

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

Dated- 13th September, 2011

Appeal No. EOJ/09/2011

JSEB through its Chairman & others	Versus	Appellant(s)
M/s Radha Casting & Metalik Pvt. Ltd.		Respondent(s)

Appeal No. EOJ/10/2011

JSEB through its Chairman & others	Versus	Appellant(s)
M/s T & T Metals Pvt. Ltd.		Respondent(s)

Present:

**Shri Arun Kumar Datta
Shri Rajesh Shankar
Shri Dheeraj Kumar
Shri Ajit Kumar
Shri Vijay Gupta**

**Electricity Ombudsman
Standing Counsel for appellant Board
Addl. Counsel for appellant Board
Counsel for respondent
Advocate for respondent**

J U D G E M E N T

1. Both the aforesaid two appeals have been filed by the appellant JSEB against the Judgement/order passed by the learned Vidyut Upbhokta Shikayat Niwaran Forum (In short to be referred as V.U.S.N.F.) of JSEB, Ranchi in case nos. 06/2011 & 14/2011 dated 05/05/2011 by which the learned VUSNF has allowed the revised amount of security demanded by the JSEB through impugned notices to be paid in 20 equal monthly installments without any interest.
2. The brief fact of the case is that both the aforesaid consumers/respondents M/s Radha Casting & Metalik Pvt. Ltd. & M/s T & T Metals Pvt. Ltd. were served with notices by the appellant JSEB to pay the revised amount of security through the impugned notices. Therefore the aforesaid consumers/respondents had placed their grievances before the authority of the appellant/JSEB and when the grievances could not be redressed then the aforesaid consumers/respondents had filed their representations before the learned VUSNF of JSEB, Ranchi for redressal of their grievances.
3. The case of the aforesaid consumers/respondents is that the appellant JSEB can not force them to pay the revised amount of security in view of the provisions as

mentioned in Clause 10.1 of the Electricity Supply (Code) Regulations, 2005 and in view of the aforesaid regulations the aforesaid consumers opted for pre payment meter but in course of hearing the aforesaid consumers had submitted in their counter affidavits as the JSEB has shown in its unavailability to make available the pre payment meter therefore they were ready to pay the revised amount of security in long easy installments without interest. Therefore the learned VUSNF on perusal of the letter No. 883 dated 03/10/ 2008 of the Chief Engineer (C& R) allowed the payment of revised amount of security in 20 equal monthly installments which shall be interest free in view of the ratio decided by the Hon'ble Jharkhand High Court in ruling reported in JCR 2005 Vol.-2 page 437.

4. On the other hand, the case of appellant JSEB is that as per Clause 11.9 of the Electricity Supply (Code) Regulations, 2005 the licensee may grant the facility of payment of arrear bills in installment and accordingly Board officers have been delegated power to grant installment maximum upto 05 numbers against the energy dues. Therefore the learned VUSNF has erred in law as well as on fact when it has granted arrears of security deposit to be paid in 20 installments because in view of Clause 10.2 of the Electricity Supply (Code) Regulations, 2005 the installment of arrear of security amount can not be more than 12 months and therefore the payment of arrear of security amount as mentioned in the notices of the respective consumers may be ordered to be paid maximum in 12 monthly equal installments. Beside it the consumers/respondents will have to pay interest/surcharge for the delayed payment surcharges in view of Clause 11.9.1 of the aforesaid Electricity Supply (Code) Regulations, 2005. The ruling reported in JCR 2005 Vol.-II page-437 is not applicable in this case because the aforesaid ruling was made in the case of old tariff of 1993 in which there was no provision for payment of interest/DPS on security amount.

5. Thus on the pleadings of both the parties and after hearing the learned Counsels of both sides disputes remain to be adjudicated in this case appears to be that whether grant of installment of arrear of security amount in 20 equal monthly installments and its payment without interest as held by the learned VUSNF can be upheld or not.

FINDINGS

6. Sri Rajesh Shankar, Standing Counsel appearing on behalf of appellant JSEB has submitted that as per Clause 11.9 of the Electricity Supply (Code) Regulations, 2005 the

licensee may grant facility of payment of arrear bills in installments and accordingly Board officers have been delegated power to grant installments maximum upto 05 numbers against the energy dues. Beside it in view of Clause 10.2 of the Electricity Supply (Code) Regulations, 2005 this security amount has to be changed after every 12 months on the basis of average billing amount which shall be equal to three months of the consumer therefore the installments of arrears of security amount can not be made more than 12 months.

7. On the other hand, It has been submitted by Sri Ajit Kumar, the learned Counsel appearing on behalf of consumers/respondents when the JSEB failed to provide pre payment meter then the respondent/consumers had agreed to pay the revised amount of security in long easy installment without any interest on which the learned VUSNF has passed the order. The order of the learned VUSNF can not be challenged in this appeal because it is barred under Clause 18.1 of the Jharkhand State Electricity Regulatory Commission (In short to be referred as J.S.E.R.C.) (Guidelines for Establishment of Forum for Redressal of Grievances of the Consumers and Electricity Ombudsman) Regulations, 2005. It has also been submitted on behalf of consumers/respondent that the consumers will pay the installments of arrears of security amount as well as the current security amount if it is changed after 12 months.

8. On the other hand, the learned Standing Counsel appearing of behalf of JSEB has contended that the jurisdiction of this Forum is not barred under Clause 18.1 of JSERC (Guidelines for Establishment of Forum for Redressal of Grievances of the Consumers and Electricity Ombudsman) Regulations, 2005 because the JSEB has only consented towards payment of arrears of security amount in installments as provided under Clause 11.9 of the Electricity Supply (Code) Regulations, 2005 and not on payment of arrears of security deposit in 20 installments without any interest which is against the regulations under Clause 11.9.1. According to which it is the liability to the consumers to pay surcharge for delayed payment surcharges as per tariff notification issued from time to time, till full payment and clearance of arrears. Beside it the ruling relied by the respondent/consumers and also relied by the learned VUSNF which is reported in 2005 (2) JCR page-437 (JHR) does not apply in the case of consumers/respondents because the aforesaid ruling is related to old tariff of 1993 in which there was no provision to charge the DPS/interest on the security amount if not deposited within time.

9. I also find myself in agreement with the aforesaid contentions of the learned Standing Counsel of appellant/JSEB because the Judgement/order dated 05/05/2011 passed in the aforesaid cases it only goes to show that JSEB has only consented for payment of installment and not in 20 equal monthly installments nor the appellant JSEB has consented that installment shall be interest free. As such the jurisdiction of this Forum is not barred under Clause 18.1 of JSERC (Guidelines for Establishment of Forum for Redressal of Grievances of the Consumers and Electricity Ombudsman) Regulations, 2005. I also find myself in agreement with the aforesaid contentions of the learned Counsel of appellant JSEB that in view of Clause 10.1 and 10.2 in absence of any pre payment meter the security deposit has to be revised after every 12 months on the basis of three months average billing amount of the consumer. Therefore the payment of revised amount of security can not exceed 12 months and the letter No. 883 dated 03/10/2008 of the Chief Engineer (C&R) JSEB, Ranchi can not be made basis for allowing the consumers/respondent to pay in 20 installments because the Chief Engineer (C&R) JSEB in its letter no. 883 has allowed the payment of arrears of energy charges in 30 and 50 installments which was the amount under Section 126 of the Electricity Act, 2003 and not security amount which has to be revised in every 12 months on the basis of average three months consumption. As such it is ordered that both the aforesaid consumers/respondents will pay the revised security amount in 12 equal months.

10. Now the question arises for determination as to whether the appellant/JSEB is entitled to charge interest on the revised amount of security and if so at which rate. In this regard Clause 11.9.1 of Electricity Supply (Code) Regulations, 2005 clearly lays down that "Grant of installment facility shall not affect the liability of the consumer to pay surcharge for delayed payment as per tariff notification issued from time to time, till full payment and clearance of arrears". The ruling relied and filed on behalf of respondents/consumers and also relied by the VUSNF in its Judgement with regard to the ruling reported in 2005 (2) of JCR 437 (JHR) of the Hon'ble Jharkhand High Court can not be made basis for refusal of grant of interest to appellant/JSEB because the aforesaid ruling was made in the case of old tariff of 1993 in which there was no provision for charging DPS/interest on the security amount if not deposited within time nor the consumer was paid any interest towards deposit of security in Clause 15.3 of old tariff of 1993 whereas in the new tariff of JSERC's Electricity Supply (Code) Regulations there is

clear provision under Clause 11.9.1 which empowers the appellant JSEB to charge interest/DPS as per notification issued from time to time, till full payment and clearance of arrear. Clause 10.6 of Electricity Supply (Code) Regulations, 2005 also provides that the Distribution licensee shall pay interest on the amount security deposited by the consumers at the prevalent bank rate of the Reserve Bank of India. In the same manner also JSEB can charge interest on the arrears of revised security amount at the prevalent bank rate of the Reserve Bank of India. In view of the aforesaid provisions of law the Judgement/order of the learned VUSNF passed in case nos. 06/2011 and 14/2011 dated 05/05/2011 can not be upheld.

11. Thus from the aforesaid discussions and findings made above I am led to hold that the aforesaid consumers/respondents in both the aforesaid cases will pay the revised amount of security demanded by the appellant JSEB through impugned notices in 12 equal monthly installments with interest at the prevalent bank rate of the Reserve Bank of India and also at the same rate on which the JSEB pays the interest charge on the refunded security deposit to consumers. In this connection the party will execute agreement in the Office of the concerned Electrical Superintending Engineer within 15 days from the date of this order. The appellant/JSEB is also directed to make every efforts for obtaining pre payment meter for giving effects to Clause 10.1 and its proviso with regard to supply of power under pre payment mode.

12. In the result the aforesaid two appeals no. EOJ/09/2011 JSEB versus M/s Radha Casting & Metalik Pvt. Ltd. and no. EOJ/10/2011 JSEB versus M/s T & T Metals Pvt. Ltd. are allowed and the Judgement/order of the learned VUSNF of JSEB, Ranchi passed in case no. 06/2011 and case no. 14/2011 dated 05/05/2011 are set aside.

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

Sd/-
Electricity Ombudsman