

**BEFORE ADJUDICATING OFFICER  
JHARKHAND STATE ELECTRICITY REGULATORY  
COMMISSION AT RANCHI**

**Adjudicating Case No. 1 of 2023  
(Arising out of Case No 15 of 2023)**

Bureau of Energy Efficiency (BEE) ..... Petitioner

Versus

Jharkhand Bijli Vitran Nigam Ltd.(JBVNL) ..... Respondent

**CORAM: HON'BLE MR. MAHENDRA PRASAD, Adjudicating Officer cum MEMBER (LAW).**

For the Petitioner : Mr. Kartikey Nayyar & Ms. Namrata Mohapatra,  
Advocates

For the Respondent: Mr. Sachin Kumar, Mr. Ravi Prakash Mishra, Mr. Vivek  
Aditya, Advocates

**Dated – 28<sup>th</sup> March 2024**

1. The Petitioner- Bureau of Energy has submitted an affidavited petition purported to be filed under section 27 of the Energy Conservation Act, 2001 for adjudication of the penalty under section 26 of the Energy Conservation Act, 2001 by the Adjudicating Officer and for directions to Jharkhand Bijli Vitran Nigam Limited (JBVNL) to make payment of penalty as adjudicated by the Adjudicating Officer.
2. The Prayers of the petitioner are as under: -
  - (a) Direct the Adjudicating Officer for holding an enquiry for the purpose of adjudging the penalty under Section 26 of the Energy Conservation Act, 2001 for non-compliance of the Regulation by the Respondent,
  - (b) Direct the Respondent to make payment of penalty as adjudicated by the Adjudicating Officer,
  - (c) Direct the Respondent to comply with the Regulation notified by the Petitioner and submit the requisite form for Energy Audit as provided in the Regulation,
  - (d) Pass any such other and further orders as are deemed to fit and proper in facts and circumstances of the case.

**Submissions of the Petitioner**

Ld. Counsel for the Petitioner submitted as follows: -

3. That the petitioner, Bureau of Energy Efficiency (hereinafter called as BEE),

established as on 01.03.2002 under the Energy Conservation Act, 2001, aims to reduce the energy intensity of the Indian economy by developing policies and strategies focused on self-regulation and market principles. BEE coordinates with designated consumers, agencies, and organizations to identify and utilize existing resources for energy conservation. The Energy Conservation Act, 2001, provides regulatory and promotional functions.

4. Further submitted that the respondent, Jharkhand Bijli Vitran Nigam Limited (JBVNL), is the largest DISCOM utility in Jharkhand, responsible for electricity distribution to retail and bulk consumers. JBVNL operates in 7 electric supply areas and has been designated consumer under the Energy Conservation Act, 2001.
5. The petitioner, with the approval of the Union of India, notified "*The Bureau of Energy Efficiency (Manner and Interval for Conduct of Energy Audit in Electricity Distribution Companies) Regulations, 2021*"(hereinafter called Regulations, 2021) to regulate energy audits in DISCOMs.
6. Due to the lack of a dedicated framework for energy auditing in distribution utilities, the petitioner developed regulations to guide DISCOMs in conducting annual energy audits and quarterly energy accounting to identify areas of energy loss and improve efficiency.
7. Under Section 14(i) of the Energy Conservation Act, 2001, the Union of India(*The Central Government may, by notification, in consultation with the Bureau*), can direct designated consumers like JBVNL to conduct energy audits by accredited energy auditors, and thus it is framework for benefit of all including discoms.
8. The main objectives of the Regulations, 2021 include quantifying energy consumption and losses, identifying inefficiencies, facilitating independent energy audits, and improving efficiency to reduce transmission and distribution losses.
9. The regulations mandate electricity distribution companies to conduct annual energy audits and submit reports to the Bureau and state agencies within specified timeframes. Additionally, periodic energy accounting must be conducted quarterly and reported within designated timeframes.
10. The regulations require the respondent to conduct periodic energy accounting and annual energy audits by in-house energy managers and accredited energy auditors respectively, aiming to establish an intervention-free auditing system to identify loss pockets and accelerate the reduction of AT&C losses.
11. That the Petitioner has mentioned relevant timeline for the compliance of the

Regulation by the Respondent herein below for the ready reference: -

| <b>Report</b>   | <b>Whom to be submitted</b>                             | <b>Type of report/audit</b>                           | <b>Period</b>            | <b>Due date for submission</b> |
|---|---|---|--------------------------|--------------------------------|
| Periodic Energy Accounting by Energy Manager (EM)         | Bureau of Energy Efficiency and State Designated Agency | First Periodic energy accounting (Quarter – II)       | 01.07.2021 to 30.09.2021 | 06.12.2021                     |
|   |   | Subsequent Periodic energy accounting (Quarter – III) | 01.10.2021 to 31.12.2021 | 01.03.2022                     |
|   |   | Subsequent Periodic energy accounting (Quarter – IV)  | 01.01.2022 to 31.03.2022 | 30.05.2022                     |
| Annual Energy Audit by an Accredited Energy Auditor (AEA) | Bureau of Energy Efficiency and State Designated Agency | First annual energy audit                             | FY 2020-21               | 06.04.2022                     |
|   |   | Subsequent Annual Energy Audit                        | FY 2021-22               | 31.07.2022                     |

12. The petitioner organized region-wise webinars/workshops for DISCOMs to create awareness and facilitate compliance with the Regulation, sending invitations to DISCOMs via email dated 15.11.2021. The timeline of the Regulation was shared with the respondent in the same email.
13. Under the powers conferred by Section 14(i) of the Energy Conservation Act, 2001, the Union of India (*Ministry of Power*) issued a letter dated 27.10.2021 to all State Governments and UTs, informing them of the Regulation and directing all distribution companies governed by the Act to conduct their 1<sup>st</sup> Energy Audit by an accredited energy auditor by 06.04.2022 (*Proviso of Clause 3*) and periodic energy accounting by 06.12.2021 (*Clause 4 (2) (a)*).
14. The petitioner, through a letter dated 18.11.2021, informed the respondent about the requirement to establish a centralized energy accounting and audit cell as per Clause 5(g) of the Regulation, requesting details of the Energy Audit Cell (EAC) in a prescribed format.
15. Via a letter dated 09.12.2021, the petitioner reminded the respondent about the Regulation's compliance requirements and requested the submission of the 1<sup>st</sup> annual Energy Audit Report and Periodic Energy Accounting Reports.
16. In addition to previous communications, the petitioner, in a letter dated 28.01.2022, reiterated its request for the submission of the first Periodic Energy Accounting Reports, emphasizing the importance of compliance and warning of potential penal actions.
17. In an email dated 23.02.2022 and a letter dated 22.02.2022, the petitioner reminded the respondent of the deadline for submitting the second Periodic Energy Accounting Reports, cautioning about non-compliance and its consequences.

18. A show-cause notice dated 04.03.2022 was issued to the respondent for non-compliance with Regulation provisions and failure to submit the first Energy Accounting report, directing a response within seven days, along with a copy of the report explaining reasons for non-compliance, under penalty of penal action as per the Energy Conservation Act, 2001 may not been taken.
19. Through letter dated 23.05.2022, the petitioner informed the respondent about the non-submission of 1st and 2nd Energy Accounting Reports, demanding reasons for the delay and submission of the reports by 31.05.2022, failing which penal action would be initiated.
20. A further show-cause notice dated 19.01.2023 was issued by BEE, directing the respondent to submit a response explaining non-compliance with the Regulation and non-submission of reports, along with the requisite reports, within seven days.
21. Despite repeated communications, the respondent failed to comply with the Regulation's directives, submitting periodic reports much beyond the stipulated dates and failing to submit 1st and 2nd Energy Accounting Reports. As a result, the petitioner seeks to invoke penalty provisions under Section 26 of the Energy Conservation Act, 2001, due to the respondent's casual behavior and non-compliance.
22. The petitioner has filed the present petition under Section 27 of the Energy Conservation Act, 2001, seeking adjudication of penalties for the respondent's non-compliance with the Regulation and failure to adhere to the Union of India's directives. This action is also in accordance with S.O.6027(E) dated 23.12.2022, empowering the petitioner to file petitions for non-compliance with the Regulation.
23. The Respondent cannot justify its non-compliance with the Regulations, 2021 by citing reasons such as upgrading internal infrastructure or appointing different billing agencies. Compliance with the Regulations, 2021 is mandatory for all DISCOMs, and failure to submit the required reports within the specified timelines are a violations of the law.
24. The Respondent's argument that the Petitioner was bound to send the list of accredited energy auditors, is irrelevant. The key issue is the Respondent's failure to submit the required reports within the specified timelines, despite reminders and opportunities to access the list of auditors.
25. The Respondent's assertion that the Petitioner lacks authority to file the present petition is refuted by the notifications issued by the Ministry of Power, granting the Petitioner the authority to take action against defaulting

Designated Consumers (DCs). The Ministry's notifications clearly empower the Petitioner to file petitions in cases of non-compliance with the Regulations, 2021.

26. The Respondent's claim that it did not receive the list of accredited auditors is contradicted by evidence showing that the list was shared with the Respondent on multiple occasions. The Respondent's failure to appoint an energy auditor cannot be justified by claiming lack of access to the list particularly when the list was available on website.
27. The Respondent's attempt to shift blame onto the Petitioner for alleged delays in communication is baseless. The Petitioner has consistently reminded the Respondent of its obligation to submit the required reports, and any delays in communication do not excuse the Respondent's non-compliance with the law.
28. The Respondent's failure to conduct periodic energy accounting and submit the reports in accordance with the Regulations, 2021 is a clear violation of the legal obligations imposed upon it. The Regulations explicitly mandate the submission of these reports within specified timelines to ensure transparency and accountability in energy consumption.
29. Despite repeated reminders, communications and even show-cause from the Petitioner urging compliance with the Regulations, 2021, the Respondent consistently neglected its responsibilities and shown disregard.
30. It is evident that the Respondent's non-compliance persisted despite the Petitioner's diligent efforts to ensure adherence to the regulatory framework. The submission of Periodic Energy Accounting Reports with significant delay and the complete omission of Annual Energy Audit Reports underscore the seriousness of the Respondent's disregard for regulatory requirements.
31. The Respondent's failure to fulfill its obligations under the Regulations, 2021 not only reflects a lack of commitment to regulatory compliance but also undermines the objectives of the energy conservation framework established by law. Such non-compliance may have adverse implications for energy efficiency, resource utilization, and overall regulatory effectiveness. The current compliance status of the Respondent is as follows: -

| Sl. No. | State     | DISCOM                                       | Energy Audit Cell |
|---------|-----------|--|-------------------|
| 1.      | Jharkhand | Jharkhand Bijli Vitran Nigam Limited (JBVNL) | No                |

| Energy Accounting Report of Q2 of FY 2021-22<br>Due Date: (6th Dec' 2021) | Energy Accounting Report of Q3 of FY 2021-22<br>Due Date: (1st Mar' 2022) | Energy Accounting Report of Q4 of FY 2021-22<br>Due Date: (30th May 2022) | Energy Accounting Report of Q1 of FY 2022-23<br>Due Date: (30th Aug 2022) |
|---|---|---|---|
| Yes<br>28.12.2022   | Yes<br>28.12.2022   | Yes<br>28.12.2022   | Yes<br>22.01.2023   |

|  |   |  |   |  |
|--|---|--|---|--|
| <b>Energy Accounting Report of Q2 of FY 2022-23</b><br><br><b>Due Date: (29th Nov' 2022)</b> | <b>Energy Accounting Report of Q3 of FY 2022-23</b><br><br><b>Due Date: (1st Mar' 2023)</b> | <b>Energy Accounting Report of Q4 of FY 2022-23</b><br><br><b>Due Date: (30th May' 2023)</b> | <b>Energy Accounting Report of Q1 of FY 2023-24</b><br><br><b>Due Date: (30th Aug 2023)</b> | <b>Energy Accounting Report of Q2 of FY 2023-24</b><br><br><b>Due Date: (14th Nov' 2023)</b> |
| Yes<br>01.09.2023  | Yes<br>07.09.2023   | Yes<br>27.09.2023  | No  | No   |

|  |   |   |
|--|---|---|
| <b>Annual Audit Report of FY 2020-21</b><br><br><b>Due Date: (6th Apr' 2022)</b> | <b>Annual Audit Report of FY 2021-22</b><br><br><b>Due Date: (31st Jul' 2022)</b> | <b>Annual Audit Report of FY 2022-23</b><br><br><b>Due Date: (31st Jul' 2023)</b> |
| No   | No  | No  |

32. Thereafter, due to late submission of Periodic Energy Accounting Reports and failure to submit the Annual Energy Audit Report, the Petitioner was constrained to file this Petition seeking inquiry, adjudication and calculation of penalty to be levied upon the Respondent herein.
33. The Respondent, thereafter, approached this Commission and objected to the contents of the Petition and sought dismissal on various grounds which include challenging the vires of the notifications and Regulations, 2021 under which this Petition has been filed.
34. The Petitioner was established under the Energy Conservation Act, 2001, with the authority to develop policies and strategies aimed at reducing energy intensity in the Indian economy. Its powers, as outlined in Section 13 of the Act, include the ability to make and notify regulations under Section 58.
35. The Regulations, 2021 were duly notified by the Petitioner in accordance with the provisions of the Act. Any contention regarding non-compliance with statutory provisions related to notification is baseless, as the Regulations were enacted within the framework of the law.
36. The Respondent's attempt to challenge the Regulations' validity before the Commission is inappropriate. Such challenges should be addressed through the appropriate legal channels, and the Commission's role is limited to enforcing compliance with existing regulations.
37. The Regulations, 2021 clearly outline the obligations of DISCOMs, including the mandatory conduct of periodic energy accounting and annual energy audits. The Respondent's failure to fulfill these obligations constitutes a violation of the law.
38. Despite receiving multiple communications and reminders from the Petitioner, the Respondent consistently failed to comply with the Regulations, demonstrating a blatant disregard for regulatory requirements.

39. The Respondent's attempt to justify its non-compliance with frivolous reasons, such as internal disturbances and delayed tender processes, is unacceptable. The Regulations provide no exemption for such circumstances, and penalties under Section 26 of the Act are warranted for non-compliance.
40. The submission of unaudited reports and delays in appointing accredited energy auditors further underscore the Respondent's negligent approach to compliance. Such actions cannot absolve the Respondent of its legal obligations under the Regulations, 2021 on the ground of non-receiving of list of Accredited Energy Auditors.
41. In conclusion, the Petitioner asserts its authority to enact and enforce regulations under the Energy Conservation Act, 2001. The Regulations, 2021 were promulgated in accordance with statutory provisions to promote energy conservation and efficiency. Learned counsel for petitioner also submitted that other DISCOMs of Jharkhand were following the direction of periodic and annual report of energy audit but the respondent failed to comply which shows utter negligence and disregard. The Respondent's failure to comply with these regulations warrants the imposition of penalties as prescribed by law. Any attempt to challenge the validity of the Regulations or evade responsibility for non-compliance should be rejected, and the Commission should uphold the rule of law by enforcing penalties against the Respondent.

#### **Submission of the Respondent**

42. The Ld. Counsel for the Respondent argues that the case brought by BEE against JBVNL is not maintainable under law or fact and further asserts that the petitioner (BEE) failed to provide evidence of a notification issued by the Central Government under Section 14(i) of the Energy Conservation Act, 2001. Without such notification published in the Gazette of India, the case cannot proceed.
43. The Respondent accuses BEE for filing the case without required notification and claimed that this fact if brought to the attention of the commission, the case would have been dismissed at an earlier stage.
44. The Respondent seeks leave to respond to BEE's claims while also challenging the maintainability of the case. They contend that certain paragraphs of BEE's application require no response as they pertain to the framing of regulations.
45. The Respondent details about JBVNL, its incorporation, and its involvement in electricity distribution across various areas in Jharkhand.
46. JBVNL explains that due to the transition phase in its billing operations,

citing changes in billing agencies and data migration processes data could not be collected and delayed due to situation.

47. Despite hurdles in compiling billing data and the unavailability of accredited firms from BEE, JBVNL asserts its efforts in submitting energy accounting reports for various financial years. Non-compliance with regulations regarding the appointment of a Nodal Officer and Energy Manager also created such circumstances in which timely compliance could not be done.
48. JBVNL cites unforeseen circumstances such as the COVID-19 pandemic's second wave and the migration of billing data as reasons for delays in compliance.
49. JBVNL denies allegations of non-compliance and casual behavior over the submission of energy accounting reports for certain quarters and the appointment of accredited energy auditors.
50. Learned counsel for Respondent JBVNL argued against the imposition of penalties, citing the lack of compliance by BEE mentioning that notification was published on 23.12.2022, and hence prior to that day on the basis of letter of Power Ministry, provision cannot be implemented. Ld Counsel cited case law Chandra Kishore Jha v Mahavir Prasad & Ors (1998) 8 SCC 266, and also Cherukuri Mani v Chief Secretary, Government of Andhra Pradesh-(2015) 13 SCC 722 in this regard. Ld Counsel asserts that penalties should be imposed strictly in accordance with the law and after considering various factors outlined in the Energy Conservation Act, 2001. The Respondent requests dismissal of the case due to the lack of foundation in BEE's application.
51. The Respondent's counsel presents a detailed defense against the allegations made by BEE, challenging the maintainability of the case, outlining compliance efforts, and disputing the basis for penalty imposition.
52. The Respondent reiterates that counter-affidavit has been filed by respondent transparently, disclosing all relevant facts. Ld Counsel clarified that the notification dated 23.12.2022 was initially missing.
53. The Respondent asserts that they have constituted the Energy Audit Cell and submitted the Energy Accounting Report for Q1 of FY 2023-24 on 21.11.2023, although delayed due to data collection requirements.
54. Respondent maintains that the provisions of the Bureau of Energy Efficiency Regulations of 2010 are applicable. The Respondent argues that without compliance with these regulations, the regulations of 2021 cannot be enforced. They emphasize the necessity of the notification dated 23.12.2022



and in absence of the list of Accredited Energy Auditors for compliance of regulations was not legally possible, nor JBVNL was bound.

55. The Respondent explains the delay in appointing an Accredited Energy Auditor, citing the tendering process and the subsequent appointment of M/s. Active Energy OPC Private Limited, but there was no intentional delay on its part.
56. The Respondent denies the allegations made by the petitioner in their rejoinder affidavit, particularly regarding the sharing of the list of auditors and the obligation under the regulations of 2010 and argued that the petitioner has failed to prove the timely provision of the auditor list.
57. The Respondent contends that the Regulations of 2021 cannot be considered workable without the issuance of the notification dated 23.12.2022 and the empanelment of accredited auditors by BEE. Ld Counsel emphasizes the need for strict interpretation of penal provisions, suggesting that any ambiguity should be interpreted against the petitioner and in favor of the respondent.
58. Finally, the Respondent argues that the petition is based on speculation and conjecture and should be dismissed with costs.
59. The Respondent's counsel provides detailed responses to the petitioner's claims, clarifies procedural matters, and asserts their compliance efforts while emphasizing the necessity of certain regulatory prerequisites for enforcement.
60. Ld. Counsel for the Respondent submitted the issues of the case as shown below,
  - a) Whether letter dated 27th October, 2021 can be said to be in compliance with the statutory provisions of section 14(i) of the Energy Conservation Act, 2001?
  - b) Whether respondent can be held liable for non-filing of periodic return for any period prior to 23.12.2022 i.e. the date on which notification u/s. 14 was issued by the Central Government issuing direction to the Distribution Company to get audit conducted?
  - c) Whether in absence of proper compliance with the provisions of the Regulations of 2010 framed by the BEE, the BEE can allege non-compliance of Regulations, 2021?
  - d) Whether in absence of any willful delay / latches, the respondent can be held liable for delay in filing of return, if any?
  - e) Whether present case filed by the BEE is misconceived and is an abuse of the process of law and is liable to be dismissed with heavy cost for unnecessarily dragging the respondent in the present litigation?
61. In light of the above, it is argued that Section 14(i) of the Energy Conservation

Act empowers the Central Government to direct designated consumers to conduct energy audits through accredited energy auditors. This direction must be issued via notification in the Gazette. Without such a notification, designated consumers are not obligated to conduct energy audits.

62. Sections 13 and 14 of the Act operate in different spheres, Section 13 concerning the powers and functions of the Bureau of Energy Efficiency, and Section 14 dealing with the Central Government's powers to issue directions.
63. The Central Government issued a notification in the Gazette of India on December 23, 2022, pursuant to Section 14(i), directing designated consumers to conduct energy audits. Therefore, any direction under Section 14(i) was given on December 23, 2022. The letter dated October 27, 2021, cannot be considered a direction under Section 14(i) as it was not published in the Gazette.
64. The respondent asserts that, due to the lack of a direction by the Central Government under Section 14(i) published in the Gazette, they were not obligated to conduct an energy audit. The regulations framed by the Bureau of Energy Efficiency only specify the manner and interval of energy audits.
65. The respondent denies the allegation that they failed to submit reports as per the timeline mentioned in the Regulations 2021. They argue that without a direction from the Central Government under Section 14(i) published in the Gazette, there was no binding obligation to conduct an energy audit, and the letter dated October 27, 2021, cannot be considered as such a direction.
66. The respondent submits that the applicant has given reasons for not holding the respondent as defaulter in the following circumstances: -
  - (a) The Energy Audit Cell was constituted on November 10, 2023, as evidenced by office order No. 1103.
  - (b) Regarding the Energy Accounting Reports for Q2 of FY 2021-22 to Q2 of FY 2022-23, the submission is deemed misleading and misconceived. The notification under Section 14(i) was issued on December 23, 2022, after the period mentioned by the applicant.
  - (c) For the Energy Accounting Report of Q3 of FY 2022-23, the respondent asserts that the Bureau of Energy Efficiency (BEE) sent the updated list of accredited energy auditors for the distribution sector via email dated April 13, 2023. The respondent's compliance depended on BEE's performance, and the availability of the list on the BEE website does not absolve BEE of its obligation to send the list directly to the respondent.

- (d) Regarding the Energy Accounting Report of Q4 of FY 2022-23, the respondent argues that there was no significant delay on the respondent's part. The notification to conduct the audit was issued on December 23, 2022, and the list of auditors was provided on April 13, 2023. As the audit report was filed on September 7, 2023, within forty-five days of the receipt of the auditors' list, there was no substantial delay.
- (e) For the Energy Accounting Report of Q1 and Q2 of FY 2023-24, the respondent contends that there was hardly any delay, with the reports being submitted within a reasonable timeframe after the due dates.
- (f) The respondent argues that no Annual Audit Reports were required to be filed for FY 2020-21, FY 2021-22, and FY 2022-23 as there was no direction from the Central Government under Section 14(i). Any reports filed for these periods do not establish estoppel against the statute, as per settled law.
67. Challenging the vires of the Regulations 2021 is unnecessary because the regulations operate in a different field from the powers granted to the Central Government under Section 14(i). The regulations cannot become operational without a direction from the Central Government under Section 14(i) and compliance with the Regulations of 2010. Reference is made to a judgment of the Hon'ble Jharkhand High Court in support of this argument.
68. Legal issues have been raised, but the applicant has failed to understand and respond to them appropriately. The submission that the letter dated October 27, 2021, constitutes sufficient compliance with Section 14(i) is incorrect. The relevant date is the issuance of the notification on December 23, 2022, and the list of accredited energy auditors was sent to the respondent on April 13, 2023.
69. The respondent argues that the present complaint is not maintainable because the applicant has failed to understand that the respondent was under no obligation to conduct an energy audit without a direction from the Central Government under Section 14(i). The Regulations of 2021 cannot bind the respondent for any period before December 23, 2022, when the notification under Section 14(i) was issued.

#### **Observation and findings of the Adjudicating Officer**

70. It is observed that Section 14 (i) of the Energy Conservation Act, 2001, states as follows,

***“14. Power of Central Government to enforce efficient use of energy and its conservation.— The Central Government may, by notification, in consultation with the Bureau, —***

*(a) specify the norms for processes and energy consumption standards for any equipment, appliance, vehicle, vessel, industrial unit, building or establishment] which consumes, generates, transmits or supplies energy;*

*(b) specify equipment or appliance 2 [or vehicle, vessel, industrial unit, building or establishment or class of equipments or appliances, as the case may be, for the purposes of this Act;*

*(c) prohibit manufacture or import of any equipment or appliance or vehicle or vessel specified under clause (b), unless it conforms to energy consumption standards specified under clause (a):*

*Provided that an industrial unit specified under clause (b) shall close its operations unless it conforms to the norms for processes or energy consumption standards specified under clause (a):*

*Provided further that from the date of notification of norms for processes and energy consumption standards under clause (a), no notification prohibiting such manufacture or import shall be issued—*

*(i) within a period of six months in the case of equipment or appliance or vehicle or vessel; and*

*(ii) within a period of two years for closure of industrial unit:*

*Provided also that the Central Government may, having regard to the market share and the technological development having impact on equipment or appliance or vehicle or vessel, and for reasons to be recorded in writing, extend the said period of six months referred to above, by a further period not exceeding six month;*

*(d) direct display of such particulars on label on equipment or on appliance specified under clause (b) and in such manner as may be specified by regulations;*

*(e) specify, having regard to the intensity or quantity of energy consumed and the amount of investment required for switching over to energy efficient equipments and capacity of industry to invest in it and availability of the energy efficient machinery and equipment required by the industry, any user or class of users of energy in the energy intensive industries and other establishments as specified in the Schedule as a designated consumer for the purposes of this Act;*

*(f) alter the list of Energy Intensive Industries and other establishments specified in the Schedule;*

*(g) establish and prescribe such energy consumption norms and standards for designated consumers as it may consider necessary:*

*Provided that the Central Government may prescribe different norms and standards for different designated consumers having regard to such factors as may be prescribed;*

*(h) direct, having regard to quantity of energy consumed or the norms and standards of energy consumption specified under clause (a), the Energy Intensive Industries and other establishments specified in the Schedule to get energy audit conducted by an accredited energy auditor in such manner and intervals of time as may be specified by regulations;*

**(i) direct, if considered necessary for efficient use of energy and its conservation, any designated consumer to get energy audit conducted by an accredited energy auditor;**

*(j) specify the matters to be included for the purposes of inspection under sub-section (2) of section 17;*

*(k) direct any designated consumer to furnish to the designated agency, in such form and manner and within such period, as may be prescribed, the information with regard to the energy consumed and action taken on the recommendation of the accredited energy auditor;*

*(l) direct any designated consumer to designate or appoint energy auditor or energy manager in charge of activities for efficient use of energy and its conservation and submit a report, in the form and manner as may be prescribed, on the status of energy consumption at the end of every financial year to the designated agency;*

*(m) prescribe minimum qualification for energy auditors and energy managers to be designated or appointed under clause (l);*

*(n) direct every designated consumer to comply with energy consumption norms and standards;*

*(o) direct any designated consumer, who does not fulfil the energy consumption norms and standards prescribed under clause (g), to prepare a scheme for efficient use of energy and its conservation and implement such scheme keeping in view the economic viability of the investment in such form, the time within which and the manner as may be prescribed;*

*(p) prescribe energy conservation and sustainable building codes for efficient use of energy and its conservation in the building or building complex;*

*(q) amend the energy conservation and sustainable building codes to suit the regional and local climatic conditions;*

*(r) direct every owner or occupier of the building or building complex, being a designated consumer to comply with the provisions of energy conservation and sustainable building codes for efficient use of energy and its conservation;*

*(s) direct, any designated consumer referred to in clause (r), if considered necessary, for efficient use of energy and its conservation in his building to get energy audit conducted in respect of such building by an accredited energy auditor in such manner and intervals of time as may be specified by regulations;*

*(t) take all measures necessary to create awareness and disseminate information for efficient use of energy and its conservation;*

*(u) arrange and organise training of personnel and specialists in the techniques for efficient use of energy and its conservation;*

*(v) take steps to encourage preferential treatment for use of energy efficient equipment or appliances:*

*(w) specify the carbon credit trading scheme;*

*(x) specify minimum share of consumption of non-fossil sources by designated consumers as energy or feedstock, provided different share of consumption may be specified for different types of non-fossil sources for different designated consumers:*

*Provided that the powers under clauses (p) to (s) shall be exercised in consultation with the concerned State.”*

71. Further, the Bureau of Energy Efficiency vide Gazette No. 436 dated 7<sup>th</sup> October, 2021 issued the BEE (Manner and Intervals for Conduct of Energy Audit (Accounting) in Electricity Distribution Companies) Regulations, 2021. Clause 3 (1) & 4 (2) of the Regulations, states as follows,

**“3. Intervals of time for conduct of annual energy audit.** - (1) *Every electricity distribution company shall conduct an annual energy audit for every financial year and submit the annual energy audit report to the Bureau and respective State Designated Agency and also made available on the website of the electricity distribution company within a period of four months from the expiry of the relevant financial year:*

*Provided that on the commencement of these regulations, the first annual energy audit of every electricity distribution company shall be conducted within six months from the date of such commencement, by taking into account the energy accounting of electricity distribution company for the financial year immediately preceding the date of the commencement of these regulations.*

...

**4. Intervals of time for conduct of periodic energy accounting.** - (2) *After the commencement of these regulations, every electricity distribution company shall, notwithstanding anything in sub-regulation (1), —*

*(a) conduct its first periodic energy accounting, for the last quarter of the financial year immediately preceding the date of such commencement; and*

*(b) conduct its subsequent periodic energy accounting for each quarter of the financial year for a period of two financial years from the date of such commencement, and submit the periodic energy accounting report within sixty days from the date of periodic energy accounting.”*

72. According to the above, it is inferred that the timeline for Energy Account Reporting and Annual Audit Reporting shall be as follows,

| <b>Report</b>                                | <b>Due Date</b> |
|--|-----------------|
| Energy Accounting Report of Q2 of FY 2021-22 | 6th Dec' 2021   |
| Energy Accounting Report of Q3 of FY 2021-22 | 1st Mar' 2022   |
| Energy Accounting Report of Q4 of FY 2021-22 | 30th May 2022   |
| Energy Accounting Report of Q1 of FY 2022-23 | 30th Aug 2022   |
| Energy Accounting Report of Q2 of FY 2022-23 | 29th Nov' 2022  |
| Energy Accounting Report of Q3 of FY 2022-23 | 1st Mar' 2023   |
| Energy Accounting Report of Q4 of FY 2022-23 | 30th May' 2023  |
| Annual Audit Report of FY 2020-21            | 6th Apr' 2022   |
| Annual Audit Report of FY 2021-22            | 31st Jul' 2022  |
| Annual Audit Report of FY 2022-23            | 31st Jul' 2023  |

73. However, the Ministry of Power vide Gazette No. 5785 dated 23<sup>rd</sup> December, 2022 issued a direction to all Distribution Companies for designation or appointment of energy manager and accredited energy auditors, as stated below,

**“S.O. 6027(E).** —In exercise of the power conferred by clauses (i), (k) and (l) of sections 14, 26 and 52 of the Energy Conservation Act, 2001 (52 of 2001), the Central Government, in consultation with the Bureau of Energy Efficiency (BEE) hereby direct:--

(a) that every Electricity Distribution Company shall designate or appoint energy manager and accredited energy auditor and get periodic energy accounting conducted by the appointed energy manager and annual energy audit conducted by the appointed accredited energy auditor and furnish reports to the State Designated Agency (SDA) and Bureau in accordance with the Bureau of Energy Efficiency (Manner and Intervals for Conduct of Energy Audit in electricity distribution companies) Regulations, 2021 published vide notification No. 18/1/BEE/DISCOM/2021, dated the 7th October, 2021; as amended from time to time.

(b) that in case of non-compliance of these directions or and non-submission of periodic energy accounting reports or annual energy audit reports or such other reports as required, submission of incorrect data or misrepresentation of facts, the State Designated Agency or Bureau or any person as designated by the Central Government shall file petition for non-compliance to the respective State Electricity Regulatory Commission or Joint Electricity Regulatory Commission.”

74. It is inferred from the above, that the MoP directed the Discom to appoint energy manager and accredited energy auditor and get periodic energy accounting conducted by the appointed energy manager and annual energy audit conducted by the appointed accredited energy auditor and furnish reports to the State Designated Agency (SDA) and the Bureau in accordance with the Bureau of Energy Efficiency (Manner and Intervals for Conduct of Energy Audit in electricity distribution companies) Regulations, 2021 published vide notification No. 18/1/BEE/DISCOM/2021, dated the 7th October, 2021. And in pursuance of above 2021 regulations, gazette was notified in Indian Gazette by Ministry of Power on 23<sup>rd</sup> December, 2022, i.e., after a period of 442 days.

75. As such, the Regulations were framed prior to the direction given by MoP. Accordingly, the Discom can only comply with the aforementioned Regulations, after they appoint energy manager and accredited energy auditor, i.e., after 23<sup>rd</sup> December, 2022. Therefore, the aforementioned timeline for Energy Account Reporting and Annual Audit Reporting should be on amended dates as follows,

| Report                                       | Old Due Date   | New Due Date   |
|--|----------------|----------------|
| Energy Accounting Report of Q2 of FY 2021-22 | 6th Dec' 2021  | 21st Feb, 2023 |
| Energy Accounting Report of Q3 of FY 2021-22 | 1st Mar' 2022  | 1st Mar' 2023  |
| Energy Accounting Report of Q4 of FY 2021-22 | 30th May 2022  | 1st Mar' 2023  |
| Energy Accounting Report of Q1 of FY 2022-23 | 30th Aug 2022  | 1st Mar' 2023  |
| Energy Accounting Report of Q2 of FY 2022-23 | 29th Nov' 2022 | 1st Mar' 2023  |
| Energy Accounting Report of Q3 of FY 2022-23 | 1st Mar' 2023  | 1st Mar' 2023  |
| Energy Accounting Report of Q4 of FY 2022-23 | 30th May' 2023 | 30th May' 2023 |
|  |                |                |
| Annual Audit Report of FY 2020-21            | 6th Apr' 2022  | 31st Jul' 2023 |
| Annual Audit Report of FY 2021-22            | 31st Jul' 2022 | 31st Jul' 2023 |

| Report                            | Old Due Date   | New Due Date   |
|-----------------------------------|----------------|----------------|
| Annual Audit Report of FY 2022-23 | 31st Jul' 2023 | 31st Jul' 2023 |

76. In view of the notification dated 23<sup>rd</sup> December 2022, the timeline of compliance by JBVNL may be observed as shown below,

| S.No | Report                                       | Old Due Date   | New Due Date   | Compliance by JBVNL | Delay/ Liable for Penalty (Duration)  |
|------|--|----------------|----------------|---------------------|---|
| 1    | Energy Accounting Report of Q2 of FY 2021-22 | 6th Dec 2021   | 21st Feb, 2023 | 28th Dec 2022       | No  |
| 2    | Energy Accounting Report of Q3 of FY 2021-22 | 1st Mar 2022   | 1st Mar' 2023  | 28th Dec 2022       | No  |
| 3    | Energy Accounting Report of Q4 of FY 2021-22 | 30th May 2022  | 1st Mar' 2023  | 28th Dec 2022       | No  |
| 4    | Energy Accounting Report of Q1 of FY 2022-23 | 30th Aug 2022  | 1st Mar' 2023  | 22nd Jan 2023       | No  |
| 5    | Energy Accounting Report of Q2 of FY 2022-23 | 29th Nov' 2022 | 1st Mar' 2023  | 1st Sep 2023        | Yes (184 Days)  |
| 6    | Energy Accounting Report of Q3 of FY 2022-23 | 1st Mar 2023   | 1st Mar' 2023  | 7th Sep 2023        | Yes (190 Days)  |
| 7    | Energy Accounting Report of Q4 of FY 2022-23 | 30th May 2023  | 30th May 2023  | 27th Sep 2023       | Yes (120 Days)  |
| 8    | Annual Audit Report of FY 2020-21            | 6th Apr' 2022  | 31st Jul' 2023 | No                  | Yes<br>(No Submission as on date/<br>Information not available at the office of the Commission) |
| 9    | Annual Audit Report of FY 2021-22            | 31st Jul' 2022 | 31st Jul' 2023 | No                  | Yes<br>(No Submission as on date/<br>Information not available at the office of the Commission) |
| 10   | Annual Audit Report of FY 2022-23            | 31st Jul' 2023 | 31st Jul' 2023 | No                  | Yes<br>(No Submission as on date/<br>Information not available at the office of the Commission) |

77. On the basis of the above discussion, it is clear that at first through letters dated 18.11.2021 (Letter No F. No 18/1/BEE/DISCOM/2021/3999-4101), 09.12.2021 (Letter No F. No 18/1/BEE/DISCOM/2021/4792-893) & 28.01.2022 (Letter No F. No 18/1/BEE/DISCOM/2022) direction to Discoms were made for submission of energy audit report but latter as on 23.12.2022 notification was issued as required u/s 14(i) of the Energy Conservation Act, 2001. It is also apparent that the Gazette Regulation was published on 07.10.21 but the Order on the same was notified by the Ministry of Power on 23.12.2022 in gazette notification.

78. Although it is true that repeated letter & shown-cause notice (dated 04.03.2022, Letter No F. No 18/1/BEE/DISCOM/2022/6780-849) were issued to respondent but respondent knowingly as everything was on website did not comply. It is also a fact that respondent is a company not an individual and it is well known principle that every person knows the law of the land and JBVNL having group of intelligent and capable officers is supposed to know every rule and regulation particularly when it was reminded by several letters. But in present case respondent remained negligent and now only technical points are being raised.



79. It is also true that the principle laid down in above referred case law that compliance should be as per provided, not otherwise. In this particular case earlier compliance was tried through letters dated 18.11.2021 (Letter No F. No 18/1/BEE/DISCOM/2021/3999-4101), 09.12.2021 (Letter No F. No 18/1/BEE/DISCOM/2021/4792-893) & 28.01.2022 (Letter No F. No 18/1/BEE/DISCOM/2022) which was not said to be complied fully, but later on it was complied fully by after publication of notification dated 23.12. 2022. In that view benefit of the above may be given for non-submission of report prior to 23.12.2022.
80. In such view of matter, the earlier non-compliance for period of FY 21-22 may be excused on the basis of legal technicalities and not be said legal violation of direction, but after 23.12.2022 if compliance of required Periodic Energy Report and Annual Energy Report is not made in timeframe then it will be violation attracting penal provision.
81. From para 76 under table S.No. 5,6 and 7 it is observed that the respondent has consecutively faltered in submission of periodical energy accounting report of Q2, Q3 and Q4 for FY 2022-23 with additional delay of submission of above reports pertaining to 184 days, 190 days and 120 days respectively. In addition to the above, the respondent has also not complied the submission of annual audit report for FY 2020-21, FY 2021-22 & FY 2022-23 as referred under para 76 table S. No 8,9 & 10.
82. Section 26 (1) of the Energy Conservation Act, 2001 runs as follows,
- “26. (1) If any person fails to comply with the provision of clause (c) or the clause (d) or clause (h) or clause (i) or clause (k) or clause (l) or clause (n) or clause (r) or clause (s) of section 14 or clause (b) or clause (c) or clause (h) of section 15, he shall be liable to a penalty which shall not exceed ten thousand rupees for each such failures and, in the case of continuing failures, with an additional penalty which may extend to one thousand rupees for every day during which such failures continues:*
- Provided that no person shall be liable to pay penalty within five years from the date of commencement of this Act.*
- (2) Any amount payable under this section, if not paid, may be recovered as if it were an arrear of land revenue.”*
83. Referring the above penal provision of the Energy Conservation Act, 2001 considering the facts presented in table under para 76 the respondent may be liable for penalty as referred in the table below:

| S. No | Report                                       | Delay in Submission | No of Days (Delay) | Penalty (max upto Rs) | Additional Penalty (Rs10000/day) | Total (may be) |
|-------|--|---------------------|--------------------|-----------------------|----------------------------------|----------------|
| 1     | Energy Accounting Report of Q2 of FY 2022-23 | Yes                 | 184                | 1000000               | 1840000                          | 2840000        |
| 2     | Energy Accounting Report of Q2 of FY 2022-23 | Yes                 | 190                | 1000000               | 1900000                          | 2900000        |
| 3     | Energy Accounting Report of Q2 of FY 2022-23 | Yes                 | 120                | 1000000               | 1200000                          | 2200000        |
| 4     | Annual Audit Report of FY 2020-21            | Yes                 | *                  | 1000000               | -                                | 1000000        |
| 5     | Annual Audit Report of FY 2021-22            | Yes                 | *                  | 1000000               | -                                | 1000000        |
| 6     | Annual Audit Report of FY 2022-23            | Yes                 | *                  | 1000000               | -                                | 1000000        |

|                       |  |
|-----------------------|--|
| <b>Total(Rs Lacs)</b> | <b>109.4<br/>(One Crore<br/>Nine Lakh<br/>and Forty<br/>thousand<br/>only)</b> |
|-----------------------|--|

\*No Data available in the office of the Commission

84. From above it is clear that there is clear non-compliance even after issue of required notification on 23.12.2022. So the respondent is held guilty for non-compliance of legal direction of BEE and hence respondent is liable for penalty as per provision in Section 26 of the Energy Conservation Act, 2001.
85. It is also imperative to note that ensuring timely energy audits and promptly acting on their findings are important steps in optimizing energy use, reducing costs, and minimizing environmental impact which would directly enhance the performance of the discoms thereby reducing the tariff burden on consumers arising out of inefficiencies and high energy losses. Even prompt compliance will improve the overall power scenario of the State of Jharkhand.
86. Since it is first time applicable compliance, so I think a lenient view should be taken in penalizing the respondent.
87. Considering the facts and circumstances and considering the table in above para 76 and 83, it is hereby ordered as below

**ORDER**

88. Respondent JBVNL is hereby penalized with a notional fine of Rs.10 lakhs (Rupees Ten lakhs) for all above non-compliances. It is hereby made clear that any future failure to comply with timely submission of reports may not be met with such leniency.
89. Accordingly, Respondent JBVNL is directed to pay the above penalty of Rs.10 Lakhs (Rupees Ten Lakhs), in line with Section 26 (1) of the Energy Conservation Act, 2001 which shall be payable to BEE(Petitioner) within three months from the date of the order, failing which an additional interest of 9% per annum would be applicable for the delayed payment.
90. The petition is disposed off, accordingly.

**Sd/-**

**Mr. Mahendra Prasad**

**Adjudicating Officer cum Member (Law)**