

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

Case No. 08 of 2015

M/s Sri Ram Steels Petitioner

Versus

Jharkhand Urja Vikash Nigam Limited (JUVNL) & Ors Respondents

**CORAM: HON'BLE MR. (DR) ARBIND PRASAD, CHAIRPERSON
HON'BLE MR. R.N. SINGH, MEMBER (ENGINEERING)**

For the petitioner : Mr. Dhananjay Pathak, Mr. Akash Deep Advocates
For the Respondents : Mr. Naveen Kumar, Mr. Amit Sinha and
Mr. Amitabh, Advocates

ORDER

Dated: 13th May, 2019

1. The petitioner – Sri Ram Steels has filed this petition against Jharkhand Urja Vikas Nigam Limited (JUVNL) and others praying therein for the following reliefs:-
 - i) For initiation of proceedings against the respondents under Section 142 of the Electricity Act, 2003 for non-compliance of the order dated 09.05.2014 passed by this Commission in Case no. 05/2013, and
 - ii) For quashing of the bill served upon the petitioner vide letter no. 602 dated 25.04.2012 whereby and where under the respondents has raised arbitrary demand in absolute contravention of the order passed by the Ld. Vidyut Upbhokta Shikayat Niwaran Forum (VUSNF) and Ld. Electricity Ombudsman as well as relevant provision of the Supply Code Regulation issued by this Commission.
 - iii) For compliance of the order dated 18.03.08 passed by the Ld. VUSNF in Case no. 45/07 which was upheld by the Ld. Electricity Ombudsman in appeal filed by the respondent in Case no. EOJ/15/08. Further, the petitioner also prayed for compliance of the order dated 23.12.2010 passed by the Ld. VUSNF in Case no. 19/2008 whereby and where under the Ld.

VUSNF, while declaring the disconnection dated 15.12.07 as illegal, held that no MMG (Minimum Monthly Guarantee) charges shall be levied during the disconnection period. Besides, the petitioner also prayed for other consequential reliefs including adjustment of illegally realized MMG charges from the petitioner amounting to Rs. 86,61,720/-

Brief fact of the case as submitted by the petitioner

2. Learned Counsel for the petitioner submitted that the petitioner had taken electricity connection at Mohanpur, District- Giridih, under the HTSS tariff for a contract demand of 2175 KVA for running its induction furnace unit.
3. Learned Counsel for the petitioner submitted that the petitioner challenged the levy of KVA charges on the basis of 100% contract demand by the respondent before the Ld. VUSNF in Case no. 45/07 and same was decided in favour of the petitioner vide order dated 18.03.08. The Ld. VUSNF quashed the energy bills right from January, 2004 and directed the respondent to issue revised bills on the basis of actual maximum demand recorded in the meter.
4. Learned Counsel for the petitioner submitted that the respondent challenged the said order dated 18.03.08 of the Ld. VUSNF before the Ld. Electricity Ombudsman in Case no. EOJ/15/2008 which was confirmed by the Ld. Electricity Ombudsman by his order dated 04.09.08.
5. Learned Counsel for the petitioner submitted that the petitioner also filed an appeal for implementation of the said order dated 18.03.08 of the Ld. VUSNF before the Ld. Electricity Ombudsman in Case no. EOJ/29/2008, which was allowed vide order dated 27.05.09 with a direction to the respondents to implement the order dated 18.03.08 passed by the Ld. VUSNF without any further delay.
6. Learned Counsel for the petitioner submitted that during the pendency of Case no. 45/07 before the Ld. VUSNF, the respondents illegally disconnected the power supply of the petitioner on 15.12.07 without giving notice under Section 56 of the Electricity Act, 2003 and it was challenged by the petitioner before the Ld. VUSNF in Case no. 19/08 which was allowed and the Ld. VUSNF by order dated 23.12.2010 declared the disconnection illegal and hold that no MMG charges can be levied during the disconnection period.
7. Learned Counsel for the petitioner submitted that the petitioner's electrical connection was restored by the respondents on 10.01.08 in the light of the interim order passed by the Ld. VUSNF in Case no. 19/08 after realizing the

- MMG charges along with DPS amounting to Rs. 86,61,720/- from the petitioner. Ld. Counsel further submitted that the petitioner after final order dated 23.12.2010 passed by the Ld. VUSNF in Case no. 19/08 approached the respondent on several dates and requested for adjustment of the excess realized KVA/MMG charges from the petitioner.
8. Learned Counsel for the petitioner submitted that on demand made by the respondents for current energy bills, the petitioner again requested the respondents for adjustment of excess MMG charges paid under protest and intimated that they would pay the regular energy bills after adjustment of excess paid amount of Rs. 86,61,720/-.
 9. Learned Counsel for the petitioner submitted that due to non-payment of current energy bills (as mentioned above), the respondent served several disconnection notices and in reply the petitioner prayed for adjustment of the current bill from the excess paid amount on account of MMG charges. Ld. Counsel further submitted that the respondents didn't disconnect the electrical connection of the petitioner rather showed huge amount as arrears along with DPS thereon.
 10. Learned Counsel for the petitioner submitted that the petitioner removed its induction furnace unit and continued with only re-rolling mill from February, 2008 and hence, applied along with requisite fees for load reduction on 13.10.08 from 2175 KVA to 1500 KVA.
 11. Learned Counsel for the petitioner submitted that the respondent after inspection prepared a report regarding removal of the induction furnace and existence of only re-rolling mill, even after that the respondent intimated the petitioner that its load may not be reduced because of arrears of energy bill.
 12. Learned Counsel for the petitioner submitted that the respondent can't deny for reduction of contract demand on the ground of arrears of energy dues, rather as per clause 9.24 of Supply Code Regulation, 2005, after 15 days from the date of notice/ reminder, the load of the petitioner is deemed to have been reduced and also the category of the petitioner was supposed to be changed from HTSS to HTS category and the bills are supposed to be revised.
 13. Learned Counsel for the petitioner submitted that inspite of removal of induction plant and compliance of necessary formalities for the reduction of load, the respondent didn't reduce the load/contract demand which created shortfall in power factor and as such the imposed penalty on account of power factor is supposed to be waived from December, 2008.

14. Learned Counsel for the petitioner submitted that the petitioner's electrical connection was disconnected on 19.09.11 by the respondent and being fed up with the continuous atrocities of the respondent, the petitioner surrendered its connection and decided to get its account finally settled with the Board. Ld. Counsel submitted that vide letter dated 28.09.11 they requested to issue final bill as per the order of Ld. VUSNF but the respondent instead of raising final bill went on raising MMG bill from the month of October, 2011 onwards till February, 2012.
15. Learned Counsel for the petitioner submitted that the respondent on 25.04.2012 served a provisional / final bill for Rs. 1,53,85,348/- without complying the orders passed by the Ld. VUSNF as well as Ld. Ombudsman.
16. Learned Counsel for the petitioner submitted that if the energy bills are being calculated in right prospective as per the tariff order and regulations framed by JSERC and as per the order of Ld. VUSNF and Electricity Ombudsman, then the petitioner would be entitled for a refund of Rs. 12,63,446/-.
17. Learned Counsel for the petitioner submitted that the petitioner filed an application before this Commission being Case no. 05 of 2013 in which this Commission also vide order dated 09.05.14 directed the respondents to implement the order dated 27.05.09 of the Ld. Electricity Ombudsman.
18. Learned Counsel for the petitioner submitted that nothing has been done till date by the respondents even after the direction of this Commission by order dated 09.05.14 in Case no. 05 of 2013. Hence, the petitioner again approached this Commission for execution of the order dated 09.05.14 in Case no. 05 of 2013.

Submission of the Respondent

19. Learned Counsel for the respondent submitted that the respondent has highest regard for the orders passed by this Commission as well as the orders of Ld. VUSNF and Electricity Ombudsman but they were only pursuing available legal remedies.
20. Learned Counsel for the respondent submitted that the order dated 18.03.08 of Ld. VUSNF in Case no. 45/07 upheld by Ld. Electricity Ombudsman by order dated 04.09.08 in Case no EOJ/15/08 were challenged before the Hon'ble High Court of Jharkhand in Writ application W.P. (C) no. 4903/2008 which was dismissed by Hon'ble Single Judge vide order dated 30.04.15 against which

the respondents had preferred a LPA no. 351/2015 and the said LPA 351/2015 was also dismissed by order dated 05.05.2016.

21. Learned Counsel for the respondents submitted that the respondents filed a SLP before Hon'ble Supreme Court of India SLP (Civil) CC no. 16982/2016 against the dismissal order dated 05/05/2016 of the Hon'ble Jharkhand High Court in LPA no. 351/2015, in which Hon'ble Supreme Court vide order dated 19.09.2016 issued notice upon the petitioner and granted stay in favour of the respondent and ordered to maintain status quo with regard to payment/refund until further orders.
22. Learned Counsel for the respondent submitted that the order dated 23.12.2010 of Ld. VUSNF in Case no. 19/08 was also challenged before the Hon'ble High Court of Jharkhand in writ application W.P. (C) no. 7266/2011 and was dismissed by the Hon'ble High Court of Jharkhand vide order dated 03.09.2015 with a liberty to the respondents to file appeal before the Electricity Ombudsman, if they so desire. Thereafter, the respondent filed an appeal before the Electricity Ombudsman EOJ/08/2015 which was dismissed by order dated 31.03.2016 on the ground of limitation. Against this order, the respondent has preferred a Writ application being W.P. (C) no. 7357/2016 before Hon'ble High Court of Jharkhand in which notices have been issued to the petitioner and the matter is still pending before the Hon'ble High Court of Jharkhand for final adjudication.
23. Learned Counsel for the respondent submitted that the respondent filed an appeal against the order of the Commission dated 09.05.14 in Case no 05 of 2013 before Hon'ble Appellate Tribunal for Electricity (APTEL) after a delay of 399 days, being Appeal no. 57 of 2016. Hon'ble APTEL while admitting the appeal and condoning the delay had directed the respondents to deposit a demand draft of Rs. 12,64,000/- with the Secretary, JSERC. The said appeal of the respondents was dismissed by the Hon'ble APTEL vide order dated 22.08.2016.
24. Learned Counsel for the respondent further submitted that the petitioner also not be allowed to withdraw the amount already deposited before this Commission by the order of the Hon'ble APTEL because if the decision of Hon'ble High Court is given in favour of the respondent then it would be difficult to realize the amount from the petitioner as the petitioner's unit is closed.

25. Learned Counsel for the respondent submitted that the respondent has full faith in the orders/directions passed by this Commission and there is no willful non-compliance of the order but the same has been challenged at the various stages in courts of law and the respondent are awaiting the final verdict of the court.

Commission's Findings

26. Heard Learned Counsel for the petitioner as well as Learned Counsel for the respondents in detail and perused the records of the case. The fundamental issue to be decided is whether the respondents are guilty for non-compliance of the orders and directions of this Commission as well as Ld. VUSNF and Electricity ombudsman.

27. With regard to levy of excess KVA charges, we find that the respondents have filed SLP before the Hon'ble Supreme Court of India, SLP (Civil) CC No. 16982/2016 against the order dated 05.05.2016 passed in LPA no. 351/2015 by the Hon'ble High Court of Jharkhand in which Hon'ble Supreme Court of India vide order dated 19.09.2016 granted stay in favour of the respondent. The relevant part of the order is reproduced below:

*“.....Status quo, as on today, with regard to payment/refund shall be maintained until further orders.
.....”*

As the Hon'ble Supreme Court had granted stay in this matter, this Commission is not inclined to precipitate any action under Section 142 of the Electricity Act, 2003 during the pendency of the aforesaid order of stay as it would be against the judicial discipline.

28. With regard to levy of MMG charges during the disconnection period is concerned, we find that the respondents have filed an appeal before the Hon'ble High Court of Jharkhand W.P. (C) no. 7375 and the matter is pending before Hon'ble High Court of Jharkhand in which notice has been issued to the petitioner. Hence at this stage, neither it would be proper nor be judicially respectful to precipitate any action under Section 142 of the Electricity Act, 2003 as sought for by the petitioner.
29. With regard to quashing of provisional / final bill served upon the petitioner vide letter no. 602 dated 25.04.2012, we are of the view that this Commission does not have any jurisdiction for quashing of the bill. The petitioner should approach the appropriate Forum for quashing of the bill and the said Forum after hearing the parties will pass necessary orders in accordance with law.

30. The amount deposited in the Commission by the respondent after the order of the Hon'ble APTEL will be kept with the Commission till the final outcome of the order of the Hon'ble Supreme Court of India in SLP (Civil) CC No. 16982/2016 and order of the Hon'ble High Court of Jharkhand in W.P. (C) no. 7357 of 2016.

ORDER

31. In view of the above findings, we are of the view that the respondents acted arbitrarily in not complying with the orders Ld. VUSNF in which disconnection was held illegal and MMG charges were declared unleviable. However, since one matter is pending for adjudication before Hon'ble Supreme Court of India in which a stay has been granted in favour of the respondents, and in the second matter, a notice has been issued upon the petitioner by Hon'ble High Court of Jharkhand, and the matter is pending for final adjudication, this Commission is not inclined to order any penal action against the respondents at this stage under section 142 of the Electricity Act, 2003. The petitioner may file a fresh petition after the final outcome in SLP (Civil) CC No. 16982/2016 of Hon'ble Supreme Court and W.P. (C) no. 7357 of 2016 of Hon'ble High Court of Jharkhand.
32. Accordingly, the petition stands disposed of at no cost.

Sd/-
(R.N. Singh)
Member (Engg)

Sd/-
(Dr. Arbind Prasad)
Chairperson