

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

Appeal No. EOJ/16/2011

Dated- 30th November, 2011

Jharkhand State Electricity Board	Appellant
Versus		
M/s Sudisa Foundry Pvt. Ltd.	Respondent

Present:

Electricity Ombudsman	-	Shri Arun Kumar Datta
Advocate for the Appellant	-	Shri Rajesh Shankar Shri Dheeraj Kumar
Advocate for the respondent	-	Shri Janak Kumar Mishra Shri Deepak Sinha Shri Piyush Poddar Miss Amrita Sinha

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 Judgement/Order dated 21.06.2011 passed in case No. 16/2010 by the Vidyut Upbhokta Shikayat Niwaran Forum (In short to be referred as V.U.S.N.F.) of J.S.E.B., Ranchi by which the learned V.U.S.N.F. has allowed the representation filed by the Consumer/Respondent and all the impugned energy bills have been quashed and the Appellant/J.S.E.B. was directed to refund the aforesaid amounts of penalty realized with interest as per norms within one month from passing of the order.

2. The brief facts of this case is that the Consumer/Respondent had entered in to an HT agreement on 28.05.2007 for the contract demand of 470 KVA with J.S.E.B. for supply of electricity under HTS-I category

having consumer No. HJAP-173. The Consumer/Respondent has duly paid all the monthly energy bills raised by the appellant/J.S.E.B. up to the month of March 2010 and there was no dues on that account against the Respondent/Company. The Respondents/Company required continuous supply of electricity and constant voltage for the purpose of production in its foundry plant, therefore the Consumer/Respondents company has switched over to JUSCO for power after obtaining valid N.O.C. from the Appellant/J.S.E.B.. The Consumer/Respondent had paid all the energy bills under protest and there was no dues to be paid by the Consumer/Respondent and as such the Consumer/Respondent has claimed for refund of excess amount of the impugned bills.

3. On the other hand the case of Appellant/J.S.E.B. In short is that the contract demand of Consumer/Respondent is 470 KVA and the maximum demand recorded in the meter for the months of 05/2009, 06/2009, 07/2009, 08/2009, 09/2009, 11/2009, 12/2009, 01/2010 was 545.4, 544.8, 546.5, 558.6, 545.4, 551.4, 589.2 and 567.0 KVA respectively. The provisional bill amounting to Rs. 188184/- was served to the Consumer/Respondent which was paid under protest. According to appellant the Consumer/Respondent was authorized to draw maximum up to 115% of the contract demand i.e. 540.5 KVA. But the Consumer/Respondent drew power beyond the above limit not once but several times and as such withdrawal of power beyond the authorized limit is unauthorized use of electricity under section 126 of the Electricity Act 2003 and therefore the Consumer/Respondent is liable to pay penal charges in accordance with the impugned bills as raised by the Appellant/J.S.E.B..

4. On the pleadings of both the sides and after hearing the learned counsels of both the parties the following issues emerges for their discussion and decision there on :-

ISSUES

Issue No. I :-

Whether existing contract demand by more than 115% comes under the mischief of unauthorized use of electricity under section 126 of the Electricity Act 2003, or not ?

Issue No. II :-

Whether impugned energy bills annexure 6 series and annexure 8 and 9 are fit to be quashed or not ?

Issue No. III :-

To what relief or reliefs the Consumer/Respondent is entitled there to ?

FINDINGS

Issues No. I & II :-

5. Both issue No. I and II are connected with each other, therefore both the aforesaid issues are taken up together for their discussions and decision there on.

6. It has been submitted by Shri Rajesh Shankar the learned standing Counsel appearing on behalf of Appellant/J.S.E.B. that the learned

V.U.S.N.F. has failed to appreciate that section 126 is very specific and covers unauthorized use of electricity. According to him Explanations (b) (II) of section 126 of Electricity Act 2003 states that unauthorized use of electricity means the uses of electricity by means not authorized by the concern person or Authority or licensee. In the present case the Consumer/Respondent had entered into an agreement for 470 KVA demand and as per Tariff the Consumer/Respondent was authorized to draw maximum up to 115% of the contract demand, i.e. 540.5 KVA. But the Consumer/Respondent drew power beyond the above limit several times and as such this withdrawal of power beyond the authorized limit is unauthorized use of electricity within the meaning of explanation (b)(II) of section 126 of Electricity Act 2003. According to learned standing Counsel of Appellant/J.S.E.B. the learned V.U.S.N.F. has also failed to appreciate that the maximum demand over and above the permissible limit of 540.5 KVA as per Tariff has been charged at the rate equal to twice the Tariff applicable. The above charges are as per sub section (6) of section 126 of the Electricity Act 2003 and as such all impugned bills were raised as per explanation (b) (II) section 126 of the Electricity Act 2003 and therefore there is no question of refund of any amount paid by the Consumer/Respondent. On the aforesaid grounds the Appellant/J.S.E.B. has prayed for setting aside the impugned order/Judgement dated 21.06.2011 passed in case No. 16/2010 by learned V.U.S.N.F. of J.S.E.B. Ranchi.

7. On the other hand it has been submitted by the learned Counsel of Consumer/Respondent that exceeding the sanctioned load does not come under the definition of unauthorized use of electricity as defined under explanation (b) of section 126 of the Electricity Act 2003. In support of his contentions the learned Counsel of Consumer/Respondent has relied and

filed Judgement of this forum held in the case of J.S.E.B. versus M/s Manglam Plastics in appeal No. EOJ/02/2011 dated 19.07.2011 and J.S.E.B. versus Smt. Asha Sinha in appeal No. EOJ/13/2011 dated 19.08.2011.

8. On perusal of the aforesaid two Judgements passed in both the appeal No. EOJ/02/2011 and appeal No. EOJ/12/2011 it is found that this forum of Electricity Ombudsman has clearly held in the aforesaid cases that withdrawal of power beyond the sanctioned load does not come under the explanation (b) of section 126 of the Electricity Act 2003 under heading within "Unauthorized use of electricity". Considering the aforesaid earlier Judgements passed in the case of M/s Manglam Plastics and Smt. Asha Sinha it is also held in this case that exceeding contract demand by more than 115% does not come under the mischief of unauthorized use of electricity under section 126 of the Electricity Act 2003. The Appellant/J.S.E.B. has already realized surcharge in terms of Clause 16.5 of 1993 Tariff taken the highest exceeded KVA as contract demand and the impugned energy bills which are annexure 6 series and 8 and 9 has also covered MMC charges in accordance with 2003-04 Tariff. Accordingly it is also held that all the impugned energy bills have been raised against 2003-04 Tariff arbitrary and illegally therefore all the impugned energy bills which are annexure 6 and annexure 8 and 9 are therefore quashed. Thus issue No. I and II are decided in favour of Consumer/Respondent and against the Appellant/J.S.E.B.

Issue No. III :-

9. As the impugned bills which are annexure 6 series and annexure 8 and 9 have been quashed as being arbitrary and illegal therefore the aforesaid amounts of penalty realized by the Appellant/J.S.E.B. through all

the impugned bills are directed to be refunded to Consumer/Respondent with interest as per norms within one month from today, the date of passing of this order failing which the Consumer/Respondent will be at liberty to move this forum for implementation of the order within two months of this order.

10. In the result, the Judgement/Order dated 21.06.2011 passed in case no. 16/2010 by learned V.U.S.N.F. is hereby confirmed without any interference. As such there is no merit in this appeal and this appeal is hereby dismissed.

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

Sd/-
Electricity Ombudsman