

**IN THE JHARKHAND STATE ELECTRICITY  
REGULATORY COMMISSION AT RANCHI**

**Case No. 28 of 2012**

M/s Jharkhand State Electricity Board (JSEB) ..... Petitioner

Versus

Jamshedpur Utilities & Services Co. Ltd. & another ..... Respondents

**CORAM: HON'BLE MR. JUSTICE N.N. TIWARI, CHAIRPERSON  
HON'BLE MR. T. MUNIKRISHNAIAH, MEMBER (ENG)  
HON'BLE MR. SUNIL VERMA, MEMBER (FINANCE)**

For the Petitioner : Shri Ajit Kumar, Shri Saket Upadhyay and  
Shri Navin Kumar, Advocates

For the Respondent : Shri M.S. Mittal, Sr. Advocate, Shri M.G.  
Ramchandran  
No.1 (JUSCO) and Ms Shilipi John, Advocates

For the Respondent: Shri Rohit Roy, Advocate  
No. 2 (DVC)

For the Commission: Shri Sudarshan Shrivastava, Advocate

**ORDER**

**Dated: 7<sup>th</sup> November 2014**

1. The petitioner – Jharkhand State Electricity Board (hereinafter referred to as “JSEB) has filed this petition seeking the following reliefs:-

- i) For an order with respect to the recovery from cross subsidy surcharge of Rs.73 crores from Jamshedpur Utilities & Services Company Limited (hereinafter referred to as “JUSCO”) against the financial years 2010-11, 2011-12 and 2012-13;

ii) For ensuring protection of interest of JSEB, in the future years, against revenue loss due to weaning away of industrial consumers by JUSCO leaving behind the subsidized categories of consumers by directing monthly payment of Cross Subsidy Surcharge (CSS) to JSEB;

iii) For recovery of Cross Subsidy Surcharge from JUSCO and other stakeholders, as applicable for the years 2006-07, 2007-08, 2008-09 and 2009-10 as wheeling charges for those years, which were not notified by the Commission; and

iv) For directing Damodar Valley Corporation (for short "DVC") to place on record the sale of power to each consumer category in the State of Jharkhand since the enactment of the Electricity Act 2003 and to compensate the JSEB by paying cross subsidy amount applicable for each year of the period.

**Petitioner's claim:**

2. The grounds on which the said relief have been sought, inter-alia, are that the JSEB has been serving a large number of consumer base - most of whom are below poverty line and the tariff of these consumers is much below the average cost of supply. The JSEB is unable to recover the cost of supply through tariff of the said category of consumers. The other licensees within the State of Jharkhand such as Jamshedpur Utilities & Supplies Company Limited (for short "JUSCO"), Damodar Valley Corporation (for short "DVC") and Tata Steel Limited (for short "TSL") which have been gradually expanding their consumer base in the lucrative consumer categories who have good paying capacity. Those licensees enjoy lower cost of supply. Due to shifting of the subsidized consumers of JSEB to other licensees, the consumer mix of JSEB has worsened affecting its ability to sustain supply of electricity to the marginal, poor and rural consumers in the

State, at the present level of cross subsidization approved by the Jharkhand State Electricity Regulatory Commission (for short "JSERC") in its tariff. It has been stated that Section 42 (2) of the Electricity Act 2003 provides for payment of cross-subsidy surcharge, in excess of wheeling charges, by the consumer receiving electricity supply from other than the distribution licensee of the area. In the State of Jharkhand the JSEB is serving huge domestic consumer base. The tariff of different categories is designed to ensure the zero cross subsidization of the consumer categories. For almost all the consumer categories, the JSEB is unable to recover their respective categories cost of supply through tariffs whereas the other licensees within the State viz. DVC, JUSCO and TSL etc have been gradually expanding their consumer base in the lucrative subsidised consumer categories who have good paying ability. The JUSCO, one of the distribution licensees, has been selectively adding only high value industrial consumers to its consumer base, to a large extent, in the district of Saraikela-Kharsawan leaving the domestic, agricultural and other subsidized categories of consumers with the JSEB which has adversely affected the financial condition of the JSEB. It amounts to supply of electricity to the industrial consumers under Open Access from JUSCO.

3. The DVC is also bound to supply to all consumer categories within its command area since the date of enactment of the Electricity Act 2003. But the DVC has been supplying power to consumers of only 33 KV and above. It has not extended any supply to LT consumers. As such, the DVC is also liable to reimburse the amount of cross-subsidy surcharge to JSEB on a monthly basis.

**The Respondents' defence:**

4. The respondents JUSCO as well as the DVC have opposed the petition and emphatically questioned the maintainability of the petition. On behalf

of JUSCO it has been stated, inter-alia, that the supply of electricity by a distribution licensee to its consumers in the licensed area of supply does not involve the payment of cross subsidy to the other distribution licensee in the same area. Cross-subsidy is also not payable when the distribution licensee takes the open access to the transmission lines of the transmission licensee for securing the electricity required for maintaining the supply of electricity to its consumers. Such cases of Open Access fall within the ambit of Sections 39 (2)(d)(i) and 40 (1)(c)(l) of the Electricity Act 2003. Section 42(2) of the said Act enjoins the State Electricity Regulatory Commission to introduce a system of Open Access to enable a consumer to choose its supplier in the competitive scenario. The Open Access as provided in Section 42 of the Electricity Act 2003 applies only to a case where a consumer in a distribution licensee's area of supply obtains supply from another supplier outside the distribution licensee's area of supply using the network of the said distribution licensee within the area of supply and/or the transmission lines of the transmission licensee. The JUSCO supplies electricity in its capacity as a distribution licensee by laying down its own supply system and wires. It does not use the distribution system of any other distribution licensee of the area of supply in any manner. There is no Open Access to the distribution system of any other distribution licensee in the area for supplying electricity to the consumers of JUSCO. The manner of the claim made by JSEB as such does not attract the liability of cross subsidy as provided under the Electricity Act 2003 or under JSERC (Open Access in Intra-State Transmission and Distribution) Regulations, 2005.

5. The Damodar Valley Corporation (DVC) adopting the same line of defence has denied its liability to pay any compensation for the cross subsidy amount.

6. **Points for consideration:**

1. Whether the petition is maintainable?
2. Whether the petitioner is entitled to get payment of any amount of cross subsidy surcharge from JUSCO or any compensation for the cross subsidy amount from DVC, as claimed for?

7. We have heard learned counsel for the parties at length and considered the facts, materials on record as well as provisions of the Electricity Act 2003 and the Regulations of the Commission. Learned counsel placed the relevant facts and made submissions to fortify their respective claim/defence. However, the crucial facts appearing on record are not in dispute and as such require no detail discussion and prob. We, accordingly, proceeded to record our findings on almost admitted facts and unambiguous provisions of law.

## **FINDINGS**

**Point Nos. 1 & 2:**

8. Both the points being inter-related have been taken up together and the same are being decided in the light of the succeeding discussion.

9. Part (VI) of the Electricity Act 2003 makes provisions with respect to distribution licensees. Section 42 of the said Act deals with the duties of the distribution licensees and open access, in detail. Sub-Section 4 of Section 42 reads as follows:-

*Section 42 (4) – Where the State Commission permits a consumer or class of consumers to receive supply of electricity from a person other than the distribution licensee of his area of supply, such consumer shall be liable to pay an additional surcharge on the charges of wheeling, as may be specified by the State Commission, to meet the fixed cost of such distribution licensee arising out of his obligation to supply.*

10. The Commission has also framed Regulations relating to Open Access viz. JSERC (Open Access in Intra-State Transmission and Distribution) Regulations, 2005.

11. Regulation 18 thereof deals with cross-subsidy which runs as under:-

**“18 – Cross-subsidy Surcharge and Additional Surcharge:**

- (i) *In addition to transmission and distribution charges and wheeling charges, open access customer availing open access to the transmission system/ distribution system shall pay a surcharge;*
- (ii) *Accordingly an Open Access customer who has been granted open access in accordance with these Regulations shall be liable to pay a surcharge as may be specified by the Commission to meet the current level of cross subsidy paid by the category of consumer applicable to the electricity supply of such Open Access customer till cross-subsidies are eliminated.”*

12. On plain reading of the provisions of Section 42 of the Electricity Act 2003 and Regulation 18 of JSERC (Open Access in Intra-State Transmission and Distribution) Regulations, 2005, it is evident that the open access as envisaged in the said provisions apply only in a case where a consumer in a distribution licensee’s area of supply obtains supply from another distribution licensee using network of the latter distribution licensee of the area and/or the transmission lines of that transmission licensee. In the present case the supply of the electricity, admittedly, is by the JUSCO as distribution licensee in its area by using the wires and distribution system installed by itself and without using the distribution system of JSEB. There is no open access to the consumers to any distribution system of any other distribution licensee in the area of supply of electricity by the JUSCO.

13. Similar is the case with the Damodar Valley Corporation (DVC). The only allegation against the DVC is that though it has to supply electricity to all

consumer-categories within the command area since the enactment of Electricity Act 2003, it has not extended electricity supply to LT consumers. The JSEB has to still supply electricity to the consumers of the command area of the DVC who are poor and below poverty line.

14. The said ground, even if accepted, does not attract the relevant provisions of open access as prescribed under Section 42 of the said Act or under the aforesaid Regulation framed by the Commission.

15. In the conclusion, we hold that the petitioner has not been able to make out any case of open access as claimed. We do not find any instance of consumer of JUSCO taking supply from the network of the JSEB. The claim against DVC also could not be substantiated.

16. The point Nos. 1 & 2 are, accordingly, decided against the petitioner.

This petition stands dismissed.

Sd/-  
(Sunil Verma)  
Member (Fin)

Sd/-  
(T. Munikrishnaih)  
Member (Tech)

Sd/-  
(N.N. Tiwari, J)  
Chairperson