tariff structure and minimum guarantee charges which reads that “ a rational tariff structure requires a two part tariff structures incorporating fixed charges to reflect the fixed costs”.

“For Financial year 2003-04 fixed costs comprise of approximately 28% of the total costs of JSEB, whereas the revenue from fixed charges at existing tariffs is only 14.61%. There is thus a distortion in the existing tariff structure that needs to be addressed. At the same time, if the entire fixed costs are recovered through fixed charges, then there will not be sufficient incentive for the Board to maximize the sale of electricity, as a significant portion of its expenses are fixed in nature”. The JSERC tariff, 2003-04 (at page 84) further reads that “ The difference between fixed charges and minimum charges is that while fixed charges are charged from consumers irrespective of consumption, minimum charges are levied only when the bill of the consumer is less than a pre specified amount”.

10. Considering the above clauses of JSERC tariff order of 2003-04, I am of the view that if energy charges go down towards minimum level of consumption then in place of charging actual units recorded in the meter, charging will be done on the basis of MMC. I am also of the view that the demand charge is a settled charge to refer fixed costs of licensee and the same can not be mixed up with the energy charges or the MMC. Therefore prayer of consumer/ M/s Jagdamba Ingo-Tech Steel Pvt. Ltd. in EOJ/16/2009 can not be allowed. Besides it the consumer/ M/s Jagdamba Ingo-Tech Steel Pvt. Ltd. and the JSEB has also executed an agreement on 31/03/2006 in which Clause 4© goes to show that the maximum demands for supply in any month will be based on maximum KVA demand for the month or 75% contract demand whichever is higher. It is also mentioned in the aforesaid agreement that the first 12 months service the maximum demand charges for any month will however, be based on the actual monthly maximum demand for that month. This is a settled principle of Law that the agreement binds both

the parties if it is not against the specific provisions of Law. On this point the JSERC regulation is silent and the agreement is also not against any Law or the JSERC regulation of 2003-04. Hence this agreement executed in between the JSEB and the consumer/ M/s Jagdamba Ingo-Tech Steel Pvt. Ltd. are therefore, binding on them. As such both the appeals filed on behalf of JSEB and others Vrs. M/s Jagdamba Ingo-Tech Steel Pvt. Ltd. in EOJ/14/2009 and EOJ/16/2009 filed by the consumer/ M/s Jagdamba Ingo-Tech Steel Pvt. Ltd. Vrs. JSEB & others are fit to be dismissed on this ground.

11. In the result the appeal no. EOJ/14/2009 and EOJ/16/2009 is dismissed and Judgement/order of the learned VUSNF dated 18/11/2009 passed in case NO. 10/2009 is upheld without any interference and the bills of the consumer/ M/s Jagdamba Ingo-Tech Steel Pvt. Ltd. from June, 2006 and onwards in which KVA charges have been raised by the JSEB on the basis of 100% of the contract demand are hereby quashed. The JSEB is directed to issue revised monthly energy bills in future to the consumer/ M/s Jagdamba Ingo-Tech Steel Pvt. Ltd. on the basis of KVA recorded in the meter for the first 12 months and thereafter KVA recorded in the meter or 75% of the contract demand whichever is higher in each month from June, 2006 and onwards of the month. The JSEB shall also adjust with interest the excess money realized from the consumer/ M/s Jagdamba Ingo-Tech Steel Pvt. Ltd. in the subsequent bills with interest as per the Electricity Supply (Code) Regulation of the JSERC within one month from the receipt of this order failing which the consumer/ M/s Jagdamba Ingo-Tech Steel Pvt. Ltd. will be at liberty to move this Forum for implementation of this order.

Let a copy of this order be served on both the parties.

Sd/-
Electricity Ombudsman

