

**JHARKHAND STATE ELECTRICITY REGULATORY COMMISSION  
RANCHI**

Case No. **21 & 23** of **2010**

Shri **Mukhtiar Singh**, Chairperson  
Shri **T. Munikrishnaiah**, Member (Tech)

Dated: 6<sup>th</sup> October 2010

**ORDER**

IN THE MATTER OF

Case No. **21** of **2010**

M/s Dhanbad Zila Flour Mill Association ..... Petitioner

Versus

Jharkhand State Electricity Board & Ors. .... Respondents

Counsel for the Petitioner: Shri Pankaj Kumar Burnwal, Advocate  
Shri Digvijay Narayan Singh, Advocate

Counsel for the Respondents: Shri Rajesh Shankar, Advocate with  
Shri S.C. Mishra, Chief Engineer, JSEB  
Shri Subhash Kr. Singh, EEE, JSEB  
Shri Ram Sewak Singh, AEE, JSEB

Counsel for the Commission: Shri Sudarshan Shrivastava, Advocate

AND

IN THE MATTER OF

Case No. **23** of **2010**

M/s Legal Watch, a NGO ..... Petitioner

Versus

Jharkhand State Electricity Board & Ors. .... Respondents

Counsel for the Petitioner: Shri Ashutosh Anand, Advocate  
Shri P.K. Sahu, Advocate

Counsel for the Respondents: Shri Rajesh Shankar, Advocate with  
Shri S.C. Mishra, Chief Engr, JSEB

Counsel for the Commission: Shri Sudarshan Shrivastava, Advocate

1. M/s Dhanbad Zila Flour Mill Association and M/s Legal Watch- the two petitioners-have filed their respective petitions arising out of notice (Annexure-A) published by the respondent-licensee-JSEB in newspapers on 6.7.2010 informing the new consumers about the security amounts to be deposited by various categories of consumers. Both the petitioners have pointed out that though the notice, in question, is for new consumers, but when the officials of the respondent-licensee-JSEB were contacted, it came out to be “Self Load Disclosure Scheme” and payment of security amount at the revised rate on the basis of load including the additional load disclosed by the consumers. The petitioners have alleged that the security amount being collected by the respondent-licensee-JSEB is not in consonance with the Rules and Regulations and as such the action of the respondent-licensee-JSEB is illegal. The respondent-licensee-JSEB has contested these two petitions and has denied the allegations levelled by the petitioners.

2. The parties are heard at length.

3. Based on the averments and the pleadings of the petitioners as well as the respondent-licensee-JSEB, the following questions emerged for determination in this proceeding:-

- i) Whether the petitioners have any locus-standi to file the petitions, under consideration, before this Commission?
- ii) Whether this Commission has the jurisdiction to hear the aforesaid two petitions? and
- iii) Whether the procedure adopted by the respondent-licensee-JSEB for “Self Load Disclosure Scheme” and pursuant thereto the collection of security amount is as per the procedure laid down by law?

4. Coming to the first question – whether the petitioners have any locus-standi to raise the issue in question before this Commission is concerned, - the learned counsels for the petitioners have argued that they are fully empowered to do so by law because they are raising vital issues of consumers concern. The learned counsels referred the provisions of Clause 16 of JSERC (Conduct of Business) Regulations 2003. They have also referred to Clause 45 of the said Regulations which speaks about the authority of the Commission to permit any registered Association/Forum or other bodies, corporate or any group of consumers to participate in any proceedings before the Commission. On the other hand the learned counsel for the respondent-licensee-JSEB argued that the said petitioners are not the consumers and as such they are not the interested persons and have no locus-standi to file these petitions before this Commission.

5. We feel that for proper appreciation of the aforesaid arguments, reproduction of the relevant provision of the JSERC (Conduct of Business) Regulations, 2003 is necessary, which runs as follows:

**Clause 16: Initiation of proceedings-**

*(1) The Commission may initiate any proceedings suo-motu or on a petition filed by any affected or interested person.*

**Clause 45: Recognition for Consumer Associations**

*(1) It shall be open to the Commission to permit any Registered Association/Forum or other bodies, corporate or any group of consumers to participate in any proceedings before the Commission.*

6. The provision of Clause 16 (1) of the JSERC (Conduct of Business) Regulations is comprehensive in nature. Not only the

Commission can initiate proceedings on a petition filed by the any affected or interested person rather it can do so suo-motu also. It means any one who is interested with the affairs of the electricity business and consumers' interest can file the petition before this Commission. Not only this, the petitioner-M/s Dhanbad Zila Flour Mill Association has been recognized by this Commission under Clause 45 of the JSERC (Conduct of Business) Regulations, 2003. About another petitioner-M/s Legal Watch, it is a registered body and the Commission has the power to permit such bodies to take up the consumers' interest. The preamble of the Electricity Act 2003 has to be kept in mind while enforcing the various provisions of the Act. The preamble of the Electricity Act, 2003 is reproduced below:

*“An Act to consolidate the laws relating to generation, transmission, distribution, trading and use of electricity and generally for taking measures conducive to development of electricity industry, promoting competition therein, protecting interest of consumers and supply of electricity to all areas, rationalization of electricity tariff, ensuring transparent policies regarding subsidies, promotion of efficient and environmentally benign policies, constitution of Central Electricity Authority, Regulatory Commissions and establishment of Appellate Tribunal and for matters connected therewith or incidental thereto.”*

7. Protecting the interest of the consumers is one of the basic features of the Electricity Act, 2003. The consumers' interest is not well represented in India, in general, and in Jharkhand, in particular because there are not many bodies to take up such issues. In such a situation, any one who comes forward to take up the cause of the consumers needs to be encouraged to achieve the objectives of the Act.

8. In view of the above, we feel that both the petitioners are legally entitled to raise issues of consumers' interest.

9. Coming to the second question – whether the Commission has jurisdiction to entertain the petitions in question- the learned counsel for the respondent-licensee-JSEB argued that there is a well laid down mechanism for redressal of grievances of the consumers under Section 42(5)(6)(7) of the Electricity Act 2003 and as such this Commission is debarred from exercising its jurisdiction on consumers' grievances. On the other hand, the learned counsels for the petitioners and the learned counsel for the Commission argued that this Commission has full power under law to entertain and adjudicate the petitions in question. They also referred to the judgment of the Hon'ble Supreme Court delivered in Civil Appeal No. 2846 of 2006 (Maharashtra Electricity Regulatory Commission Vrs Reliance Energy Limited and others) and Civil Appeal No. 3551 of 2006 (Maharashtra State Electricity Distribution Company Ltd. Vrs. Lloyds Steel Industries Limited) reported in (2007) 8 SCC 381 wherein it has been held that the State Commission has power to issue general direction to licensees that they should abide by conditions of the license issued to them and charge only as per the tariff fixed under the Electricity Act, 2003 so that the public at large should not be harassed. They also referred to the judgment dated 30.3.2009 of Hon'ble Appellate Tribunal for Electricity passed in Appeal No. 180 of 2008 (BSES Rajdhani Power Ltd. Vrs. Delhi Electricity Regulatory Commission & another) reported in 2009 ELR (APTEL) 0352 wherein the Hon'ble Tribunal has followed the judgement of the Hon'ble Supreme Court referred to above. The learned counsels also referred to the provisions of Clause 16 of the JSERC (Conduct of Business)

Regulations, 2003 according to which the Commission is empowered to hold any proceedings as it considers appropriate in discharge of its functions under the Act. Section 86(1)(k) of the Electricity Act, 2003 was also invoked to support that this Commission has jurisdiction to entertain the petitions in question.

10. True, there is a well laid down mechanism under Section 42 of the Electricity Act, 2003 for redressal of grievances of the consumers but does that mean that the Commission do not have any powers to enforce the provisions of law and its directions and orders.

11. This issue has been settled by the Hon'ble Supreme Court in the judgement quoted earlier. The relevant paragraphs of the said judgment are reproduced below:

*"16. A comprehensive reading of all these provisions leaves no manner of doubt that the Commission is empowered with all powers right from granting license and laying down the conditions of license and to frame regulations and to see that the same are properly enforced and also power to enforce the conditions of license under sub-section (6) of Section 128.*

*17. Thus, insofar as the first contention of the learned counsel for the respondents that the Commission has no power is concerned, we are of the view that the same is wrong. In this behalf the provisions of the Electricity Act, 2003 are quite clear and categoric and Section 128(6) empowers the Commission to get the conditions of license enforced. But the question is whether the said power under Section 128(6) has been rightly exercised by the Commission or not. After clearing the first hurdle, that the Commission has power to issue directions, we shall now examine whether the direction given by the Commission in the present case is correct or not.*

*18. When the Commission received a spate of complaints from consumers against its licensees/distribution companies that they are arbitrarily issuing supplementary/amended bills and charging excess amounts for supply of electricity, it felt persuaded to invoke its general power to supervise the licensees/distribution companies and in that connection issued notice dated 3.8.2004. There can be no manner of doubt that the Commission has full power to pull up any of its licensee or distribution company to see that the Rules and Regulations laid down by the Commission are properly complied with. After all, it is the duty of the Commission under*

*Sections 45(5), 55(2), 57, 62, 86, 128, 129, 181 and other provisions of the Act to ensure that the public is not harassed.”*

12. The Hon’ble Appellate Tribunal for Electricity in its judgment dated 30.3.2009 passed in Appeal No. 180 of 2008 (BSES Rajdhani Power Ltd. Vrs. DERC & another) reported in 2009 ELR (APTEL) 0352 has also followed the aforesaid judgement of the Hon’ble Supreme Court while deciding the issue whether or not the State Commission is vested with the independent and inherent powers and has held as follows:

*“To find out the answer for this question, it is appropriate to refer to the relevant observations made by the Supreme Court in 2007 8 SCC 381, MSEDC v. Reliance Energy Ltd. And the same is contained in para 18, which is as follows:*

*There can be no manner of doubt that the Commission has full powers to pull up any of its licensee to see that the Rules and Regulations laid down by the Commission are properly complied with. After all, it is the duty of the Commission under Sections 45(5), 52, 5(2), 57, 62, 86, 128, 129, 181 and other provisions of the Act to ensure that the public is not harassed.*

*The above observation would clearly indicate that the Supreme Court endorses the power of the State Commission to pull up the licensee/distribution company and punish them, whenever the Commission finds that there are violations of Rules and Regulations, and licensing conditions framed by the State Commission. It is further mandated by the Supreme Court that it is the duty of the State Commission to take action against the distribution licensees who harass the consumer public, by violating the rules and conditions under the powers conferred under Sections 45, 52, 55, 57, 62, 86, 128, 129 and 181 of the Act. In other words, the Supreme Court gives clear indication about the existence of the independent powers of the State Commission to deal with breach of licensing conditions and Regulations by the distribution licensees to protect the interest of the public.”*

13. From the above it is abundantly clear that this Commission has full powers to entertain the petitions, in question, and dispose them of as per law.

14. The third question relates to the voluntarily load disclosure scheme launched by the respondent-licensee-JSEB and the procedure adopted to collect the security from the consumers. The learned counsels

for the petitioners and the learned counsel for the Commission referred to Section 47 of the Electricity Act, 2003 and Clause 10 of the JSERC (Electricity Supply Code) Regulations, 2005 and argued that the respondent-licensee-JSEB has not followed the procedures laid down in the aforesaid Regulations and as such the procedure adopted by them for collection of security amount is bad in law. The learned counsel for the respondent-licensee-JSEB argued that they have followed the provisions of law including Clause 10 of the JSERC (Electricity Supply Code) Regulations, 2005 and they have worked out the security amount accordingly and there is nothing wrong in their procedure.

15. There is no dispute between the petitioners and the respondent-licensee-JSEB as far as legal provisions as to security amount are concerned. Both the parties relied upon the provisions of Section 47 of the Electricity Act, 2003 and Clause 10 of the JSERC (Electricity Supply Code) Regulations, 2005. Section 47 of the Electricity Act, 2003 provides for collection of security by the licensee. It will be relevant to reproduce the provisions of Section 47 of the Electricity Act, 2003 and Clause 10 of the JSERC (Electricity Supply Code) Regulations, 2005 for proper appreciation of the contentions.

**Section 47 of the Electricity Act, 2003–Power to require security -**

*(1) Subject to the provisions of this section, a distribution licensee may require any person, who requires a supply of electricity in pursuance of section 43, to give him reasonable security, as may be determined by regulations, for the payment to him of all monies which may become due to him –*

*(a) in respect of the electricity supplied to such person; or*

*(b) where any electric line or electrical plant or electric meter is to be provided for supplying electricity to such person, in respect of the provision of such line or plant or meter,*



and if that person fails to give such security, the distribution licensee may, if he thinks fit, refuse to give the supply of electricity or to provide the line or plant or meter for the period during which the failure continues.

(2) Where any person has not given such security as is mentioned in sub-section (1) or the security given by any person has become invalid or insufficient, the distribution licensee may, by notice, require that person, within thirty days after the service of the notice, to give him reasonable security for the payment of all monies which may become due to him in respect of the supply of electricity or provision of such line or plant or meter.

(3) If the person referred to in sub-section (2) fails to give such security, the distribution licensee may, if he thinks fit, discontinue the supply of electricity for the period during which the failure continues.

(4) The distribution licensee shall pay interest equivalent to the bank rate or more, as may be specified by the concerned State Commission, on the security referred to in sub-section (1) and refund such security on the request of the person who gave such security.

(5) A distribution licensee shall not be entitled to require security in pursuance of clause (a) of sub-section (1) if the person requiring the supply is prepared to take the supply through a pre-payment meter.

## **Clause 10 of JSERC (Electricity Supply Code) Regulations, 2005**

### **10. Security Deposit**

10.1 Distribution Licensee may require any person to whom supply or additional supply of electricity has been sanctioned to deposit security amount.

*Provided that a person to whom supply of electricity has been sanctioned through prepayment meter shall not be required to deposit any security amount.*

*Provided further that a consumer who has deposited security amount and subsequently opts and is allowed to receive supply through a prepayment, shall be refunded such security deposit by way of adjustment to the prepayment credit to the account of such consumer from which the value of his future consumption is to be deducted.*

10.2 The amount of security mentioned in Clause 10.1 of these Regulations above shall be equal to the three months average billing amount. For the purpose of determining the average billing under these Regulations, the average of the billing of the consumer for the last twelve months or in case where supply has been given for the shorter period, the average of the billing of such shorter period, shall be calculated.

*Provided that in the case of seasonal consumer, the average of the billing for the season for which supply is provided shall be calculated.*

**Explanation-** "seasonal consumer" means consumer who normally use electricity supply for a purpose which operates for a particular part of the year not exceeding nine (9) months.

10.3 *Where the distribution licensee requires security from a consumer at the time of commencement of service, the amount of such security shall be estimated by distribution licensee based on the tariff, Contract Demand /Sanctioned Load, Load Factor, Diversity Factor, and number of working shifts.*

10.4 *The Distribution Licensee shall recalculate the amount of security based on the Actual billing of the consumer once in each financial year.*

*Where the amount of security deposited by the consumer is more than 110% of such calculated security for the financial year the licensee shall refund the excess amount over the calculated security amount to the consumer by way of adjustment in the minimum possible number of succeeding bills of the consumer.*

*In case where the amount of security deposited by the consumer is less than 90% of the such security calculated for the financial year the licensee shall be entitled to serve notice to the consumer to deposit the amount of shortfall in security from the calculated security amount within 30 days and if the consumer fail to deposit the security amount within due date his service connection may be disconnected.*

10.5 *The Distribution Licensee may adjust and debit any amount which is due or owing from the consumer against the security deposited by him.*

10.6 *The Distribution Licensee shall pay interest on the amount of security deposit by the consumer at a rate prevalent to bank rate of the Reserve Bank of India.*

10.7 *Upon termination of supply, the Distribution licensee after adjusting and debiting any amount due or owing from the consumer against the security deposited by him refund the balance amount of security within 60 days to the person who deposited the security under intimation to the consumer if different from such person. Provided that if the Distribution Licensee fails to make payment of balance amount of security payable to the consumer upon termination of supply within 60 days of termination of supply, the licensee shall pay interest to the consumer for the period of delay over 60 days at a rate 2% higher than the Bank rate.*

16. The aforesaid legal provisions make it abundantly clear that the respondent-licensee-JSEB is empowered to collect sufficient security amount from the consumer. Section 47(1) of the Electricity Act, 2003 also provides that the licensee is empowered to collect sufficient security amount as may be determined by Regulations. In pursuant to Section 47 of the Act, the Electricity Supply Code Regulations have been framed.

The detailed procedure has been laid down in Clause 10 of Chapter-10 of the said Electricity Supply Code Regulations.

17. Now coming to the notice issued by the respondent-licensee-JSEB through the newspapers shows two things – the first sentence of the notice speaks about “new consumers” whereas the second sentence speaks about the calculation of the security amount on three months estimated energy consumption. Clause 10.3 of the aforesaid Electricity Supply Code Regulations is for new consumers only and there is nothing like three months estimated average consumption. Rather it speaks about estimation based on the tariff, contract demand/sanctioned load, load factor, diversity factor and number of working shifts.

18. The three months average applies only to old/existing consumers. The self load disclosure scheme which has been launched by the respondent-licensee-JSEB also applies to the existing consumers. As such the language of the notice itself is not harmonious. From the two petitions and from the Counter Affidavit filed by the respondent-licensee-JSEB, it becomes abundantly clear that both the parties are speaking about the existing consumers and not the new consumers as mentioned in the first sentence of the said notice. The entire issue, as made out by both the parties, relates to the existing consumers and not the new consumers.

19. The procedure for calculation of security amount for the existing consumers is laid down in Clause 10.2 of the JSERC (Electricity Supply Code) Regulations. A perusal of the said clause makes it clear that the security amount shall be three times of the average actual

billings of the consumers for the last 12 months. It means that the consumer-wise calculation has to be made and not the category-wise as has been done by the respondent-licensee-JSEB. This issue is also supported by clause 10.4 of the said Electricity Supply Code Regulations which speaks that distribution licensee shall recalculate the amount of security based on the actual billing of the consumer once in each financial year. So there is no scope for estimation and there is no scope for category-wise fixation of security amount. Moreover, the concept of calculating the security amount has nothing to do with the connected load in cases of the existing consumers as has been done by the respondent-licensee-JSEB. So the procedure for working out the security amount by the respondent-licensee-JSEB is not in consonance with law.

20. It is well known that the respondent-licensee-JSEB has collected money by way of security from the large number of consumers. No doubt it is a voluntary load disclosure scheme and we do appreciate the concern of the respondent-licensee-JSEB for the consumers. But, as said above, the respondent-licensee-JSEB has not followed the procedures as laid down in clause 10 of Chapter 10 of the JSERC (Electricity Supply Code) Regulations, 2005.

21. The question arises as to how the money collected by the respondent-licensee-JSEB as security amount from the existing consumers will be adjusted. The answer to this also is clearly laid down in Clause 10 of the Electricity Supply Code Regulations, 2005 which speaks about the adjustment of security amount. The licensee has just to follow the provisions of Clause 10 of Chapter 10 of the said

Regulations to take steps accordingly to adjust the amount of security collected from the existing consumers.

22. It was also brought to the notice of the Commission that individual notices have been issued to the existing consumers who have declared their load imposing penalty/compensation on them for the excess/additional load. Since it is a voluntary load disclosure scheme, we feel that no coercion/penalty/compensation be charged from the consumers for the excess/additional load.

23. In view of the above, the petitions, under consideration, are disposed of with no cost.

Sd/-  
(T. Munikrishnaiah)  
Member (E)

Sd/-  
(Mukhtiar Singh)  
Chairperson