

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

Case No. EOJ/05/2010

Dated- 21st October, 2010

JSEB through its Chairman & others	Appellant(s)
	Versus	
Navkanti Apartments	Respondent(s)

Present:

Shri Arun Kumar Datta	Electricity Ombudsman
Shri Rajesh Shankar	Counsel for appellant Board
Shri Dheeraj Kumar	Addl. Counsel for appellant Board
Shri N.K. Pasari	Counsel for the respondent
Shri Sudhir Kr. Singh	Advocate for the respondent

J U D G E M E N T

1. Being aggrieved by and dissatisfied with the Judgement/order dated 30/09/2003 passed in case no. 33/2003 by the learned Consumer Grievance Redressal Forum, (In short to be referred as CGRF) JSEB, Ranchi this appeal has been filed by the appellant/ JSEB for setting aside the Judgement/order passed in the aforesaid case by which the learned CGRF, JSEB has allowed the representation of the consumer/ respondent/ Navkanti Apartments and the appellant/JSEB was directed and held that the common area of the consumer/respondent should be treated as domestic supply and the bill should be raised on domestic tariff irrespective of the capacity of electric motor for lifting under ground water.
2. The case of appellant/JSEB in brief is that the tariff of 1993 of the Bihar State Electricity Board (In short to be referred as BSEB) makes provision for the use of motor for lifting water for domestic purpose up to 1 HP. Further subsequent amendment vide

notification dated 15/08/1996 in respect to the nature of power supply to multi storied building vide paragraph F, it has been prescribed that “ the rates applicable to domestic category of tariff shall also apply for consumption of electrical energy in common area of a multi storied building”. As such, in view of tariff 1993 water lifting up to 1BHP will only count in domestic category and above 1BHP capacity the electric motor for lifting water in common area can not be treated in the domestic category rather it will be considered under commercial service. Earlier the promoters of the consumer’s multi storied building namely Navkanti Apartments had taken an electrical connection in the name of M/s. S.K. Bose and company under commercial category of tariff 1993 for a load of 2.0 KW bearing Consumer No. LK/56-PL-3131 and in September, 2001 the promoter had handed over the multi storied building to its different flat owners who have taken/occupied their residential flats and thereafter the respective flat owners had taken their separate domestic electrical connections. On 05/04/2003 it was found on joint inspection of aforesaid apartments the electric motor water pump was found to be used in the common facility having 1500 Watts and parking area lighting $2 \times 60 = 120$ Watts and staircase lighting $4 \times 60 = 240$ Watts i.e, total 1860 Watts = 1.86 KW = 2 KW. Therefore, according to the appellant/JSEB as the aforesaid motor pump was of 1500 Watts therefore this motor water pump was above 1 HP, therefore the appellant/JSEB was right in charging the common area as commercial category and therefore the findings of the learned CGRF is fit to be set aside.

3. On the other hand the case of consumer/respondent/Navkanti Apartments in brief is that the learned CGRF has rightly decided this issue in favour of the consumer/respondent after considering various judgments of the Hon’ble Courts and in the case of Rameshwarm Apartments. The Hon’ble Court has held that common area of the multi storied building has to allow the service under domestic category irrelevant of the load distribution. Further the amended tariff of the Board dated 11/08/1996 itself stipulates that there is no load restriction. Besides it the consumer is using the building for residential purpose and there is no commercial activity in the premises. The fixation of 1 HP as the basis for grant electrical connection to the multi storied building ceased to exist on the very day when the appellants themselves had notified the amended tariff in the year 1996 declaring the service provided to the common area of the multi storied

building to be domestic and therefore the question of load distribution up to 1 HP does not arise at all. On the aforesaid ground the consumer/respondent has prayed for dismissal of this appeal.

FINDINGS

4. Shri Rajesh Shankar while appearing on behalf of JSEB has submitted that the learned CGRF, JSEB has failed to appreciate the provision as prescribed in the 1993 tariff which restricts the provisions of electric motor for water lifting upto 1 BHP only and therefore the electrical motor using more than the 1BHP capacity can not be treated in the domestic category even for the purpose of common area or common supply. The capacity of the consumer's water pump has been found to be as 1.5 KW vide inspection report dated 05/04/2003 which is above the 1.5 BHP in view of the provisions of the domestic service mode of tariff of 1993. Besides it the learned CGRF has failed to appreciate that the amendment notification dated 14/08/1996 also mentioned at paragraph 'F', it has been stipulated that the rates applicable to domestic category of tariff shall also apply for the consumption of electrical energy in common area of a multi storied building. But the consumer/respondent has neither restricted load of its pump up to 1 BHP nor ever made any application for conversion of service from commercial to domestic.

5. On the other hand Shri N.K. Pasari, the learned Counsel appearing on behalf of respondent/consumer has submitted that the learned CGRF, JSEB has rightly held that for common area of multi storey building, the rates of domestic service category shall be applicable and not the commercial tariff after considering the various judgments of the Hon'ble Courts in which this issue has already been decided in favour of the consumers. The amended tariff notification dated 11/08/1996 which has amended the 1993 tariff in pursuance of the order passed by the Hon'ble High Court and subsequently upheld by the Hon'ble Supreme Court in the matter of Bihar 440 Volts Vidyut Upbhokta Sangh. In view of the amended tariff there is no load restriction as the amended tariff of 1996 did not stipulate the quantum of the load which shall be allowed for grant of service connection for common area of multi storied building used solely for the residential purposes. It has been further submitted on behalf of consumer/respondent that the

fixation of 1 HP as the basis for grant of electrical connection to the multi storied buildings have been ceased to exist on very day of the amended tariff of 1996, which has declared the service provided to the common area of multi storied building to be domestic category of service. According to the learned Counsel of respondent/consumer the Division Bench of the Hon'ble Court had decided this question in the matter of Rameshwarm Apartment in which the appeal filed by the Electricity Board was dismissed and the Hon'ble Court has held that the common area of the multi storied building has to allow the service under domestic category irrelevant of the load restriction. The learned Counsel of respondent/consumer has also relied and filed the rulings reported in 1994 (1) PLJR at page 853 held in the case of Council for Protection of Public Rights and Welfare and others, 2000 (2) PLJR at page 279 held in the case of Narmada Apartment Owner's Association and others Vrs. BSEB, (1997) 11 Supreme Court case at page 380 held in the case of BSEB Vrs. Bihar 440 Volts Vidyut Upbhokta Sangh, Writ petition (Civil) No. 6410 of 2002 held in the case of Rameshwarm Apartment South Office Para, Ranchi Vrs. JSEB and others. On the basis of aforesaid rulings the learned Counsel appearing on behalf of the respondent/consumer has submitted that this question is now settled that the appellant/JSEB can not charge the common area premises as commercial and the appellant/JSEB has to charge the common area of electrical supply on domestic tariff. It has also been submitted that since the appellant/JSEB can not charge the electrical supply in common area therefore the bills issued in question has to be set aside and also JSEB can not charge the delayed payment surcharge on the aforesaid bills in question. In support of his contention the learned Counsel has relied and filed the rulings reported in 2002(3) PLJR at page 510 held in the case of Manvendra Narayan Agarwal Vrs. Bihar State Electricity Board, 2002(3) PLJR at page 532 held in the case of Subodh Kumar Poddar Vrs. Bihar State Electricity Board and others, 1995(2) PLJR 715 held in the case of M/s Gaya Roller Flours Mills (P) Ltd. Vrs. Bihar State Electricity Board and others, CWJC No. 2987 of 2000 ® held in the case of Ranchi Club Limited Vrs. Bihar State Electricity Board and others in which the Hon'ble Court has held that when the bills was illegal therefore delayed payment surcharge can not be levied.

6. I also find myself in agreement with the findings recorded by the learned CGRF in this case and the aforesaid contentions made by the learned Counsel of

respondent/consumer because in the aforesaid rulings filed and relied on behalf of the consumer/respondent as held in the case of Narmada Apartment, Rameshwarm Apartment and others it is now settled that the appellant/JSEB can not charge the electrical energy in the common area on commercial tariff and therefore it must be held that the rates applicable to domestic tariff shall also apply for consumption of electrical energy in common area of a multi storied building which also includes electric motor for lifting water. There is no force in the contention raised by the learned Counsel of appellant/JSEB that the electrical motor for lifting water is above 1 BHP therefore the JSEB/appellant has legally raised the electrical bills of the consumer/respondent on commercial basis in view of tariff 1993 and 1996. It is also held that the appellant/JSEB also can not charge delayed payment surcharge on illegal bills raised by the appellant/JSEB.

7. Therefore, in view of the aforesaid Judgments passed by the Hon'ble High Court, I am led to hold that the supply of electricity in the common area of consumer/respondent which also includes the electrical motor for lifting water, can not be treated as commercial supply and it is held as domestic supply and as such the bill in question is to be raised on domestic tariff.

8. Accordingly, the bills in question is set aside and the appellant/JSEB will issue the revised bills to consumer/respondent on domestic tariff from 01/10/2001 within one month without any delayed payment surcharge and thereafter the consumer/respondent will pay the amount of revised bills to appellant/JSEB within 15 days from receiving the revised bills failing which the respondent/consumer will be at liberty to move this Forum for implementation of this order within two months from receipt of the order. If the name of the consumer/respondent has not been changed as yet then the consumer/respondent will submit application in the requisite form for change of name and comply all necessary formalities within 15 days and thereafter the appellant/JSEB shall change the connection in the name of consumer/respondent within one month after compliance of the necessary formalities.

9. In the result there is no merit in the appeal of the appellant/JSEB and the findings made in the Judgement/order of the learned CGRF in its Judgement dated 30/09/2003 in

the case No. 33/2003 is hereby upheld without any interference and this appeal is dismissed.

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

Sd/-
Electricity Ombudsman