

Jharkhand State Electricity Regulatory Commission, Ranchi

Case No. 10/2007-08

Shri P.C.Verma, Member

IN THE MATTER OF

Non-providing of electric connection to the residents of Housing Co-operative colony, Bokaro Steel Plant, by the distribution licensee SAIL/Bokaro Steel Plant

AND

IN THE MATTER OF

Rajeshwar Pandey S/o Late Sita Ram Pandey, Resident of Plot No. 407, Housing Co-operative colony, Bokaro Steel City..... **Petitioner**

Vrs.

Electricity Distribution Licensee SAIL/Bokaro Steel Plant (BSP) & Others..... **Respondent**

For the petitioner - (1) Shri Rajeshwar Pandey,
(2) Shri Vyas Ojha.

For the Respondents- (1) Shri Rajeev Ranjan, Advocate.
(2) Shri Abhay Kumar Mishra, Advocate
(3) Shri Aswani Bhalla, Sr. Manager (Law), SAIL BSP

ORDER
(27.05.2008)

The instant petition/rejoinder is filed by the petitioner to start contempt proceeding and take appropriate action against the respondent electricity distribution Licensee SAIL/Bokaro Steel Plant (BSP) for not complying with the orders of the Commission dated 04.12.2007 wherein it has been ordered that the licensee SAIL/BSP shall give electric connections individually to all the applicants residing in the Housing Co-operative colony of Bokaro Steel Plant till 31st Dec, 2007, failing which the licensee shall be liable to pay compensation as per Regulations of the Commission i.e. Rs. 50 (Rupees fifty) only per day per applicant from the date of security deposit till the date they are provided electric connection.

The case in brief is that the residents of the Bokaro Steel Employees Co-operative House Construction Society Ltd, herein after called Housing Co-operative for brevity, got allotted land from SAIL/Bokaro Steel Plant for establishing Housing Co-operative colony on mutually agreed terms and conditions in the year 1968 and 1969 and according to which they are getting bulk supply of electricity at 11 KV at the rate fixed by SAIL/BSP (at present @ Rs. 3.40 per unit) which is paid jointly to licensee for the entire colony by the Housing Co-operative and the distribution of electricity within the Housing Co-operative colony including installation of lines and Sub-stations for the same and connection to individual premises and its maintenance is being done by the Housing Co-operative itself. Since after enactment of the Electricity Act, 2003 distribution and supply of electricity is done in accordance with the Act only by a person who has been granted licensee for this purpose by the Commission and accordingly SAIL/BSP applied for and was granted license for distribution and supply of electricity in its area with effect from 28.07.2004 and as such SAIL/Bokaro Steel Plant (BSP) is an electricity distribution licensee under the provisions of the Act. Under the provisions of the Act, it is one of the main and basic obligations of the licensee to provide electricity supply (individually) to any premises in its area on application by the owner or occupier of the premises at the tariff fixed by the Commission and accordingly the residents of the Housing Co-operative colony of Bokaro Steel Plant are desirous of taking electricity supply from the licensee SAIL/BSP directly and individually and pay the electricity charges at the domestic tariff fixed by the Commission. Accordingly, firstly Sri Rajeshwar Pandey, Resident of Plot No. 407, Housing Co-operative colony, Bokaro Steel Plant, applied for individual domestic electric connection on 14.05.2007 to the licensee. Since the licensee was not willing to provide individual electric connection to the applicant petitioner Sri Rajeswar Pandey, he filed petition before the Commission praying for directing the licensee to provide individual connection to the applicant residents of the Housing Co-operative colony which was allowed accordingly by the Commission and the licensee was directed to provide individual electric connection to the petitioner applicant vide Commission order dated 17.08.2007. After lapse of about three months from the order of the Commission dated 17.08.2007 another petitioner was filed by the petitioner Shri Rajeshwar Pandey that ever after lapse of more than three months of the order of the Commission licensee has not provided individual domestic connection to his house and to the house of other more than two hundred applicants of the Housing Co-operative colony who have applied for individual electric

connection in the mean time and the licensee is not willing to provide individual connection to the applicants. On perusal of the records, the Commission was satisfied that the licensee has failed to provide electric connection individually to the applicants of the Housing Co-operative colony within stipulated time as per provisions of the Act and Regulations framed thereunder and accordingly vide its order dated 04.12.2007 the Commission directed the licensee SAIL /BSP to provide electric connection to all the applicants of the Housing Co-operative colony of Bokaro Steel Plant within 31st Dec, 2007, failing which the licensee SAIL/BSP shall be liable to pay compensation to the applicants at the rate of Rs. 50 (Rupees fifty) only per applicant per day from the date of security deposit till the date of providing electric connection to the applicants as per the Regulations of the Commission . After lapse of about further three months from the this order of the Commission dated 04.12.2007 the petitioner filed the instant petition stating therein that even after clear order of the Commission to provide individual electric connection by specified date ie 31st Dec, 2007, the licensee has not provided the connection to him and other applicants of the Housing Co-operative colony even after expiry of about two months of the date specified by the Commission to provide individual electric connection and that the licensee SAIL/BSP is not willing to provide them individual electric connections and praying for starting contempt proceedings and taking appropriate action against the respondent licensee and to direct the licensee to provide individual electric connection to their houses.

The respondent licensee SAIL/BSP was issued show-cause notice dated 06.03.2008 from the Commission to be replied on or before 24.03.2008. The licensee SAIL/BSP submitted reply to the show cause vide their reply dated 21.03.2008 in which they submitted that contempt proceedings can be initiated by the Hon'ble High Court only and that the respondent licensee has initiated several steps for giving electricity supply to the petitioner Sri Rajeshwar Pandey. The Commission after considering the fact that contempt proceedings can not be initiated by the Commission issued another show-cause notice dated 02.04.2008 as to why action should not be taken against the respondent licensee under the Section 142 of the Act for disobedience of the orders of the Commission and for contraventions of the provisions of the Act, to be replied on or before 11.04.2008 and accordingly hearing in the matter was fixed on 11.04.2008. Since P.O. was out of station on 11.04.2008, the hearing was adjourned for 15.04.2008. Rajiv Ranjan, Advocate, appeared on behalf of the respondent licensee SAIL/BSP on 15.04.2008 and informed that they have filed Review petition before the Commission on 09.04.2008 against the order of

the Commission dated 04.12.2007, and further submitted that the petitioner, Sri Rajeshwar Pandey is not supplying requisite details of load and purpose of electricity supply due to which it is not being possible for the respondent licensee to provide electric connection. The Review petition filed by the respondent licensee was clubbed for hearing with the instant petition being similar in nature and hearing was adjourned as part heard for hearing on 25.04.2008. P.O. being out of station on 25.04.2008 hearing could not be done on 25.04.2008 and was adjourned for hearing on 02.05.2008. Shri Vyas Ojha appeared on behalf of the petitioner and Shri Abhaya Kumar Mishra, Shri Vishal Kumar Trivedi, Advocates and Shri Ashwani Bhalla, Sr. Manager (Law) appeared on behalf of the respondent licensee on 02.05.2008. The Counsel of the respondent licensee SAIL/BSP prayed for time because their conducting advocate was not present because of some unavoidable personal reasons and accordingly at their request the hearing was adjourned for 12.05.2008. On 12.05.2008 Shri Vyas Ojha and Shri Rajeswar Pandey appeared on behalf of the petitioner and Shri Abhaya Kumar Mishra, Advocate, and Shri Ashwani Bhalla Sr. Manager (law) appeared on behalf of the respondent licensee SAIL/BSP. Heard both parties and they also made written submission.

Petitioner Shri Rajeshwar Pandey through his written submission and pleadings contended that the respondent licensee has not provided him and other 320 applicants of the Housing Co-operative colony with individual electric connection even after lapse of more than five months of their making application to the licensee in prescribed application form and even after lapse of about four months of the date specified by the Commission i.e 31st Dec, 2007, within which every applicant of the Housing Co-operative colony was to be provided with individual electric connection as per clear order of the Commission dated 04.12.2007. He further contended that though the respondent licensee has clearly admitted vide reply given by the Public Information Officer of the licensee SAIL/BSP to Sri Satyavrat Singh, a resident of the Housing Co-operative, under Right to Information Act, 2005, that they have received 317 numbers of application but they are sitting tight over the matter and has absolutely taken no action towards providing them individual electric connections except in case of only one applicant i.e. the petitioner Sri Rajeswhar Pandey in which case they have taken uncalled for and superfluous action just to avoid and delay the matter and they have not taken any action whatsoever in case of other three hundred and twenty (320) applicants. The petitioner further submitted that the respondent licensee, through their different officers, after lapse of many

months of the submission of his application for individual electric connection on 14.05.2007, started making uncalled for communication to him demanding him to see them in their office for settling terms and conditions and asking for details regarding load and purpose of supply again and again. However all these communications of the licensee were duly and promptly replied by the petitioner but even then nothing has been done by the licensee towards giving him the individual electric connection as applied for. He further pleaded that they are already getting electric supply in bulk supply at 11 KV Volt and internal distribution and supply to individual residence of the Housing Co-operative colony is being undertaken by the Co-operative itself and the charges of electricity are paid by the Co-operative for bulk supply at a rate determined by the respondent licensee SAIL/BSP itself (presently at the rate Rs. 3.40 paise per unit), which is much more than the tariff fixed by the Commission for domestic supply and thus the residents of the Housing Co-operative colony are put to heavy monetary loss by every passing day. He further contended that this is being done as per the previous agreement of the Housing Co-operative with the licensee SAIL/BSP agreed way back in the year 1968-1969. The petitioner submitted that the aforesaid previous agreement entered in the year 1968-1969 is not relevant in the present case and circumstances as the residents of Housing Co-operative colony have applied for getting electricity supply individually from the electricity distribution licensee SAIL/BSP under the provisions of The Electricity Act, 2003. The petitioner further pleaded that the respondent licensee is asking for the piece of land within the premises of the petitioner for establishing electrical sub-station for providing electric connection to the petitioner which is not required so for providing electric connection and is a mere pretext for not providing electric connection to him. The petitioner further contended that they are already getting bulk supply of electricity from the respondent licensee at 11KV Volt and internal distribution within Housing Co-operative colony is being done through the electrical installation (lines and sub-stations) installed and maintained by the Co-operative itself and the Co-operative, in the meeting its Directors, has taken a decision to hand over the electrical distribution system of the Housing Co-operative to the licensee SAIL/BSP and the same has been duly communicated to the licensee vide Co-operative Chairman letter dated 04.12.2006 and that the licensee simply needs to take over existing distribution system of the Housing Co-operative and to start billing individually to effect the individual electricity supply to the residents of Housing Co-operative colony. The petitioner argued that, therefore, it is clear beyond any doubt that the licensee SAIL/BSP is not willing to

give individual electric connection to the residents of Housing Co-operative colony and is deliberately disregarding the orders of the Commission and provisions of the Act. The petitioner also submitted that the Revision petition filed by the respondent licensee against the orders of the Commission dated 04.12.2007 is not maintainable at this stage because the same has been filed after much delay and after expiry of the time limit and that too only after a show-cause notice is issued to the respondent.

The respondent licensee SAIL/BSP through its written submission and pleadings, in the first place, prayed for Revision of the order dated 04.12.2007 of the Commission on the ground that in the said order penalty has been imposed for payment of compensation at the rate of Rs. 50 (Rupees fifty) only per day per applicant till the date of providing electric connection for not giving electric connection to the applicants by the date specified by the Commission, under Section 142 of the Act without giving notice to the respondent licensee and without hearing the respondent licensee in the matter as per provisions of the Section 142, and without taking into consideration the fact that the respondent licensee was taking steps for providing electric connection to the petitioner Shri Rajeshwar Pandey. The learned advocate of the respondent licensee further in their submission pleaded that presently there being only one member in the Commission, the quorum for proceeding is not complete because as per the Section 12 of Conduct of Business Regulations 2003, of the Commission, the quorum should be of two members and therefore they prayed that the instant proceeding should be kept in abeyance. The learned Advocate of the respondent licensee further contended that the Housing Co-operative was allotted land by SAIL/ BSP for establishment of the Housing colony on terms and conditions agreed between them way back in the year 1968 and 1969 according to which SAIL/BSP is to give bulk supply of power to the Housing Co-operative colony and Co-operative is to lay and maintain its own electrical installation for distribution and supply of power to its members and that the charges of the bulk supply of power is to be paid by Co-operative to SAIL/ BSP as per the electricity bill raised by SAIL/BSP and that therefore the Housing Co-operative is under contractual obligation to lay electrical installation for providing individual connection to the petitioner or at least the Co-operative or petitioner should provide land to the licensee for establishing sub-station for providing electric connection to the petitioner and that in absence of the above requirements and obligations being fulfilled by the Co-operative or petitioner; the petitioner cannot be given individual electric connection by the respondent licensee. The

respondent licensee, in its written submission, has quoted the observations of the Hon'ble High Court in LP Appeal No. 712 of 2003 in which the Hon'ble High Court has referred to the aforesaid agreement between the Housing Co-operative and SAIL/BSP for allotment of land to the Co-operative and observe that the allotment of land has been done on certain terms and conditions which includes that the Co-operative would be charged on the actual cost basis for water supply, power, sewerage, disposal facility etc if these facilities are asked for and extended to the Co-operative by SAIL/BSP. The learned Advocate of the respondent licensee further contended that the respondent is asking for relevant information from the petitioner and has asked the petitioner to appear before the officers of the licensee to settle the terms and conditions and that they have asked the petitioner to provide land in the Co-operative colony or in his premises to lay power sub-stations for providing electric connection to the petitioner and that the petitioner or Co-operative is not co-operating with the licensee and that the petitioner has not appeared before the officers of the licensee for settling terms and conditions and has not provided land in his premises for laying sub-stations nor Co-operative has given NOC and therefore it is not being possible for the licensee to give individual electric connection to the petitioner and as such the licensee is not responsible for delay in giving electric connection to the petitioner.

So far as the prayer of respondent licensee SAIL/BSP for Revision/recall of the order of the Commission dated 04.12.2007 is concerned; it is a fact, as contended by the petitioner, that the prayer for Revision has been filed after much delay after expiry of one month time from the date of the order allowed for filling revision as per the Regulations of the Commission and that too it has been filed only after a show-cause notice is served to the respondent licensee for non obedience of the orders of the Commission and no reason whatsoever for the delay has been submitted and as such the prayer of the Revision is time barred. Moreover the ground taken by the respondent licensee for Revision of the order of the Commission dated 04.12.2007 is that in the said order, Commission has ordered that the licensee shall be liable for payment of compensation to the applicants from the date of security deposit till providing of electric connection if they fail to provide the individual connection to the applicants by 31st Dec, 2007; under the provisions of the Section 142 of the Act, without giving notice to and without hearing the respondent licensee as required under this section. This ground of the respondent licensee is entirely misconceived as the said compensation has been ordered, as indicated clearly in the

order itself, under the relevant provisions of the Standard of Performance Regulations, 2005 of the Commission wherein it is interalia provided that if the licensee does not meet the minimum standard of performance with respect to providing electric connection to an applicant within stipulated time after submission of application, the licensee shall be liable to pay compensation at the rate of Rs. 50 (Rupees fifty) only per applicant to the applicants from the date of deposit of security till the date of providing electric connection. The licensee as per the terms and conditions of the license has to abide by the provisions of the Act and provisions of the Regulations of the Commission framed thereunder and as such the licensee is liable to pay the compensation as above even without any expressed and formal order of the Commission. However, the Commission vide its said order dated 04.12.2007, has merely reiterated the aforesaid relevant provisions of the Regulations for clarity and there is no need of giving any notice or hearing in this matter. In view of the above the prayer of the respondent licensee for Revision / recall of the order of the Commission dated 04.12.2007 is rejected. Further it is to make clear that since the licensee has not provided the connection by 31st Dec, 2007 as ordered by the Commission in its order dated 04.12.2007 and has not even issued any demand to the applicants for security deposit which, as per the explicit provisions in Supply Code Regulations, 2005 of the Commission, the licensee has to issue demand notice to the applicants, on the basis of load submitted in the application, within 25 days of the submission of the application which the licensee has not done so; the licensee SAIL/BSP therefore shall pay compensation to the applicants at the rate of Rs. 50 (Rupees fifty) only per applicant per day from 1st January, 2008 till providing of individual electric connection to the applicants as per order dated 04.12.2007 of the Commission.

So far as the objection of the respondent on the ground that quorum of the Commission is not complete is concerned, the case was registered and proceeding was started while there were three Members in the Commission including the Chairperson and in the mean time two members including the Chairperson has superannuated and as such there is presently only one Member Commission. Section 82 (4) of the Act says that the State Commission shall consist of not more than three members i.e. the Commission may consist of only one member. Again as per Section 92(2) of the Act, which says about the proceeding of the Commission, it is clearly provided that “(2) The Chairperson, or if he is unable to attend a meeting of the Appropriate Commission, any other Member nominated by the Chairperson in this behalf and, in the absence of such

nomination or where there is no Chairperson, any member chosen by the members present from amongst themselves, shall preside at the meeting.” i.e. the proceeding shall continue even if there is no Chairperson in the Commission. Further this Section 92(2) of the Act is applicable with respect to who will preside the proceeding in case there are two Members but where there is only one Member as in the present case there arises no question as to who will preside and this Section 92(2) is not applicable in this case. So far as the Section 12 of the Conduct of Business Regulations, 2003 is concerned it says that the quorum shall be of two Members among the three Members and is therefore applicable where there are three Members and is not applicable where there is only one Member in the Commission. In case there is only one member Commission as in the instant case the provisions under the Section 48 and 50 of the Conduct of Business Regulations, 2003 shall be applicable. Under the impending aforesaid circumstances the requirement of quorum of two Members under the Section 12 of the Conduct of Business Regulation, 2003 of the Commission is here by relaxed and it is decided to proceed in the matter with one Member Commission under provisions of the Section 48 and Section 50 of the Conduct of Business Regulations, 2003 and as such the prayer of the respondent licensee to keep the proceeding in abeyance for quorum being not complete is rejected.

As per the provisions of the Section 43 (1) of the Act every distribution licensee shall provide electricity to any premises within its area of supply on application by the owner or occupier of the premises within one month of the receipt of the application provided that where such supply requires extension of lines and sub-stations the distribution licensee shall supply electricity to such premises immediately after such extension or within such period as may be specified by the Commission. Further it has been clearly provided in Section 43(2) that it shall be the duty of the distribution licensee to provide, if required, electricity plant or electric lines for giving electricity supply to the premises as required under Section 43(1) and the licensee has the necessary right of the way by virtue of its distribution license to lay electrical plant and electric lines for making electricity supply under the provisions of the Section 67(1) of the Act and there is explicit provisions in the relevant Supply Code Regulations, 2005 of the Commission that after the receipt of application the licensee shall inspect the premises of the applicant and shall issue the demand for deposit of security and shall carry out the extension work and provide electric connection within stipulated period from the receipt of the application. Moreover in the instant case the Commission has given specific directions vide its order dated 04.12.2007 to provide

individual electric connection to the applicants of the Housing Co-operative colony within 31st Dec, 2007. The aforesaid observation of the Hon'ble High Court in a LPA No.712 of 2003 regarding the contractual obligations of the Housing Co-operative towards SAIL/BSP in terms of the agreement between the Co-operative and SAIL/BSP in the year 1968 and 1969 is not relevant in the instant case as the matter here relates to the supply of electricity to the applicants of Housing Co-operative colony by the electricity distribution licensee of the area i.e. SAIL/BSP under the provisions of The Electricity Act, 2003 as distribution, supply, transmission and use of electricity and matters related and incidental to it has to be undertaken as per the provisions of the Electricity Act, 2003 only. Thus the respondent licensee demanding again and again floor-wise and point-wise details of load and such other details once the applicants have furnished the load of the premises and purpose of electricity supply in prescribed application form and calling the applicants to appear before the licensee's office for settling terms and conditions whereas there has to be a pre-notified terms and conditions for every class of consumer as per the approval and tariff of the Commission and demanding land and/or no-objection from the applicants or Co-operative is redundant, evasive and contravention of the relevant provisions of the Act and Regulations framed there-under as mentioned above.

Admittedly the respondent licensee SAIL/BSP received at least three hundred seventeen (317) number of applications for giving individual connection from the residents of Housing Co-operative much before 31st Dec, 2007, the date specified by the Commission for providing individual electric connection to all the applicants and that the licensee has not taken any action towards providing individual electric connection to them except for one applicant i.e. the petitioner Shri Rajeshwar Pandey in which case they have asked for further details of load floor-wise and point-wise and asked for providing land in this premises for laying sub-station and have asked him to appear in their office for settling terms and conditions. It is further admitted stand of the respondent licensee that it cannot provide individual electric connection to the applicants of the said Housing Co-operative colony unless the Co-operative constructs and lays electrical installation (lines and sub-stations) for distribution of electricity within their Housing Co-operative colony under the contractual obligations as per agreement between the Co-operative and SAIL/BSP way back in the year 1968 and 1969 for allotment of land to the Co-operative by SAIL/BSP or unless at least the applicants or the Co-operative provides land for laying lines and sub-stations. Respondent licensee is charging the Housing Co-operative arbitrary tariff

determined by itself and not charging tariff approved by the Commission putting the applicants of the Housing Co-operating colony to monetary loss by every passing day. As such, therefore, the respondent licensee has deliberately in a blatant way contravened and continues to contravene one of the most basic and main provisions of the Act with respect to the duties and obligations licensee regarding supply of electricity to any person on application in his area of supply i.e. the provisions of Section 43 of the Electricity Act, 2003 and has disobeyed and continues to disobey the orders of the Commission dated 04.12.2007 and therefore the respondent distribution licensee SAIL/Bokaro Steel Plant shall pay under provisions of the Section 142 of The Electricity Act, 2003 a penalty of Rs. 50,000=00 (Rupees Fifty Thousand) only and additional penalty of Rs. 5,000=00 (Rupee Five Thousand) only per day from the date of this order till providing individual electricity supply to all the applicants of the Housing Co-operative colony as per order dated 04.12.2007 of the Commission.

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