

JHARKHAND STATE ELECTRICITY REGULATORY COMMISSION  
RANCHI  
(Case No.23/2007-08)

**QUORUM**

Shri Mukhtiar Singh, Chairperson  
Shri P. C. Verma, Member.

IN THE MATTER OF

An application for setting aside the letter No. 2103 dated 14.08.2007 in terms of which the respondent No. 2 has approved the request of respondent No.5 for grant of electrical connection from the NIPL feeder and to disconnect the electrical connection of the respondent No.5 from the NIPL feeder and to maintain uninterrupted power supply to the petitioner's unit.

AND

IN THE MATTER OF

M/s Nilachal Iron & Power Ltd.....PETITIONER.

Vrs.

Jharkhand State Electricity Board & Others.....RESPONDENT.

**ORDER**

**(26.07.2008)**

The instant petition is filed by the petitioner for setting aside letter No. 2103 dated 14.08.2007 in terms of which the G.M.-Cum- Chief Engineer, (of Jharkhand State Electricity Board) Singhbhum Area, Jamshedpur has approved the request of respondent No.5 M/s Sri Om Metal Ltd for grant of electrical connection from the NIPL feeder and to disconnect the electrical connection of the Respondent No. 5 from the NIPL feeder and to maintain uninterrupted power supply to the petitioner's unit (industrial).

The case, in brief, is that the petitioner M/s Nilachal Iron & Power Ltd applied to the respondent No.1 Jharkhand State Electricity Board, hereinafter called JSEB for brevity, for electric connection to its Sponge Iron Plant at Ratanpur (district of Saraikela-kharsawan), for electrical supply at 33KV (HT) Volt in the year 2003. There being no 33KV (HT) line available near the Sponge Iron Plant of the petitioner, the respondent No. 1 JSEB intimated the petitioner that 33 KV (HT) line will have to be constructed from the Maniqui Grid of JSEB to the petitioner's unit at the cost of the petitioner for providing electricity supply as applied for. Accordingly the 33KV (HT) line from Maniqui Grid to the plant of the petitioner is constructed at the cost of the petitioner and the petitioner is provided with the electrical connection in the year 2005 and is availing electricity at 33 KV Volt through this 33KV (HT) line. The

respondent No.2, G.M.-Cum-Chief Engineer (of JSEB), Singhbhum Area, Jamshedpur vide his letter No. 2103 dated 14.08.2007 has approved the request of respondent No. 5 M/s Shri Om Metal Ltd for grant of electrical connection to him (respondent No.5) from the NIPL feeder i.e. 33KV (HT) line from Maniqui Grid to the petitioner's unit constructed at his cost and accordingly respondent No. 5 is connected with the said 33KV (HT) line and is availing electricity through the said 33KV (HT) line i.e NIPL feeder. The case of the petitioner is that due to grant of electricity-connection/electricity-supply to the respondent No. 5 from the said 33KV (HT) line (feeder); the electricity supply to the petitioner's unit has been adversely affected and therefore the concerned respondents be directed forthwith to disconnect the electrical-connection/electricity-supply given to respondent No. 5 from the said independent/dedicated 33KV (HT) line (feeder) of the petitioner and to direct the respondent JSEB to maintain uninterrupted power supply to the petitioner's unit.

Notices were issued to the respondent and case was fixed for hearing on 05.04.2008. On that day Shri M.S. Mittal and Sri PAS Pati, Advocates appeared on behalf of the petitioner and Shri Rajesh Shankar and Shri Abhay Prakash, Advocates appeared on behalf of the respondent JSEB. The Petitioner submitted that the notice should be issued to the respondent No. 5 M/s Om Metal Ltd also and accordingly it was ordered to issue notice to the respondent No.5 and put up the matter for hearing on 02.05.2008. On 02.05.2008 Shri PAS Pati advocate appeared on behalf of the petitioner and Shri A.K.Mishra, Nodal Officer appeared on behalf of the JSEB. The service report of the notice issued to the respondent No.5 was not received and also the learned counsel for the petitioner requested for time and accordingly the case was adjourned to 17.05.2008 for service report and reply if any from the respondent No.5. On 17.05.2008 Shri S.Laheri appeared on behalf of the petitioner and none appeared on behalf of the respondent JSEB. The service report of the notice issued to the respondent No.5 was not received and also representative of the petitioner requested for time and accordingly the case was adjourned to 21.05.2008 for service and reply if any from the respondent No.5. On 21.05.2008 Sri M.S. Mittal and PAS Pati Advocates appeared on behalf of the petitioner and Shri Rajesh Shankar and Shri Abhay Prakash appeared on behalf of the respondent of the JSEB. The learned counsel for the petitioner filed petition/rejoinder on behalf of the petitioner raising preliminary objection to the hearing of the case in view of the fact that quorum as required is not complete in terms of the provisions contained in Clause 12 of "Conduct of the Business Regulation" of

the Commission. After hearing both the parties it was agreed that the issue raised about quorum will be decided along with the case and as such the rejoinder be kept on record. It was further submitted that the report for the notice issued to the respondent No.5 is not received and as such the service cannot be said to be complete. It was ordered that a fresh notice by the registered post with AD be issued to the respondent No.5 because the former notice was issued through courier and the case was fixed for hearing on 07.06.2008 awaiting service report and reply if any from the respondent No.5. On 07.06.2008 Shri P.A.S.Pati Advocate appeared on behalf of the petitioner and Shri Rajesh Shankar and Shri Abhay Prakash, Advocates appeared on behalf of the respondent JSEB. The service report of the notice issued to respondent No.5 was received but none appeared on behalf of the respondent No.5.

A counter affidavit was filed by the respondent JSEB raising preliminary objection that the petition filed by the petitioner is not maintainable before the Commission as the dispute raised by the petitioner does not come under the purview of Section 9 of the Electricity Act, 2003 and accordingly the present petition is liable to be dismissed. The learned counsel for the respondent JSEB further submitted that the preliminary issue of the jurisdiction may be decided first before proceeding with the matter. Upon this, the learned counsel for the petitioner submitted that since the objection has been raised for the first time and the counter affidavit on behalf of the respondent JSEB has been filed only today, he needs two weeks time to seek instruction and file reply. Accordingly the counter affidavit of the respondent JSEB is kept on record and the request made by the learned counsel for the petitioner is allowed, the case is fixed for hearing on 21.06.2008. On 21.06.2008 Shri Vibhas Sinha, Advocate appeared on behalf of the petitioner and Shri Rajesh Shankar and Shri Abhay Prakash, Advocates appeared on behalf of the respondent JSEB and Shri Vijay Kumar Gupta, Advocate appeared on behalf of the respondent No.5. The learned counsel for the respondent JSEB again submitted that his preliminary objection that the case is not maintainable on the point of jurisdiction may be decided first before proceeding further in the matter. The learned counsel for the petitioner submitted that since his Senior Advocate in this case is out of station due to some unavoidable reasons, at least two weeks time to file reply to the rejoinder filed by the respondent JSEB on the point of the jurisdiction may be allowed. Allowing the request of time of the learned counsel for the petitioner the case was adjourned for hearing for 19.07.2008 on the issue of maintainability of the petition.

On 19.07.2008 Shri M.S. Mittal and Shri PAS Pati advocates appeared on behalf of the petitioner and Shri Rajesh Shankar and Shri Abhaya Prakash advocates appeared on behalf of the respondent JSEB.

Heard both parties.

Learned counsel for the petitioner Shri M.S. Mittal, at the out set, submitted that he is withdrawing his earlier objection filed about quorum since Chairman has joined in the Commission in addition to existing Member (Tech). The learned counsel for the petitioner, Shri M.S. Mittal, on the other hand, through his written submission and pleadings contended that the petitioner has filed the instant petition for adjudication of the grievance against the respondent licensee JSEB under Section 9 of the Electricity Act, 2003 under the direction of the Hon'ble High Court, Ranchi and as such it should be heard and decided by the Commission. The learned counsel for the petitioner further submitted that the petitioner has also come for the redressal of his grievance against the respondent licensee JSEB under the provisions of the Electricity Act, 2003. The learned counsel for the petitioner further pleaded the petitioner has grievances against the respondent licensee JSEB and redressal of grievances should be done by some forum. The learned counsel for the petitioner further pleaded that the other forums like Consumer Grievances Redressal Forum under the Electricity Act, 2003 adjudicated upon only the billing dispute of the consumer and as such they cannot adjudicate upon in this case and therefore the petitioner has filed the instant petition before the Commission for adjudication.

The learned counsel for the respondent JSEB Shri Rajesh Shankar through his written submission and pleadings contended that the petition cannot be proceeded with and the petitioner's grievances against the respondent JSEB cannot be adjudicated upon by the Commission under Section 9 of the Electricity Act, 2003 as the said Section 9 of the Act relates clearly to Captive Generating Plant whereas the petitioner M/s Nilachal Iron & Power Ltd is a consumer of the respondent licensee JSEB and not a Captive Generating Plant. The learned counsel for the respondent JSEB further pleaded that the issue in question being the grievances of an individual consumer i.e. the petitioner against the respondent licensee JSEB cannot be adjudicated upon by the Commission as the Commission's adjudicatory function is limited to the adjudication of dispute between the licensee and generating company only as clearly provided in Section 86 (1)(f) of the Electricity Act, 2003. Learned counsel for the

respondent JSEB further pleaded that there are forums under Electricity Act, 2003 to adjudicate upon the grievances of the individual consumers against the licensee. The learned counsel for the respondent JSEB further cited judgments of the Hon'ble Supreme Court in Civil Appeal No. 2846 of 2006 and Civil Appeal No.3551 of 2006 and submitted that the Hon'ble Supreme Court has clearly held that the grievances of individual consumers against the licensee cannot be adjudicated upon by the Commission. Learned counsel of the respondent JSEB further submitted that it is misconceived that the petitioner came for the adjudication of the grievances under Section 9 of the Act under the direction of the Hon'ble High Court. The learned counsel of the respondent JSEB further added that as a matter of fact the case was withdrawn by the petitioner from the Hon'ble High Court.

As far as the direction of the Hon'ble High Court is concerned the order of the Hon'ble High Court under reference is quoted below:-

“2/25.01.2008

After some argument, Mr. M.S. Mittal, learned counsel, appearing on behalf of the petitioner seeks permission to withdraw this writ petition in order to move before the statutory forum for the purpose of adjudication of the controversies raised in this writ petition in terms of Section 9 of the Electricity Act.

Permission is accorded. Accordingly, this writ petition is dismissed, as withdrawn.”

It is clear from the aforesaid order of the Hon'ble High Court dated 25.01.2008 that the petitioner has withdrawn the said petition WP (C) No. 6593 of 2007 praying before the Hon'ble High Court that the petitioner wants to move the matter before the statutory forum for the purpose of adjudication of his grievance in terms of Section 9 of the Electricity Act which was accordingly permitted by the Hon'ble High Court and accordingly the writ petition was dismissed as withdrawn. Moreover in the aforesaid order of the Hon'ble High Court no where there is any direction to or mention of Jharkhand State Electricity Regulatory Commission. The provisions of Section 9 of the Electricity Act, 2003 specifically relates to the Captive Generating Plant and the instant case being in the nature of the grievance of an individual consumer i.e. the petitioner against the respondent licensee JSEB; we agree with the learned counsel for the respondent JSEB that Section 9 of the Act has no applicability in the matter. Therefore we find that the contention of the petitioner that he has filed the instant petition before the Commission for adjudication of grievances for the petitioner against the respondent

licensee JSEB as per the directions of the Hon'ble High Court is not acceptable. We further agree to the contention of the respondent JSEB that the Commission's adjudicatory function is limited to the adjudication of dispute between the licensee and generating company under the provisions of the Section 86(1)(f) of the Act and as such we hold that the Commission cannot adjudicate upon the grievances of individual consumers against the licensee as clearly held by the Hon'ble Supreme Court in its order in Civil Appeal No. 2846 of 2006 the relevant Para 13 of which (the order) is quoted below for ready reference.

Quote:

“ 13. It may be noted from a perusal of section 86(1)(f) of the Act that the State Commission has only power to adjudicate upon disputes between licensees and generating companies. It follows that the Commission cannot adjudicate disputes relating to grievances of individual consumers. The adjudicatory function of the Commission is thus limited to the matter prescribed in Section 86(1)(f).”

Unquote:

Nonetheless we find that the contention of the petitioner that the grievances of the petitioner consumer against the respondent licensee JSEB should be adjudicated upon and redressed by some forum is in place and needs to be addressed. There is Consumer Grievances Redressal Forum constituted under Section 42 (5) of The Electricity Act, 2003 for redressal of grievances of consumers against the respondent licensee JSEB and the forum is competent to take up the grievances of the consumers like the instant petition as per the provisions of Clause 8 of “The Guide Lines For Establishment Of Forum For Redressal Of Grievances Of The Consumers And Electricity Ombudsman” read with Section 42(5) of the Act. We therefore hold that the contention of the petitioner to the extent that the Consumer Grievance Redressal Forum adjudicates upon billing disputes of the consumers only is not correct. In view of the above the petition of the petitioner is not maintainable in this Commission and hence rejected.

Sd/-  
(P.C.Verma)  
Member (Tech)

Sd/-  
(Mukhtiar Singh)  
Chairperson