

**Jharkhand State Electricity Regulatory Commission
Ranchi**

Case No. 5/2008-09

IN THE MATTER OF

An application for a direction upon the Respondents to enhance the contract demand of the petitioner and to allow the TOD meter benefit in terms of 2000 tariff Schedule.

AND

IN THE MATTER OF:

M/s. Balajee Electrosteels Ltd. PETITIONER.
Through: Shri Rajesh Kumar, Advocate.

Vrs.

Damodar Valley Corporation & Anothers. RESPONDENT.
Through: Shri M.S. Mittal, Sr. Advocate and
Shri Srijit Choudhary, Advocate.

QUORUM:

Mukhtiar Singh, Chairperson.

P.C.Verma, Member (Tech).

ORDER

05.12.2008

The instant petition is filed by the Petitioner M/s Balajee Electrosteels Ltd., a consumer of Damodar Valley Corporation (hereinafter called corporation for brevity), praying for direction upon the respondent Damodar Valley Corporation for enhancing their contract demand from existing 9.2 MVA to 16 MVA as applied for and for revision of its energy bill since July, 2005 on the basis of the TOD (Time Of Day) tariff applicable to it as per tariff schedule.

Notice was issued to the opposite party i.e. respondent corporation and both parties submitted affidavits and counter affidavits. Both parties were heard at length in which Shri Rajesh Kumar, Advocate, legal counsel for the petitioner and Shri M.S. Mittal, Sr. Advocate, Srijit

Choudhary, Advocate, legal counsel on behalf of the respondent corporation made submissions and pleadings.

The case, in brief, is that the petitioner is a HT (High Tension) consumer, with existing contract demand of 12.2 MVA, of the respondent corporation, a deemed distribution licensee in the state of Jharkhand. The petitioner consumer through written submissions and pleadings, has contended that the feeder through which it avails power has been constructed at the cost of the petitioner company as well as another consumer M/s. Super Steel and that the petitioner was drawing power through this feeder at times to the extent of 16 MVA to cater to the requirement of its factory getting ad-hoc supply over and above its contract demand from the respondent distribution licensee corporation till the end of 2007. The respondent corporation has given power supply to a third consumer namely Tulsian Metals Co. from the same feeder which is constructed at the cost of the petitioner consumer and one another consumer M/s Super Steel and from which the two (the petitioner and M/s Super Steel) were drawing power and since then the distribution licensee corporation has discontinued the supply of ad-hoc power over and above its contract demand to let the petition avail 16MVA power to cater to the requirement of their factory as they were availing earlier on the plea that the conductors of the feeder do not have capacity to carry that much power; though the petitioner is entitled to avail 25% more power than its contract demand in off-peak hours as per TOD tariff applicable to it. The petitioner has also contended that the respondent corporation is not enhancing their contract demand from existing 12.2 MVA to 16 MVA to cater to their actual requirement, as applied for, from the existing feeder and the respondent corporation is requiring the petitioner company to get constructed a fresh line (feeder) at its own cost for enhancement of its contract demand to 16 MVA. The petitioner consumer has also contended that the distribution licensee corporation is not allowing the benefits of TOD tariff which it is entitled to under the tariff schedule.

The respondent distribution licensee corporation, at the outset, through written submission and pleadings has contended that there is an arbitration clause in the agreement between the parties according to which any dispute arising between them is referable to an arbitrator and that the Commission has no jurisdiction to entertain this petition. The respondent corporation has further contended that it is not possible to enhance the contract demand of the petitioner from 12.2 MVA to 16 MVA from the existing feeder because the existing feeder is fully loaded and it is not physically feasible to enhance load on this feeder. The respondent corporation, while pleading that the existing feeder through which the petitioner is drawing power though constructed at the cost of the petitioner and one another consumer is the property of the corporation as per the agreement; contended that the petitioner has the liberty to construct a fresh line (feeder) at its own cost as per prevailing practices followed in DVC for enhancement of the contract demand as per its requirement. The respondent corporation has further contended that the enhancement of load of the petitioner from 9.2 MVA to 12.2 MVA was done on the condition that the petitioner would be surrendering the TOD facilities and the petitioner consumer has agreed to act upon the same and hence there is no question of claim of availing TOD facilities by the petitioner.

In our opinion, any subject matter which falls within the purview of the provisions of the Electricity Act, 2003 shall be carried out, dealt with and disposed of in accordance with the respective provisions of the Act; irrespective of anything contained otherwise in any agreement and therefore we entirely disagree to the pleading and contention of respondent distribution licensee corporation that since there is an arbitration clause in the agreement between the respondent corporation and the petitioner according to which any dispute arising between them is referable to an arbitrator, the Commission has no jurisdiction in the matter. However, in view of the facts and circumstances of the case and judgment delivered by the Honourable Supreme Court in Civil Appeal No 2846 of 2006, Maharashtra Electricity Regulatory Commission Vrs Reliance

Energy Ltd & Ors and Civil Appeal No 3551 of 2006, Maharashtra State Electricity Distribution Co. Ltd Vrs. Lloyds Steel Industries Ltd, we hold that the instant petition, being in the nature of a complaint by an individual consumer against the distribution licensee for wrong application of tariff and accordingly wrong energy billing and also for not enhancing their contract demand to cater to their requirement of power from the existing feeder constructed at the cost of the petitioner and one another consumer, is a consumer grievance in terms of the provisions of Sub-Section (5), (6) and (7) of Section 42 of the Electricity Act, 2003 and should be settled by the appropriate forum established under the aforesaid provisions of the Act. Therefore we refer the case to the Consumer Grievances Redressal Forum of the respondent distribution licensee corporation with the direction that the forum will settle the grievances with reasoned order within two (2) months. It is further directed that if the consumer is aggrieved with the decision of the Consumer Grievance Redressal Forum it may make representation to the Ombudsman for redressal and settlement of its grievances. It is incidentally mentioned here that two members of the Consumer Grievances Redressal Forum nominated by the respondent distribution licensee corporation have been approved for appointment on the post by the Commission and one independent member to be nominated by the Commission for appointment is yet to be approved. It is presumed that the Consumer Grievances Redressal Forum of the respondent distribution licensee is functioning as per provisions of Section 42 (5) of the Electricity Act 2003, however if the same is not functional, it is hereby directed that the Consumer Grievances Redressal Forum may be operationalised by the respondent corporation with two members within a week.

(P.C.Verma)
Member (Tech)

(Mukhtiar Singh)
Chairperson