

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

Case No. EOJ/24/2008

Dated- 17th December, 2008

JSEB through its Chairman & others.

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Appellant(s)

Versus

M/s Niranjan Hi-Tech Ltd.

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Respondent(s)

Present:

Shri Sarju Prasad

Electricity Ombudsman

For Appellant (s)

(1) Shri D.K. Pathak, Advocate

(2) Shri Ravi Kr. Singh, Advocate

For Respondent (s)

(1) Shri Vijay Gupta, Advocate

J U D G E M E N T

1. This appeal has been filed by JSEB challenging the Judgement/order passed by Vidyut Upbhokta Shikayat Niwaran Forum (in short VUSNF) of Jharkhand State Electricity Board (in short JSEB), Ranchi on 15/07/2008 in case no. 43/2007.
2. The brief facts; giving rise to this appeal is that respondent, M/s Niranjan Hi-Tech Ltd. having its place of working at Manjhladih, P.O.-Kharharbari, P.S.-Giridih (Muffasil), Dist.-Giridih filed a representation before VUSNF for redressal of its grievance relating to energy bills for the month of January, 2004 onwards. The respondent was granted electrical connection for 1800 KVA, on 33KV for running induction furnace under HTSS category consumers which was energized on 01/02/2002 and was enhanced to 3391 K.V.A. and finally to 3600 K.V.A.on

33KV According to the respondent, as per the tariff order of Jharkhand State Electricity Regulatory Commission (in short JSERC) which is effective from 01/01/2004, there is no provision for charging demand charges on the basis of 100% of the contract demand, in case there is less recording of maximum demand in the meter of the consumer during a month but the JSEB is raising energy bills on the basis of 100% of the contract demand even if, there is less recording of maximum demand in the meter of the consumer, which is illegal and the respondent is entitled for refund of excess amount of money realized on the basis of the 100% of the contract demand. The respondent before filing a representation before VUSNF had filed a representation before the General Manager-cum-Chief Engineer, Electric Supply Area, Hazaribagh but the energy bills were not corrected.

3. The representation of the respondent was contested by JSEB before VUSNF alleging that prior to the tariff order of JSERC which is effective from 01/01/2004 the energy charges were being realized by JSEB on the basis of tariff order of Bihar State Electricity Board (in short BSEB) dated 24.09.1999 / 15.03.2000 and tariff order of BSEB for the year 2001 which has been published in the gazette of Bihar on 7/5/2001. According to the JSEB, only the rates have been decided by JSERC and other conditions like charging on the basis of 100% of the contract demand which was prevailing at the time of BSEB, has remained intact, therefore JSEB is entitled for raising energy bills on the basis of 100% of the contract demand in case of less recording of the maximum demand in the meter of the consumer during a month. But the VUSNF following decisions of this Court in

the case of M/s T & T Metals Pvt. Ltd. and few other cases have been pleased to hold that JSEB is not entitled for charging demand charges on the basis of 100% of the contract demand from the month of January, 2004. It is entitled only to charge on the basis of actual maximum demand recorded in the meter of the consumer during a month from the month of January, 2004 and ordered for adjustment/refund of excess amount realized.

4. It is admitted that the State of Jharkhand has been separated from the State of Bihar on 15th November, 2000 and JSEB has been separated from BSEB with effect from 1.4.2001. It is also admitted that under the old Electricity Act the power to decide tariff vested upon the State Electricity Boards and accordingly the BSEB has issued a tariff order which was effective from September, 1999 in which a provision was made for the HTSS category consumers with induction furnace for demand charges and it was provided that demanded charges shall be levied on the basis of actual maximum demand recorded in the meter during the month or 100% of the contract demand, whichever is higher. Subsequently, this tariff order was notified on 15.3.2000 in the Bihar gazette which was applicable at the time of separation of JSEB from BSEB. The BSEB subsequently repealed this tariff order of 1999 and issued a new tariff order which has been published in the State gazette of Bihar on 7/5/2001 i.e. after the separation of JSEB from BSEB. But it is apparent that State of Jharkhand or JSEB has not issued in the State gazette notification adopting the tariff order of BSEB for the year 2001 which was published in Bihar gazette on 7.5.2001. Subsequently, new Electricity Act of 2003 came into force with effect from 10.06.2003 and according to new Electricity Act,

the power to decide tariff fully vested upon State Electricity Regulatory Commissions. In case of Jharkhand, it is the JSERC who has the power to decide tariff. Naturally, JSEB submitted tariff petition before JSERC and JSERC decided the tariff and published which is effective from 1st January 2004.

5. From the tariff order of JSERC, we find in the tariff order for the HTSS consumers with induction furnace is at page no. 117 Clause 5.25 and from the tariff order of 2003-04, we do not find any provision from which it can be said that the right of the JSEB to levy demand charges on the basis of 100% of the maximum demand still exists, in case of less recording of maximum demand in the meter of the consumer during a month. The learned lawyer for JSEB has submitted that number of terms & conditions of supply were submitted before the JSERC and JSERC in Clause 5.30 at page no. 123 has dealt with the power factor surcharge (rebate and penalty) and delayed payment surcharge but for the other conditions they have stated that the others would be dealt with at a later stage due to in-depth analysis of the issues involved. We find that there is a saving clause in clause 1.4 in the last page no. 148 of 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”.

6. Thus, we find that nowhere there is any specific clause that the existing practice of levying demand charges on the basis of 100% of the contract demand in case of less recording of the maximum demand during a month in the meter of the

consumer shall remain the same. Therefore, we can not import a word and phrase which is not existing in the saving clause, although 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 has been specifically mentioned to remain the same in the saving clause. This Forum has already held in case no. EOJ/01/06 dated 15th February, 2007 of M/s T & T Metals Pvt. Ltd and many more other cases of similar nature that the JSEB is not entitled to levy demand charges on the basis of 100% of the contract demand in case there is less recording of the contract demand in the meter of the consumer during a month.

7. In the present appeal, the same argument has been advanced by the learned lawyer of JSEB which have already been answered in other cases decided by this Forum. I do not find any merit in this appeal and is liable to be dismissed. In the result, the majority Judgement/order of the VUSNF dated 15/07/2008 passed by both the members of VUSNF is upheld and this appeal is dismissed.

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

Sd/-
Electricity Ombudsman