

BEFORE THE ELECTRICITY OMBUDSMAN, JHARKHAND

4th floor, Bhagirathi Complex, Karamtoli Road, Ranchi – 834001

Case No. EOJ/14/2007

Dated- 23rd December, 2008

Jharkhand State Electricity Board & others Appellant(s)
Versus
M/s Chinnmastika Sponge Iron Pvt. Ltd. Respondent(s)

Present:

Shri Sarju Prasad	Electricity Ombudsman
Shri R. N. Sahay	Advocate for appellant Board
Shri Ajit Kumar	Advocate for the respondent
Shri Vijay Gupta	Advocate

J U D G E M E N T

1. This appeal has been filed by Jharkhand State Electricity Board (JSEB) against the order dated 03/10/07 passed by Vidyut Upbhokta Shikayat Niwaran Forum (in short VUSNF) of JSEB in case no. 13/07.
2. The brief facts; giving rise to this appeal is that M/s Maa Chinnmastika Sponge Iron (P) Ltd. having its place of working at Binjhar, P.O. Marar, P.S.-Giddi, Ramgarh, Dist.- Hazaribagh filed a petition before VUSNF on 09/05/07 alleging therein that petitioner M/s Maa Chinnmastika Sponge Iron (P) Ltd. had taken an electric connection initially for 300 KVA for running its factory which was enhanced to 400 KVA and finally to 1067 KVA. According to the petitioner/respondent M/s Maa Chinnmastika Sponge Iron (P) Ltd., after the new tariff order notified by Jharkhand State Electricity Regulatory Commission (JSERC) for the year 2003-04, the JSEB is entitled to charge on the basis of maximum demand recorded in the particular month in the meter of the consumer from 01/01/2004 subject to minimum guarantee as provided in the tariff order of 2003-04, but

the JSEB/appellant is charging on the basis of 75% of the contract demand in case there is less recording of maximum demand in the meter of the consumer. Further, according to the petitioner/respondent, the petitioner is entitled for load factor rebate in view of tariff order of 2003-04 but the JSEB is not giving benefit of load factor rebate as per the tariff order 2003-04, rather they are calculating power factor rebate on the old formula which was in force at the time of BSEB. The petitioner had prayed for restraining to the respondent from raising bills on the basis of 75 % of the contract demand and charge only on the basis of maximum demand recorded in the meter of the petitioner subject to minimum monthly charges as per the tariff order of 2003-04 and for giving the benefit of power factor, load factor and voltage rebates as per the provisions of tariff 2003-04.

3. It is admitted that the respondent/M/s Maa Chinnmastika Sponge Iron (P) Ltd. had taken an electric connection for running its industry sometimes in the year 2000 when the contract demand was only for 300KVA at 11KV which was enhanced to 450KVA at 11KV and currently the same has been enhanced to 1067KVA at 33KV. Although in the counter affidavit of JSEB, it has been mentioned that petitioner is a HTSS consumer with induction furnace and is liable to pay 100% of the contract demand or the actual demand recorded whichever is high; but in fact the petitioner/respondent is not a HTSS consumer with induction furnace, rather it was simply a HTS-I category of the consumer when the contract demand was upto 450 KVA and has become HTS-II consumer from the day when the contract demand was enhanced to 1067 KVA. This has been rectified in the supplementary memo of appeal filed by the JSEB. It is not disputed that at the time of BSEB, there were three categories of HTS consumers as per the tariff schedule of BSEB of the year 1993. These three categories were HTS-I, HTS-II and EHTS. We are not concerned with EHTS. We are concerned with HTS-I and HTS-II. In HTS-I category installation is covered with minimum contract demand of 75KVA with voltage 11KV and

in HTS-II category installation is covered with minimum contract demand of 1000KVA and supply of electricity at voltage 33 KV. At the time of BSEB, the demand charges for HTS-I category was Rs. 125 /KVA/month on the basis of maximum demand recorded during the month or 75% of the contract demand whichever is higher plus energy charges at the rate of 178 paise per KWh subject to minimum charges as indicated in clause 15.2 of the tariff schedule of BSEB of the year 1993. In HTS-II category consumer, the demand charges was Rs. 115/ KVA per month on the maximum demand recorded during the month or 75% of the contract demand whichever is high plus energy charges at the rate of. 178 paise/KWh subject to minimum charges as indicated in 15.2 of tariff schedule of BSEB.

4. From the tariff order which is applicable with effect from 01/01/2004, the JSERC has raised demand charges with respect to all three categories of HT consumers without induction furnace which is contained in table No. 5.31 at page 115 of the JSERC's tariff order 2003-04. According to which for all the three categories the demand charges has been raised to Rs. 140/kVA/month and energy charges has also been enhanced from existing Rs.178 paise /KVh/ to Rs. 4.00 /KWh/ with minimum monthly charges at the rate of Rs. 250/kVA/ month for HTS-I and HTS-II consumers. The JSERC's tariff order provides that consumer is entitled for voltage rebate at 5% when supply at 33kV and load factor rebate as mentioned in table no. 5.32 and 5.33 at page 116 of the tariff order. In the tariff order, there is absolutely no mention that the demand charge will be levied at the rate of actual demand recorded in the meter of the consumer or 75% of the contract demands whichever is high, in place of these provisions of BSEB, the JSERC has provided minimum monthly charges (M.M.C.) at the rate of Rs. 250/kVA/month. The learned advocate of the respondent has invited my attention to page 112 of the 2003-04 tariff order of JSERC and has submitted that even in the proposed tariff of JSEB they

have not claimed the actual maximum demand or 75% of the contract demand whichever is higher, rather their proposal was for AMG (Annual Minimum Guarantee) charges based on load factor of 30% and power factor 0.9 on contract demand payable at the rate of energy charges applicable to HTS-II category in lieu of existing demand charges but the JSERC has approved in place of demand charges and AMG charges as MMC (Minimum Monthly Charge) which is contained in table 5.31 at page 115 of tariff order, 2003-04.

5. According to the petitioner/respondent the maximum demand recorded in the meter of the consumer for the month of January, February, March and April were more than 75% of the contract demand which was at that time only 450 KVA, therefore the petitioner had no grievance, but when the load was enhanced from 450 KVA to 1067 KVA and the supply of 11 KV was also changed to 33 KV in the month of May, 2004, thereafter, the maximum demand recorded in the meter of the consumer per month was less than the contract demand, but JSEB applied the old formula of tariff schedule of BSEB with respect to demand charges and issuing bills on the basis of 75% of the contract demand.

6. There was similar provision with respect to HTSS consumers with induction furnace for charging 100% of the contract demand in case there is less recording of the maximum demand in the meter of the consumer but the new tariff order of JSERC issued for the year 2003-04 do not contain provisions for realizing the demand charges on the basis of 100% contract demand in case of consumer with induction furnace in the category of HTSS. It has been held by this Forum that after the issue of the tariff order by JSERC, the JSEB can not charge 100% of the contract demand in case there is less recording of the maximum demand in the meter of the consumer and the JSEB can charge

demand charges on the basis of actual maximum demand recorded in the meter of the consumer subject to minimum monthly charges (M.M.C) only.

7. Initially, the power to determine the tariff was with the State Electricity Board but after coming into force the new Electricity Act, 2003, the power had vested with the Jharkhand State Electricity Regulatory Commission (JSERC) in Jharkhand State as per the provision of the Section 86 of the Electricity Act, 2003. After the tariff order of JSERC already notified for the year 2003-04 which is effective from 01/01/04, the electricity supply company can not charge anything more than what is contained in the tariff order of the JSERC and all the previous provisions contrary to the tariff order of JSERC must be deemed to have been repealed .

8. The claim of the petitioner/respondent was contested by the JSEB but in the counter affidavit of the JSEB, they have erroneously mentioned the provision relating to HTSS category consumers with induction furnace. But from the Judgement of the VUSNF, we find that the VUSNF has not been swayed away due to incorrect mentioning of the provisions of the HTSS consumers with induction furnace, rather the Judgement is on the basis of the tariff order which is applicable to HTS-I and HTS-II category of the consumers without induction furnace. The mistake has been now corrected in the additional memo of appeal.

9. I have gone through the entire judgement of VUSNF and have carefully examined the same vis-à-vis and the provisions relating to tariff order of 2003-04 HTS-I and HTS-II category of consumers without induction furnace, I find that VUSNF has not committed any error regarding giving in its findings. It has applied ratio of the case decided by this Forum in case no. EOJ/01/06 dated 15.02.2007 in JSEB & Others Vrs. M/s T& T Metals (P) Ltd. I find that ratio is applicable to HTS-I and HTS-II consumers also because of the similarity of the provisions of the old tariff order of BSEB and the

present tariff order of the JSERC, only difference was in the case of HTS consumers with induction furnace, there were provisions for charging 100% of the contract demand or the maximum demand recorded in the meter of the consumer whichever is higher but in case of HTS- I and HTS-II consumers without induction furnace there were provisions for levying demand charges on the basis of maximum contract demand recorded in the meter of the consumer or the 75 % of the contract demand which ever is high. But basically the provisions were akin to both types of consumers.

10. So far the merit of the case to the consumer is concerned, I find that the judgement of the VUSNF is well covered by provisions of the tariff order of the JSERC and the findings of the VUSNF is perfectly justified. As per the tariff of JSERC for the year 2003-04, the demand charges has to be levied on the basis of the actual demand recorded in the meter of the consumer subject to minimum monthly charges only. The JSEB should not forget of the new tariff order besides demand charges, energy charges has been raised from Rs. 178 paise per Kwh (unit) to Rs. 4.00/kVA/month (unit) that means energy charges has been enhanced more than 232% and similarly there is enhancement on demand charges also from Rs. 115/kVA/month to Rs.140/kVA/month. Not only this in place of the formula for calculating demand charges at the rate of 75% of the contract demand at it existed in the tariff schedule of BSEB has been replaced with minimum monthly charges at the rate of Rs. 250/kVA/month therefore there is no justification for the JSEB to levy demand charge at the rate of 75% of the contract demand in case there is less recording of the actual maximum demand in the meter of the consumer therefore, I find the judgement of VUSNF is perfectly justified. VUSNF has also held that JSEB must give benefit of voltage rebate and load factor rebate as mentioned in table no. 5.32 and 5.33 at page 116 of the tariff order of 2003-04 which is also fully justified.

11. The learned lawyer for the JSEB has made the submission before VUSNF regarding the saving clause as contained in 1.4 at page 148 of the tariff order of JSERC, 2003-04 which was not rightly negative by the VUSNF. The provision of 1.4 is 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 I find that earlier provision of demand charges has not at all been saved in Clause 1.4.

12. I find there is no merit in this appeal and the findings of the VUSNF is perfectly justified. The JSEB is directed to implement the order of the VUSNF within 30 days from the date of receipt of the order failing which JSEB shall be liable to pay interest at the rate on which the JSEB charges as delayed payment surcharge on excess money realized from the consumer. In the result this appeal is dismissed.

Sd/-
Electricity Ombudsman