

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

Appeal No. EOJ/12/2011

Dated- 31th October, 2011

Jharkhand State Electricity Board **Appellant**
Versus
Smt. Lali Devi W/o Late Sishupal Agarwal **Respondent**

Present:

Electricity Ombudsman - **Shri Arun Kumar Datta**
Advocate for the appellant - **Shri Rajesh Shankar**
Shri Dheeraj Kumar
Advocate for the respondent - **Shri N.K. Pasari**
Shri Sudhir Kumar Singh

J U D G E M E N T

1. This appeal has been filed by the Appellant/J.S.E.B. for setting aside the Order/Judgement dated 03.05.2011 passed in case No. 06/2009 by Vidyut Upbhokta Shikayat Niwaran Forum (In short to be referred as V.U.S.N.F.) of J.S.E.B., Ranchi, in which the petition filed by the Consumer/Respondent was allowed and the energy bills for the period from 01/1998 to 07/2009 including to impugned bill dated 12.12.2002 has been quashed and revised bills were directed to be raised on the Consumer/Respondent in consonance with the observation in the order/Judgement dated 03.05.2011 passed in case No. 06/2009.

2. It has been contended by Shri Rajesh Shankar the learned standing Counsel of the appellant/J.S.E.B. that the learned V.U.S.N.F. failed to appreciate that on 17.11.1997 the officers of the J.S.E.B. had inspected the

premises of the Consumer/Respondent and it was found that the Consumer/Respondent was running the lodge though the Consumer/Respondent was the domestic consumer having the sanction load of 1 KW under domestic Tariff. Therefore the bills of the Consumer/Respondent were raised on C/S Tariff as the connected load found to be 7.2 KW i.e. 8 KW on the aforesaid date of inspection. Therefore the energy bills were raised on the 7 KW. The past reading mentioned on the energy bill of the Consumer/Respondent does mean that the meter was in running condition. The bills of the Consumer/Respondent were raised on 144 units per KW i.e. $7 \times 144 = 1008$ units per month because the Consumer/Respondent didn't allow the meter reader to record the readings. Because the meter of Consumer/Respondent was found to be defective and therefore the bills of the Consumer/Respondent was raised on 1008 units which is correct and as such payable by the consumer respondent.

3. It has been further argued of behalf of the appellant/J.S.E.B. that in view on the Hon'ble High Court's order dated 23.07.2002 the 2nd inspection was made in the premises of the Consumer/Respondent and it was found that several equipments were removed from the premises of the Consumer/Respondent. As such no Geyser was found in the 2nd inspection report which was found in the 1st inspection at the premises of the Consumer/Respondent and thereafter the bills were accordingly corrected at 5 KW. In view of the Hon'ble High Court's order the correction of Rs. 55,607.81 was also given to the Consumer/Respondent which fact was not considered by the learned V.U.S.N.F. Beside it the learned V.U.S.N.F. also failed to appreciate that as the Consumer/Respondent was running the lodge, therefore the bills were raised on higher load and in C/S Tariff and according to load inspection the bills were raised. In the inspection report it

is found mentioned that one Geyser was not connected to the electrical system but the presence of Geyser in the premises of the Consumer/Respondent can lead to believe that the geyser can be utilized when ever desired. The load was found to be 8 KW in the premises of the Consumer/Respondent and billing was done on 7 KW and after 2nd inspection the bills were raised on 5 KW which is correct and justified. On the basis of aforesaid facts it has been submitted on behalf of the appellant/J.S.E.B. that the learned V.U.S.N.F. has committed an error in allowing the representation of the Consumer/Respondent and as such the impugned Judgement/Order dated 03.05.2011 passed in case No. 06/2009 by learned V.U.S.N.F. is fit be set aside.

4. On the other hand it has been submitted by learned Counsel of Consumer/Respondent that the Consumer/Respondent was enjoying energy connection for domestic/residential purposes but the billing was done in terms of Commercial Service Tariff which was absolutely unjustified. The load was enhanced from 1 KW to 3 KW without any basis which is wrong. It is also not the fact that the Consumer/Respondent didn't allow the meter reader to carry out the recording of the meter reading and it is also not the case of appellant and therefore the appellant cannot raise bills on the basis of 144 units per KW. In support of his contention the learned Counsel of Consumer/Respondent has relied and filed order dated 04.06.2003 passed in case No. 12/2003 of C.G.R.F., J.S.E.B.

5. It has been further submitted by the learned Counsel of Consumer/Respondent that the subsequent inspection report dated 29.11.2002 the load of Consumer/Respondent was reduced is also contrary to the circular dated 23.07.2001 in as much as the question of connected load would again be a dispute and the socket point to the extent 300 watt could not have been taken and otherwise also it is settled preposition that

the load having been ascertained 4385 watt has to be taken as 4 KW because it is less than 4.5 KW. As such the assessment of 5 KW is bad in law. It has been further argued on behalf of the Consumer/Respondent that it is the settled preposition that once the bills are disputed and it is concluded to be wrong then in that event no D.P.S. can be charged and the entire component of D.P.S. is to be deleted. The load ascertained as 7 KW was illegal and beyond the circular and guidelines issued by the Board. Further the purported correction in the energy bill of the Rs. 55,000/- and odd was also illegal because no D.P.S. was deleted and no calculation of purported rectification was served on the Consumer/Respondent. According to learned Counsel of Consumer/Respondent the 2nd inspection dated 29.11.2002 in which the load was ascertained to be 5 KW was again illegal in as much as the socket point were taken into account and load of 4 KW has been ascertained to be 5 KW. Therefore according to learned Counsel of Consumer/Respondent the learned V.U.S.N.F. has not committed any error either in law or in facts while adjudicating upon the dispute between the appellant/J.S.E.B. and Consumer/Respondent which was so adjudicated pursuant to the orders of the Hon'ble High Court and therefore this appeal filed by the appellant/J.S.E.B. is fit to be dismissed.

6. The Consumer/Respondent had prayed the following reliefs before the V.U.S.N.F. in its Complaint/Representation dated 21.07.2009.

- (a) For quashing the inspection report dated 29.11.2002, to the extent it relates to the load of unconnected plug points of 300 W. into account, for determining the total load of the petitioner.
- (b) For quashing energy bill dated 12.12.2002 raised on the basis of the said inspection report dated 29.11.2002.

- (c) For a direction upon the Respondents to delete the entire component of delayed payment surcharge, which is liable to be deleted, since the Respondents themselves have found the earlier bills to be wrong and it is a settled principles of law that if the bills are found to be wrong and are revised, then there is no question of levy of any delayed payment surcharge.
- (d) For a direction upon the Respondents to give details of the energy charges of Rs. 60,039/- as raised in the bill dated 12.12.2002.
- (e) For a direction upon the Respondents to raise bills of the petitioner on the basis of connected load of 4 KW instead of 5 KW.
- (f) For directing the Respondents not to disconnect the electrical connection of the petitioner till the dispute is resolved by this Hon'ble Court.
- (g) For any other order(s), direction(s) as your Lordships may deem fit and proper for imparting complete and substantial justice to the petitioner.

7. On the pleadings of both parties and after hearing the arguments of learned Counsel of both the sides the following issues are settled for their determination and decision there on :-

ISSUES

Issue No. (I) :-

Whether the connected load of the Consumer/Respondent can be fixed at 4 KW instead of 5 KW by deleting the 300 watts of unconnected plug points as prayed, or not?

Issue No.(II) :-

Whether energy bill dated 12.12.2002 for the month of 11/2002 and inspection report dated 29.11.2002 as well as statement of energy bills for the period from 01/1998 to 07/2009 filed by the appellant/J.S.E.B. are liable to be quashed or not ?

Issue No. (III) :-

Whether amount of D.P.S. levied on the Consumer/Respondent is fit to be quashed or not?

FINDINGS

Issue No. (I) :-

8. On this issue it has been submitted by Shri Rajesh Shankar the learned standing Counsel appearing on behalf of appellant/J.S.E.B. that excess load was found in the premises of the Consumer/Respondent at the time of load verification and the bills were accordingly issued in view of circular No. 23 dated 13.01.97 of B.S.E.B., Patna which authorizes the officials of the Board to charge if any electrical equipment is found in the premises of the Consumer/Respondent. On the other hand it has been submitted by Shri N.K. Pasari the learned Counsel of the Consumer/Respondent that inspection report dated 29.11.2002 was even

contrary to the circular dated the 23.07.2001 because the socket point to the extent of 300 watt could have been taken and otherwise also it is settled proposition that the load having been ascertained 4385 watt has to be taken as 4 KW since it is less than 4.5KW and as such the assessment @ 5 KW is bad in law. On the other hand Shri Rajesh Shankar has argued that circular No. 246 dated 28.07.2001 will not be applicable to the J.S.E.B. as the said circular was issued after 31.03.2001 and therefore any Circular/Tariff which is issued after 01.04.2001 will not be applicable in J.S.E.B. and therefore the bills already issued are correct. I find force in the contention of Shri Shankar's that the aforesaid circular dated 23.07.2001 of B.S.E.B. is not applicable because it has been issued after creation of J.S.E.B.. The circular No. 23 dated 13.01.1997 authorizes the officials of the board to charge if any energy equipment is found in the premises of the Consumer/Respondent. I don't find any force in the contention of Shri N.K. Pasari the learned Counsel of Consumer/Respondent that 300 watts have been added on account of five Nos. of plug socket which were idle points which has also been included for the calculation of the load factor which cannot be charged in view of letter No. 1068(Comm.) dated 28.07.2001 which provides for not including waitage of idle/unused plug points. In view of the aforesaid discussion and findings made above. I am of the view that the prayer of Consumer/Respondent cannot be allowed and therefore the connected load of Consumer/Respondent cannot be reduced to 4 KW from 5 KW and as such it is held that connected load of Consumer/Respondent shall be 5 KW from 29.11.2002 upto the coming into force of Electricity Act 2003 and Tariff order 2003-04 and from 01.01.2004 and onwards the connected load of the Consumer/Respondent shall be 4 KW in C/S mode of Tariff because in the Act/Tariff/Regulation there is no such provision to count idle plug points in ascertaining the load factor. This issue is accordingly decided and disposed of.

Issue No. (II) :-

9. On this issue it has been submitted by Shri Rajesh Shankar the learned standing Counsel appearing on behalf of appellant/J.S.E.B. that in view of inspection dated 17.11.1997 the energy bills were raised on the basis of the 7 KW. The past reading mentioned on the energy bill does not mean that the meter is in running condition. The Consumer/Respondent didn't allow the meter reader to record the readings, therefore the bills were raised @144 units per KW i.e. $7 \times 144 = 1008$ units per month. The meter of the Consumer/Respondent was found to be defective and as such the bills were raised at 1008 units which are correct and payable by the Consumer/Respondent. On the other hand it has been submitted by Shri Pasari the learned Counsel of the Consumer/Respondent that the aforesaid allegation that the Consumer/Respondent didn't allow the meter reader to carry out recording of the meter reading cannot be taken to be true and it is not the case of appellant and in no circumstances the appellant can raise bills on the basis of 144 units per KW. This facts has also been decided earlier in the case of M/s Sartaj Hotel versus J.S.E.B. and others in the order/Judgement dated 04.06.2003 passed in case No. 12/2003 by C.G.R.F. of J.S.E.B. On perusal of the aforesaid Judgement which has also been filed on behalf of Consumer/Respondent it is found that the learned V.U.S.N.F. has clearly held that 144 KWH per KW cannot be charged in case meter was running slow or defective. I also find force in the aforesaid contention of learned Counsel of Consumer/Respondent because on perusal of the statement of energy bills for the period from 01/1998 to 07/2009 which has been filed on 13.04.2011 before the V.U.S.N.F., Ranchi it is found that the meter reading has always been taken but the energy charges have been levied some times on the basis of 144 KWH/KW and some times on flat rates of 250 KWH, 300 KWH and not on the basis of

actual consumption as recorded in the meter. This statement also does not go to show that at any point of time the meter was defective or the Consumer/Respondent did not allow the meter reader to take the reading of the meter. Therefore I do not find any force in the aforesaid contentions of the learned standing Counsel of the appellant/J.S.E.B. Because of the reason stated above the energy bills issued and mentioned in the aforesaid statement filed by the appellant/J.S.E.B. before the V.U.S.N.F. on 13.04.2011 for the period from 01/1998 to 07/2009 including the bill dated 12.12.2002 for the month of 11/2002 is hereby ordered to be quashed and the revised bills is directed to be issued for the entire period under C/S Tariff from 29.11.2002 up to 31.12.2003 treating connected load of 5 KW and from 01.01.2004 and onwards on connected load of 4 KW on the basis of actual consumption recorded in the meter which must be available in records of the appellant/J.S.E.B. This issue is accordingly decided and disposed of.

Issue No. (III) :-

10. This is the settled principle of law that no D.P.S. can be charged at all on incorrect and illegal energy bills. In this connection there is no force in the contention of the learned Counsel of Consumer/Respondent that from the date of execution of date of agreement the premises of the Consumer/Respondent should be treated under C/S Tariff from 09/1999 because the premises of Consumer/Respondent was found to be used as a lodge on the date of 1st inspection that is on 17.11.1997. Therefore the revised bill is directed to be issued from the date of 1st inspection i.e. from 17.11.1997 to 31.12.2003 treating connected load of 5 KW and from 01.01.2004 and onwards treating connected load of 4 KW. In view of the settled principle of law it is also ordered that no D.P.S. can be charged at

all for the past period from 17.11.1997 and onwards till the issuance of revised bills in view of the directions and order given in this Judgement.

11. Accordingly the appellant/J.S.E.B. is directed to issue revised energy bills within a period of one month in terms of this Judgement and serve the same on the Consumer/Respondent. The Consumer/Respondent will be at liberty to move this forum in case of non compliance of the order within a period of two months from today.

12. Thus from the aforesaid discussions and findings made above I am led to hold that there is no merit in this appeal and in the result the Judgement/Order of the learned V.U.S.N.F. dated 03.05.2011 passed in case No. 06/2009 is upheld and this appeal is dismissed.

Let a copy of the Judgement be served on both the parties.

Sd/-

Electricity Ombudsman