

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

Dated- 16th December, 2011

Appeal No. EOJ/18/2011

Jharkhand State Electricity Board Appellant

Versus

M/s Bhawani Ferrous Pvt. Ltd. Respondent

Appeal No. EOJ/19/2011

Jharkhand State Electricity Board Appellant

Versus

M/s Vikromatic Steels Pvt. Ltd. Respondent

Present:

Shri Arun Kumar Datta Electricity Ombudsman

**Advocate for the Appellant - Shri Rajesh Shankar
Shri Dheeraj Kumar**

**Advocate for the respondent - Shri Sudhir Kr. Singh
Shri Arvind Ranjan
Shri Nitin Kr. Pasari**

J U D G E M E N T

1. Both the aforesaid two appeals No. EOJ/18/2011 (J.S.E.B. Versus M/s Bhawani Ferrous Pvt. Ltd.) & EOJ/19/2011 (J.S.E.B. Versus M/s Vikromatic Steels Pvt. Ltd.) have been filed by the appellant/J.S.E.B. against the common Judgement/Order passed by the learned Vidyut Upbhokta Shikayat Niwaran Forum (In short to be referred as V.U.S.N.F.) of J.S.E.B., Ranchi in case No. 03/2011 & 04/2011 dated 06.09.2011 by which the learned V.U.S.N.F. have allowed the representation filed by both the consumers and the impugned notices

demanding additional security have been quashed to the extent it requires the consumers to pay additional security in one lump and have further directed both the consumers to pay additional security in 20 equal monthly installments without any interest.

2. The brief facts of the case is that both the aforesaid Consumers/Respondents M/s Bhawani Ferrous Pvt. Ltd and M/s Vikromatic Steels Pvt. Ltd were served with notices by the appellant/J.S.E.B. to pay the revised amount of security through the impugned notices. Both the aforesaid Consumers/Respondents had placed their grievances before the officers of the J.S.E.B. but their grievances could not be redressed then both the aforesaid Consumers/Respondents had filed their representation before the learned V.U.S.N.F. of J.S.E.B. Ranchi for redressal of their grievances on which learned V.U.S.N.F. has passed the impugned Judgement/Order.

3. The grievance of both the Consumers/Respondents in short is that the appellant/J.S.E.B. cannot force them to pay the revised amount of security in view of Clause 10.1 of the Electricity Supply Code Regulation, 2005 and in view of proviso of 10.1 of aforesaid Regulation both the aforesaid consumers had opted for supply of electricity through pre-payment meter. But the appellant/J.S.E.B. could not provide pre-payment meter for supply of electricity to both the aforesaid Consumers/Respondents, therefore both the aforesaid Consumers had submitted their willingness through their supplementary counter affidavit before the learned V.U.S.N.F. that they are ready to pay the revised security amount in long easy installments which shall be free of interest. To resolve the deadlock the learned V.U.S.N.F. has ordered for payment of the revised security amount of both the consumers in 20 equal monthly installments without any interest. The learned V.U.S.N.F. by its impugned Judgement has further directed the appellant/J.S.E.B. to make

fervent efforts for obtaining pre-payment meters in the mean time for giving effects of the provision of law regarding supply of power under pre-payment mode.

4. On the other hand the case of appellant/J.S.E.B. in short is that in view of Clause 11.9 of the Electricity Supply Code Regulation, 2005 the licensee may grant the facility of payment of arrear bills or security amount and in accordance with the aforesaid provision the officers of the J.S.E.B. have been delegated power to grant installment maximum up to five No. against the energy dues. Therefore the impugned Judgement/Order of learned V.U.S.N.F. is fit to be set aside because the learned V.U.S.N.F. has allowed both the Consumers to pay the security amounts in 20 interest free equal monthly installments. According to appellant/J.S.E.B. Clause 10.2 of the Electricity Supply Code Regulation, 2005 the security amount has to be revised after every 12 months and therefore the payment of arrears of security amount as mentioned in the notices of the respective Consumers cannot be more than 12 months. According to appellant/J.S.E.B. in view of Clause 11.9.1 of the Electricity Supply Code Regulation, 2005 the Consumers/Respondents will have to pay interest/surcharge for the installment facility. On the aforesaid grounds the appellant/J.S.E.B. has prayed for setting aside the impugned Judgement/Order of the learned V.U.S.N.F. and to allow both the aforesaid two appeals of the appellant/J.S.E.B.

5. On the pleadings of both the parties and after hearing the learned Counsel of both the sides the only issue which arises for determination in this case is that whether grant of installments of arrear of security amount in 20 interest free equal monthly installments as held by the learned V.U.S.N.F. can be up held or not ?

FINDINGS

6. Shri Rajesh Shankar the learned standing Counsel appearing on behalf of appellant/J.S.E.B. has submitted that Clause 10.1 of Electricity Supply Code Regulation, 2005 empowers the distribution licensee to furnish deposit of security amount to any consumer to whom supply or additional supply of electricity has been sanctioned. On the basis of aforesaid provision, additional security amount has been demanded by virtue of impugned notices from both the aforesaid Consumers/Respondents. It has been further submitted on behalf of appellant/J.S.E.B. that 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 billing of the Consumers in view of Clause 10.2 of the Electricity Supply Code Regulation, 2005. As such the installments of arrears of security amount cannot be ordered for more than 12 months. Further the licensee may grant the facility of payment of arrear bill in installment in view of Clause 11.9 of Electricity Supply Code Regulation. Clause 11.9.1 of Electricity Supply Code Regulation, 2005 also lays down that the consumer will have to pay surcharge for delayed payment as per Tariff notifications issued from time to time, till full payment and clearance of arrears.

7. On the other hand the learned Counsel appearing on behalf of Consumers/Respondents in both the aforesaid appeals has submitted that payment of security amount cannot said to be arrears nor it is revenue of J.S.E.B. or licensee, rather it is the amount of consumers which has to be deposited by the consumers as security in case of arrears of electrical energy remains unpaid by the consumers which has to be refunded to the consumers after adjustment of arrears of energy dues. Shri N. K. Pasari the learned Counsel of Consumers/Respondents in both the aforesaid

appeals has relied and filed a ruling reported in 2005 (2) JLJR 571 held in the case of M/s Sourya Metals Ltd. versus J.S.E.B. and he has further submitted that the Hon'ble Jharkhand High Court while dealing with the aforesaid situation and that too when 2004 Tariff schedule was already existing the Hon'ble High Court had been pleased to hold that :-

“The levy of delayed payment surcharge/interest on account of security deposit is against the provision of the Tariff”. Therefore according to learned Counsel of Consumers/Respondents the learned V.U.S.N.F. has rightly held in its impugned Judgement for payment of security amount in 20 interest free equal monthly installments which should not be interfered with and both the appeals are fit to be dismissed.

8. On perusal of the aforesaid ruling reported in 2005(2) JLJR 571 (M/s Sourya Metals Ltd. versus J.S.E.B.) it is found at paragraph 2 of the aforesaid ruling that the consumer had filed application dated 14.05.2002 requesting the G.M. cum C.E., Singhbhum area Electricity Board to fix installment in connection with payment of security deposit. The G.M. Vide letter dated 16.05.2002 granted 10 installments for deposit of the aforesaid security amount. Petitioner paid first installment of Rs. 2,94,492/- on 23.04.2002 and entered into HT agreement on 26.03.2003. Thereafter on the request of the consumer the G.M. cum C.E. had allowed deposit of security in 12 installments. As such the contention of Shri N.K. Pasari is correct that the case of appellant about payment of security amount in five installments is fit to be rejected because in the aforesaid ruling the G.M. cum C.E. has allowed payment of security amount firstly in 10 installments and afterwards in 12 installments. But at the same time Shri Rajesh Shankar is also correct that the installment of security amount cannot be more than 12 installments because in view of clause 10.2 of the Electricity Supply Code Regulation, 2005 this security amount has to be revised after every 12 months on the basis of average billing amount

which shall be equal to three months billing of the consumer. As such I am led to hold that installment of arrears of security amount cannot be made for more than 12 months.

9. Now the question arises as to whether interest on the arrears of the security amount is payable or not. The aforesaid ruling held in the case of M/s Sourya Metals Ltd. versus J.S.E.B. was the case in which the consumer has filed application dated 14.05.2002. Therefore there is no force in the contention of Shri Pasari that 2004 Tariff schedule was already existing when the Hon'ble court has been pleased to hold that no D.P.S./interest can be charged on account of security deposit. On perusal of the aforesaid ruling of M/s Sourya Metals Ltd. it is also found that the aforesaid ruling was made in context with old Tariff of 1993 and in view of clause 15.3(a) of the 1993 Tariff no interest was payable towards deposit of security by the consumer. Therefore the Hon'ble Court has held that the Respondent/board is not empowered to charge the delayed payment surcharge/interest on account of non deposit of the security amount in time. But this is not the case here because Clause 11.9 of the Electricity Supply Code Regulation, 2005 lays down that licensee may grant the facility of payment of arrear bills in installments. Further 11.9.1 of the aforesaid Regulation further lays down that "Grant of installment facility shall not affect the liability of the consumer to pay surcharge for delayed payment as per Tariff notifications issued from time to time, till full payment and clearance of arrears". This installment facility is being provided to consumers in view of 11.9 of the aforesaid Regulation and when the installment facility is being given to the Consumer/Respondent then Clause 11.9.1 of the aforesaid Regulation also comes into play which provides for payment of D.P.S./interest on arrear by the Consumers. When the Consumers are not paying the revised security amount in one lump then this becomes arrears on which D.P.S./interest is

payable by the Consumers/Respondents. As such there is no force in the contention of learned Counsel of Consumers/Respondents that security amount is not arrear. Therefore the aforesaid ruling is not applicable into facts and circumstances of this case. Beside it Clause 10.6 of the Electricity Supply Code Regulation, 2005 also provides that the distribution licensee shall pay interest on the security deposited by the consumers at the prevalent bank rate of the Reserve Bank of India. In the same manner the appellant/J.S.E.B. can also charge interest on the arrear of revised security amount at the prevalent bank rate of Reserve Bank of India. This has also been held by this forum of Electricity Ombudsman in the appeal Nos. EOJ/04/2011, EOJ/05/2011, EOJ/06/2011, EOJ/07/2011, EOJ/08/2011, EOJ/09/2011 and EOJ/10/2011.

10. In view of the aforesaid discussion and findings made above I am led to hold that the Judgement/Order passed in case No. 03/2011 (M/s Bhawani Ferrous Pvt.Ltd. versus J.S.E.B.) and case No. 04/2011 (M/s Vikromatic Steels Pvt. Ltd. versus J.S.E.B.) passed by V.U.S.N.F. in its impugned Judgement dated 06.09.2011 cannot be up held and as such it is set aside.

11. Both the impugned notices demanding additional security to pay in one lump are hereby quashed. The Consumers/Respondents in both the aforesaid two appeals No. EOJ/18/2011 (J.S.E.B. versus M/s Bhawani Ferrous Pvt. Ltd.) and EOJ 19/2011 (J.S.E.B. versus M/s Vikromatic Steel Pvt. Ltd) are directed to pay the revised amount of security demanded by the appellant/J.S.E.B. through their 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 J.S.E.B. pays the interest charge on the refunded security deposit to consumers. In this connection the parties will execute agreement in the offices of the concerned H.S.D. within 15 days from the date of receipt of this order.

The appellant/J.S.E.B. is also directed to make every effort for obtaining pre-payment meter for giving effects to Clause 10.1 and its proviso of Electricity Supply Code Regulation, 2005 with regard to supply of power to consumers under pre-payment mode.

12. In the result both the appeals No. EOJ/18/2011 (J.S.E.B. Versus M/s Bhawani Ferrous Pvt. Ltd.) & EOJ/19/2011 (J.S.E.B. Versus M/s Vikromatic Steels Pvt. Ltd.) are allowed and the Judgement/Order of the learned V.U.S.N.F. passed in case No. 03/2011 and 04/2011 passed on 06.09.2011 is modified to the extent as already directed above.

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

Sd/-
Electricity Ombudsman