

**IN THE JHARKHAND STATE ELECTRICITY REGULATORY COMMISSION AT
RANCHI
Case No. 37 of 2023**

M/s Pasari Steel Pvt Ltd..... **Petitioner**
Versus
Jharkhand Bijli Vitran Nigam Limited and Ors.....**Respondents**

**CORAM : HON'BLE MR. MAHENDRA PRASAD, MEMBER (LAW)
HON'BLE MR. ATUL KUMAR, MEMBER (TECHNICAL)**

For the Petitioner : Mr. Kumar Sundaram, Mr. Kumar Pawan, Advocate
For the Respondent : Ms. Anita Prasad (DGM, JBVNL), Mr. Rajesh Kumar, Mr. Sachin Kumar, Mr. Vivek Aditya, Advocates

Date – 1st August, 2024

1. The Petitioner M/s Pasari Steel Pvt Ltd. has filed the instant petition under Clause 26 of the JSERC (Guidelines for Establishment of Forum for Redressal of Grievances of the Consumers and Electricity Ombudsman) Regulations, 2011 for a direction upon the Respondents to comply the order dated 22.04.2008 passed by the Learned CGRF, Ranchi in case no. 04/08 affirmed by the order dated 30.08.2008 passed by Electricity Ombudsman in case no. EOJ/17/2008.
2. The Petitioner in its petition has prayed for the following relief:
 - (a) For a direction upon the Respondents to comply the order dated 22.04.2008 passed by the Learned CGRF, Ranchi in Case No. 04/08 affirmed by the order dated 30.08.2008 passed by Electricity Ombudsman in Case No. EOJ/17/2008 and to refund the amount with interest for which the petitioner is eligible forthwith insofar as in some cases amounts have already released by adjusting the amount against KVA charges.
 - (b) For grant of any other relief as may be found appropriate towards the ends of the justice.

Submission of the Petitioner

3. Learned Counsel of the petitioner has submitted that the petitioner is a HTSS consumer of JBVNL and was granted a HTSS electricity connection for contract demand of 4545kVA in the year 2005 on 11kV supply voltage for running induction furnace which was energized on 12.10.2005.
4. Learned Counsel further submitted that from January 2004 onwards as

per the tariff order 2003, the petitioner was to be billed against maximum demand kVA recorded in the meter and not on the basis of 100% of the contract demand, however the petitioner was billed from October 2005 to July 2007 and onwards for 100% of the contract demand instead of actual recorded maximum demand in the meter.

5. Learned Counsel pointed out that after the repeal of the tariff schedule of 24.09.1999 and 07.05.2001 (BSEB), issued by the Bihar State Electricity Board(BSEB), this Hon'ble Commission declared vide its letter dated 19.05.2005 that the previous tariff schedule was not applicable on documents with effect from 01.01.2004. Thereafter, the petitioner being aggrieved by the actions of the respondents, moved before the Learned Consumer Grievances Redressal Forum (CGRF), Ranchi and filed Case No. 04/08 and Learned CGRF by order dated 22.04.2008 in the aforementioned Case No.04/08 quashed the impugned bills issued to the petitioner for the period from October, 2005 to March, 2008 in which the KVA charge has been raised by the Respondents on the basis of 100% of the contract demand and Learned CGRF further directed to issue the monthly energy bills in future on the basis of actual KVA recorded in the meter in each month as maximum demand. The Electricity Board was further directed to adjust the excess amount realized from the petitioner in subsequent bills with interest as per the Supply Code Regulation of JSERC and respondents were also directed to issue revised bills to the petitioner on the basis of actual consumption. The concluding portion of the order dated 22.04.2008 passed in Case No. 04/08 is being reproduced herein below for ready reference:

“7.0 In the light of discussion as made above following the ratio of judgment in aforesaid cases of Hon'ble Ombudsman, we are of the view that the JSEB is not entitled to bill the HTSS consumers on the basis of 100% of the contract demand as KVA charge in monthly energy bills even if it is recorded less than the contract demand in the meter, in the light of tariff order 2003-04 issued by JSERC effective from 01.01.2004. As such the impugned bills issued to the petitioner for the period from October 2005 to March 2008 in which the KVA charges - have been raised by the respondents on the basic of 100% of the contract demand are therefore quashed. The respondents are directed henceforth to issue the monthly energy bills in future also to the petitioner on the basis of actual KVA recorded in the meter in each month as maximum Demand. Further, the Board shall also adjust the excess money realized from the petitioner in the subsequent bills with interest as per supply code regulations of JSERC. In the light of above

directions, the respondents shall issue revised bills to the petitioner on the basis of actual maxm. demand KVA recorded in the meter in each month from October 2005 to March 2008 within a period of one-month from the receipt of this order. Further, no coercive action shall be taken against the petitioner by respondents till the bill is revised as per direction given above.”

6. It was submitted that the respondent being aggrieved by the dissatisfied with the order passed by the CGRF, the respondent Board through its Chairman challenged the said order before the Electricity Ombudsman, Jharkhand in Case No. EOJ/17/2008 and the Electricity Ombudsman, by order dated 30.08.2008 was pleased to dismiss the same holding that this Forum has already held in Case No.EOJ/01/06 by order dated 15 February, 2007 and many more other cases of similar nature that the JSEB is not entitled to levy demand charges on the basis of 100% of the contract demand.

The relevant portion of the order dated 30.08.2008 passed in Case No. EOJ/17/2008 is being reproduced herein below for ready reference:

“6..... This Forum has already held in case no. EOJ/01/06 dated 15th February, 2007 of M/s T & T Metals Pvt. Ltd and many more other cases of similar nature that the JSEB is not entitled to levy demand charges on the basis of 100% of the contract demand in case there is less recording of the contract demand in the meter of the consumer during a month.

7. In the present appeal, the same argument has been advanced by the learned lawyer of JSEB which have already been answered in other cases decided by this Forum. I do not find any merit in this appeal and is liable to be dismissed. In the result, the Judgement/order of the VUSNF dated 22.04.2008 is upheld and this appeal is dismissed.”

7. Learned Counsel submitted that the petitioner had repeatedly made representations to the respondents for compliance of the order dated 30.08.2008 issued by the Electricity Ombudsman which were ignored.
8. Learned Counsel pointed out that Hon’ble Jharkhand High Court, in the matter of one Laxmi Business and Cement Company Pvt. Ltd. has been pleased to hold that:
- (a) after the promulgation of electricity Act, 2003, fixation of Tariff raised with the respective State Electricity Regulatory

Commissions;

- (b) Earlier Tariffs i.e. Tariff of 1991 and 2001 issued by Bihar State Electricity Board stands repealed;
- (c) No proposal has been given by the State Board regarding contract Demand or actual consumption.

9. Learned Counsel for the Petitioner submitted that the Board challenged the aforesaid judgment, however the same was affirmed by the Hon'ble Supreme Court in its judgment as reported in (2014) 5 SCC 236 has settled the matter regarding KVA charges and has affirmed that the Board has to issue bills on the basis of actual consumption and not on the basis of contract demand.
10. It was submitted that despite the order of the CGRF affirmed by the Electricity Ombudsman and a specific direction by the Hon'ble Supreme Court that the Board will refund the amount to the consumers who are also not party before this Hon'ble Court, the respondents till date failed to comply the same. Thereafter, the Petitioner being aggrieved and dissatisfied with the actions of the respondents, moved before the Hon'ble Jharkhand High Court vide W.P.(C). No. 5722 of 2019 and the Hon'ble Jharkhand High Court by order dated 10.02.2023 was pleased to dispose off the same with a liberty to the petitioner to approach this Commission.
11. Learned Counsel of the Petitioner submitted that this Commission vide notification dated 09.11.2011 has issued "Guidelines for Establishment of Forum for Redressal of Grievances of the Consumers and Electricity Ombudsman, Regulation 2011 wherein Clause 26 specifies the situations wherein the orders of CGRFs and/ or Ombudsman are not being complied. Clause 26 of the said regulations is being reproduced herein below for ready reference:

"26. Non-compliance of the orders of CGRF/Ombudsman

The non-compliance of the orders of CGRFs/Ombudsman, as the case may be, shall be deemed to be a violation of these Regulations and will be liable for appropriate action by the Commission under Sections 142, or 146 read with Section 149 of the Electricity Act, 2003"

12. Learned Counsel of the Petitioner further submitted that several matters are pending before the General Manager-cum-Chief Engineer, Singhbhum Area, Jamshedpur for refund of KVA charges which was charged on the basis of contract demands instead of actual consumption.

13. Learned Counsel further submitted that in the case of M/s. Union Enterprise, Manager-Cum-Chief Engineer, Electric supply area, Jamshedpur by order dated 26.07.17 directed the Respondent-Nigam to adjust the amount by revising kVA for the period June, 2008 to July 2010 as per the order of Vidyut Upbhokta Shikayat Niwaran Forum and in compliance of the same, the Electrical Executive Engineer (C&R), issued a revised bill dated 29.8.18 wherein the amount against KVA with interest has been adjusted against DPS and fuel surcharge.
14. Learned Counsel for the petitioner in its conclusion prayed to issue direction to the respondents to give effect to the order dated 22.04.2008 passed by the CGRF affirmed by the Electricity Ombudsman.

Submission of the Respondent

15. Learned Counsel for the Respondent submitted that a case related to KVA charge of HTSS Consumer is pending before the Hon'ble Supreme Court in a batch matter of total 19 cases and one of the said batch matter is SLP(C) No. 27763 of 2016 (Jharkhand Urja Vikash Nigam Ltd. vs. M/s Bimal Deep Steel Pvt. Ltd.) and only after adjudication of the sub-judice batch matters pending before the Hon'ble Supreme Court related to kVA charge of HTSS consumers, shall clarify the position in the present matter.
16. Learned Counsel for the Respondent further submitted that the observations made by the Hon'ble High Court of Jharkhand in the case of M/s Laxmi Business and Cement Company Pvt. Ltd. have no bearing on the present case as M/s Laxmi Business and Cement P. Ltd. is a consumer of HTS tariff of Jharkhand Bijli Vitran Nigam Ltd.
17. Learned Counsel of the Respondent further submitted that only after adjudication of the sub-judice batch matters pending before the Hon'ble Supreme Court related to KVA charge of HTS consumers can clarify the issue raised by the petitioner.

Commission's Observation and findings

18. The Commission has considered the submission made by the parties and perused the materials/information's available on records.
19. The Commission has also considered to the judgement of VUSNF, Ranchi in Case No.04/08 dated 22/04/2008, relevant extract is referred below:

“.....

7.0 In the light of discussion as made above following the ratio of judgement in the aforesaid cases of Hon'ble Ombudsman, we are of the view that the

JSEB is not entitled to bill the HTSS consumers on the basis of 100% of the contract demand as kVA charge in monthly energy bills even if it is recorded less than the contract demand in the meter. In the light of tariff order 2003-04 issued by JSERC effective from 01.01. 2004. As such the impugned bills issued to the petitioner for the period from October 2005 to March 2008 in which the KVA charges have been raised by the respondents on the basis of 100% of the contract demand are therefore quashed. The respondents are directed henceforth to issue the monthly energy bills in future also to the petitioner on the basis of actual KVA recorded in the meter in each month as maximum demand. Further the Board shall also adjust the excess money realized from the petitioner in the subsequent bills with interest as per supply code regulations of JSERC. In the light of above directions, the respondents shall issue revised bills to the petitioner on the basis of actual maxm. demand KVA recorded in the meter in each month from October 2005 to March 2008 within a period of one month from the receipt of this order. Further, no coercive action shall be taken against the petitioner by respondents till the bill is revised as per direction given above.

Accordingly, the petition is allowed and disposed of in the light of above directions.

.....”

20. The Commission has also referred to the judgement of Electricity Ombudsman, Ranchi passed in Case no.EOJ/17/2008 dated 30th August 2008 of the Petitioner wherein the Learned Ombudsman had upheld the judgement/order of VUSNF dated 22.04.2008. The relevant extract from the order is referred below:

“.....

In the present appeal, the same argument has been advanced by the Learned lawyer of JSEB which have already been answered in other cases decided by this Forum. I do not find any merit in this appeal and is liable to be dismissed. In the result, the judgement/order of the VUSNF dated 22.04.2008 is upheld and this appeal is dismissed” ...

21. The Commission has taken a serious note on the Respondent's non-compliance with the judgment of the VUSNF and the Ombudsman, and submitting mere reason for non-complying with the orders/direction stating that similar cases pertaining to kVA charges is pending for adjudication before the Hon'ble Supreme Court is not justified. Noting that neither of the orders issued by these institutions has been challenged nor has any stay order been issued by any higher judicial authority.
22. In the above context, the Commission has also observed a serious disregard by the Respondent for the non-compliance of the order passed by the VUSNF and Electricity Ombudsman. The Commission has referred to the penal provisions regarding non-compliance with the orders of the CGRF/Ombudsman, as outlined in Clause 26 of the JSERC (Guidelines for

Establishment of Forum for Redressal of Grievances of the Consumers and Electricity Ombudsman) Regulations, 2011, as quoted below:

“Non-compliance of the orders of CGRFs/Ombudsman

The non-compliance of the orders of CGRFs/Ombudsman, as the case may be, shall be deemed to be a violation of these Regulations and will be liable for appropriate action by the Commission under Sections 142, or 146 read with Section 149 of the Electricity Act, 2003.”

In the result it is ordered as below;

ORDER

23. Considering the facts and circumstances of the case, the prayers of the Petitioner are allowed. The Respondent is directed to comply with the orders issued by VUSNF on 22.04.2008 and by the Electricity Ombudsman on 30.08.2008 within 15 days from the issuance of this order failing which appropriate penal action may be initiated against the respondent.
24. The Petition stands disposed off, with the aforesaid directions.

Sd/-
Member(T)

Sd/-
Member(L)