

# Jharkhand State Electricity Regulatory Commission Ranchi

## FORM OF PROCEEDING

### Case No. 17 of 2012

M/s Usha Martin Limited ..... Petitioner

Vrs.

Jharkhand State Electricity Board & Ors. .... Respondents

Sl.No.	Date of proceeding	Proceedings of the Commission with signature	Office action taken with date
08.	14.11.2012	<p style="text-align: center;"><b><u>ORDER</u></b></p> <p>M/s Usha Martin Limited, referred to herein after as the petitioner, has filed an application before this Commission for directing the licensee-JSEB to raise bills strictly with the provisions of the Tariff Order, and also to direct the respondent, the Licensee-JSEB to raise bills strictly in accordance with the tariff provisions in respect of HT Consumers by charging penal charges only on that KVA which is recorded beyond 110% of the contract demand and/or direct the Licensee-JSEB to rectify the bills for the month of December 2011, wherein the credits given in the bill for the month of November 2011 has been reversed on the basis of the direction given by the Chief Engineer (C&amp;R) of the Licensee-JSEB, and or passed such order or orders as this Hon'ble Commission may deem fit and proper under the facts and circumstances of this case.</p> <p>The respondent, the Licensee JSEB was noticed, who has appeared and filed their counter affidavit.</p> <p>Both sides heard at length.</p>	

We deemed it appropriate to go back a little to understand the facts of this case. The petitioner had filed a petition earlier in this Commission for the relief which has been sought in the present petition. The Commission without going into the merit of the case, disposed of the petition vide its order dated 25.4.2012. The said order is reproduced as under:

***“During the course of arguments the respondents pointed out to the letter of the Electrical Superintending Engineer, Electric Supply Circle, Ranchi addressed to the Assistant Vice President, USHA Martin Limited, Tatisilwai, Ranchi which refers to the discussion held by the said officer with one of the Hon’ble Member of the Commission***

***Since the issue raised in the petition under consideration is the same on which the Hon’ble Members views are already known, it will not be in the interest of justice to proceed to decide the petition on merits.***

***With these observations, the petition is disposed of.”***

The petitioner went to the Hon’ble High Court of Jharkhand at Ranchi against the aforesaid order of the Commission. The Hon’ble High Court of Jharkhand at Ranchi vide its order dated 2/25.7.2012, directed this Commission for a fresh hearing and deciding the case on merit with speaking reasons. The relevant para of the aforesaid order of the Hon’ble High Court is reproduced as under :

***“Considering the above, this writ petition is allowed. The order dated 25.4.2012 passed by the Jharkhand State Electricity Regulatory Commission in Case NO. 02/2012 is set aside. The matter is remitted to the Commission for a fresh hearing and deciding the case on merit with speaking reasons.”***

The respondent, the Licensee-JSEB filed an LPA in the Hon'ble High Court of Jharkhand at Ranchi against the aforesaid order of the Hon'ble single judge. In L.P.A No. 358 of 2012 , Jharkhand State Electricity Board ( Appellant) Vrs. Usha Martin Limited & Ors. (Respondents), the Hon'ble High Court of Jharkhand at Ranchi vide its order dated 14<sup>th</sup> September 2012 upheld the order of the learned Single Judge of the High Court of Jharkhand at Ranchi. The concluding para of the order dated 14<sup>th</sup> September 2012 in the aforesaid LPA No. 358/2012 of Hon'ble High Court of Jharkhand at Ranchi is reproduced below:

***“In view of the above reasons, we are of the considered opinion that no prejudiced has been caused to the appellant so as to prefer this Letters Patent Appeal and the otherwise also on merit, we do not find any illegality in the order passed by the learned Single Judge. Hence, this L.P.A. is dismissed.”***

Having the background of the case, let us go to the pleas of the two sides advanced before the Commission. The Petitioner referred to page 144 of the respondents JSEB's Tariff Order for the FY 2011-12 issued by the Commission, wherein High Tension Voltage Supply Service (HTS) has been dealt with. The petitioner has heavily relied on the para of the aforesaid tariff order in dealing the issue of exceeded contract demand. The relevant para of the aforesaid tariff order is reproduced below:

***“ The penalty of exceeding contract demand shall be 1.5 times the normal charges for actual demand exceeding 110% of the contract demand; the penal charges shall be applicable on exceeded demand only.”***

The learned lawyer for the petitioner points out that this Para of the tariff order is crystal clear and there is no ambiguity in its content and substance. According to the learned lawyer of the petitioner, the penalty can be levied only when the consumer exceeds 110% of the contract demand and not otherwise. Learned lawyer further argued that the penal charges shall be applicable on exceeded demand only. In other words, he argued, if a consumer has exceeded the contracted demand by 120%, then the penalty charge will be applicable only after 110% of the contracted demand.

The learned lawyer for the respondent has raised the question of jurisdiction as well. The learned lawyer has argued that the Commission does not have the jurisdiction to hear the petition under consideration, because this is a case of individual consumer's grievance for which he should have gone to the Consumer Grievance Redressal Forum created under Sec. 42 (5) of the Electricity Act, 2003. Secondly, the learned lawyer for the respondents points out that once the Commission has issued a Tariff Order, it becomes functus officio and should not interpret its own tariff order.

On the question of jurisdiction, the learned lawyer for the petitioner points out that in view of the clear-cut direction of the Hon'ble High Court, as stated earlier, the Commission can not go into the question of jurisdiction now and has to decide the issue, under consideration, on merit.

The Commission is aware that Consumer Grievance Redressal Forums have been created under Sec. 42 (5) of the Electricity Act, 2003 for redressal of consumer's individual grievances. This has been amply laid down by the Hon'ble Supreme Court in Maharashtra Electricity Regulatory Commission Vs. Reliance Energy Ltd., (2007) 8 Supreme Court cases 381. But in view of the Hon'ble High Court's direction to hear the matter on merit, the Commission is duty bound to go into the merit of the case. That being the situation, the Commission proceeds to examine the pleas of the two sides.

The petitioner's plea is that JSEB Tariff Order for the FY 2011-12 in respect of HTS consumers is not implemented in letter & spirit, as designed by the Commission. The relevant para is again reproduced as under :

***“ The penalty of exceeding contract demand shall be 1.5 times the normal charges for actual demand exceeding 110% of the contract demand; the penal charges shall be applicable on exceeded demand only.”***

The learned lawyer for the respondent has relied on the judgment of the Hon'ble Supreme Court ( 2012) 2 Supreme Court cases 108 – Executive Engineer Southern Electricity Supply Co. of Orissa Ltd. (SOUTHCO) and Anrs. Vrs. Shri Seetaram Rice Mills, wherein it has been held that the use of electricity by the Consumer beyond 100% of the sanctioned load shall be treated as unauthorized and will be charged accordingly under Sec. 126 of the Electricity Act, 2003. The learned lawyer for the respondent points out that in view of the judgment of the Hon'ble Supreme Court, the respondent has rightly charged the petitioner on the exceeded contracted demand i.e over and above the 100% of the contracted demand. On the other hand, the learned lawyer for the petitioner says that the said judgment of the Hon'ble Supreme Court does not apply in this case because the facts and circumstances of that case were different.

It is fact that the Hon'ble Supreme Court in the aforesaid case has held that –

*.....consumption of electricity in excess of sanctioned/connected load shall be an “Unauthorized use of electricity.” In terms of Sec. 126. That view has also been taken for the reasons that overdrawl of electricity amounts to breach of the terms and conditions of the contract and statutory conditions, besides such overdrawl being prejudicial to the public at large, as it is likely to throw out of gear the entire supply system, undermining its efficiency , efficacy and even increasing voltage fluctuation.*

In the humble understanding of the Commission of the aforesaid judgment of the Hon'ble Supreme Court , the Hon'ble Supreme Court has taken into consideration the Electricity Act,2003, the Regulations framed there under and the terms and conditions of supply in the agreement executed between the consumer and the licensee. While issuing the tariff orders of various licensees the Commission, in addition to the terms and condition laid down in JSERC ( Electricity Supply Code ) Regulations, 2005, have prescribed in every tariff order certain other terms and conditions so that the issues related to the tariff are crystal clear and the consumers are not harassed. Keeping that in mind, the Commission has clearly spelt out the aforesaid penalty clause and in doing that the Commission is within its powers. The Hon'ble Supreme Court in (2007) 8 Supreme Court Cases 381, Maharashtra Electricity Regulatory Commission Vrs. Reliance Energy Ltd. & Anrs. has clearly held that the SERC has the power to issue a general directions to the licensees that they should abide by the conditions of the license issued to them and charge only as per that tariff fixed under the Electricity Act, 2003 so that the public at large should not be harassed.....

The Commission is not intending to enlarge or reduce the scope of meaning of the penalty clause in question, mentioned in the tariff order of Licensee- JSEB for the FY 2011-12. In order to minimize the litigations, the Commission is only reading the penalty clause as it is. In view of the Commission, the penalty clause shows that the penalty on exceeding contract demand shall be 1.5 times of the normal charges for the actual demand exceeding 110% of the contract demand; the penal charges shall be applicable on exceeded demand only. In this penalty clause, it has been clearly stated that penal charges is to be levied only when the consumer has exceeded 110% of the contracted demand. In other words, if the consumer has a contracted demand of 5000 KVA and his recorded demand is 5700 KVA, then the penalty shall be levied only on 200 KVA, i.e up to 5500 KVA the consumer will be charged at

the normal rate and on the remaining 200 KVA penal charges. As stated earlier, the terms and conditions mentioned in the tariff order are a part of the of terms and conditions of supply. That being the situation, in the humble opinion of the Commission, the judgment of the Hon'ble Supreme Court in (2012) 2 Supreme Court cases 108 - Executive Engineers Southern Electricity Supply Co. Ltd. (SOUTHCO) & Anrs. Vrs. Shri Seetaram Rice Mills is not applicable in the facts and circumstances of the present case, because in that case, there was no stipulation in the regulations, in the agreement executed between the licensee and the consumer nor in the tariff order as to how the exceeded demand will be dealt with. On the other hand, in the present case, as discussed earlier, there is clear stipulation in this regard in the relevant tariff order issued by the Commission.

In view of the above, the petition of the petitioner is allowed.

Sd/-  
Member (E)

Sd/-  
Chairperson