

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY  
AT NEW DELHI**

**(APPELLATE JURISDICTION)**

**APPEAL NO.57 OF 2016  
AND  
IA NOs.144 & 145 OF 2016**

**Dated: 22<sup>nd</sup> August, 2016.**

**Present: Hon'ble Smt. Justice Ranjana P. Desai, Chairperson  
Hon'ble Mr. I.J. Kapoor, Technical Member.**

**IN THE MATTER OF:**

M/s Jharkhand Bijli Vitran Nigam Ltd )  
(in short "JBVNL") through its Director, )  
Engineering Building )  
HEC, Dhurwa, Ranchi-834004. ) ....Appellant(s)

Versus

1. Sri Ram Steels )  
Having works at Mohanpur, )  
Mahtodih,, P.O. Udnabad, P.S. & )  
District Giridih, )  
through one of its partner Dasrath )  
Ram, )  
Son of Late Sahdeo Ram, R/o )  
Maheshtundi, )  
P.O. Karharbari, P.S. Giridih )  
(Mufassil), )  
District-Giridih(Jharkhand) )

2. Jharkhand State Electricity Regulatory )  
 Commission )  
 Through its Secretary, )  
 Office:2<sup>nd</sup> Floor, Sainik Bhawan, )  
 Main Road, Ranchi P.O.G.P.O.& P.S. )  
 Lower Bazar, District-Ranchi-834001. ) ....Respondent(s)

Counsel for the  
 Appellant(s)/Applicants ... Mr. Himanshu Shekhar  
 Mr.Aabhas Parimal  
 Mr. Navin Kumar

Counsel for the Respondent(s) ...Mr. Mohit Kr. Shah for **R-1**  
 Mr.Farrukh Rasheed for **R-2**

## **J U D G M E N T**

### **PER HON'BLE (SMT.) JUSTICE RANJANA P. DESAI - CHAIRPERSON**

1. In this appeal, the Appellant - M/s Jharkhand Urja Vikas Nigam Limited has challenged Order dated 9/5/2014 passed by the Jharkhand State Electricity Regulatory Commission ("**State Commission**"). By the impugned order, the State Commission has directed the Appellant to implement the order of the Ombudsman.

2. We are of the opinion that the appeal deserves to be dismissed in limine. It is necessary to state the gist of facts to

substantiate this conclusion of ours. It is the case of Respondent No. 1 that it had taken electricity connection at Mohanpur, District Giridih under the HTSS tariff for a contract demand of 2175 KVA for running its induction furnace unit. The Appellant started levying KVA charges on Respondent No.1 on the basis of 100% contract demand and not on the basis of actual consumption, in violation of tariff order for 2003-04, applicable with effect from 01/01/2004. It is the case of Respondent No.1 that with effect from 01/01/2004 Jharkhand State Electricity Board has no power to raise bills on the basis of 100% contract demand as prescribed by 1999 tariff order. Respondent No.1 therefore challenged the said action of the Appellant before the Vidyut Upbhokta Shikayat Nivaran Forum, Jharkhand Ranchi (**"VUSNF"**). A complaint was registered as Case No.45 of 2007. VUSNF by order dated 18/03/2008 allowed Respondent No.1's complaint and held that the Appellant is not entitled to bill Respondent No.1 on the basis of 100% contract demand but Respondent No.1 should be billed on the basis of actual KVA recorded in the meter in each month. Bills for the period from January 2004 to February 2008 were quashed and the Appellant

was directed to issue fresh bills and adjust the excess money realised in the subsequent bills with interest.

3. The Appellant challenged the said order before the Electricity Ombudsman under Section 42(6) of the Electricity Act, 2003. However, the said Appeal was dismissed by a detailed judgment dated 04/09/2008. According to Respondent No1, it also filed an appeal for implementation of the said order and the same was allowed vide judgment dated 27/05/2009 with a direction to the Appellant to implement the order dated 18/03/2008 passed by the VUSNF without any further delay. The Appellant then challenged the said order of the Electricity Ombudsman before the Jharkhand High Court in writ petition being W.P. (C) No.4903 of 2009. The said petition was dismissed by the Jharkhand High Court by order dated 30/04/2015. The High Court relied on the judgement of the Supreme Court in **Jharkhand State Electricity Board & Ors. v. Laxmi Business and Cement Company Private Ltd & Anr.**<sup>1</sup>. After referring to the judgment of the Supreme Court and its previous judgements, the Jharkhand High Court took a view that the tariff orders of

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<sup>1</sup> 2014(5) SCC 236

1999 and 2001 issued by Bihar State Electricity Board have no application in the State of Jharkhand with effect from 01/01/2004 and therefore with effect from 01/01/2004 tariff order issued by Bihar State Electricity Board in the year 1999 in relation to induction furnace consumers has no application in the State of Jharkhand and therefore Jharkhand State Electricity Board is not entitled to raise bills against the consumers owning induction furnace on the basis of 100% contract demand as prescribed in the tariff order of 1999.

4. In our opinion in view of this judgment of the Jharkhand High Court nothing survived in the instant appeal. However, on 22/01/2016 the counsel for the Appellant submitted that order of learned Single Judge of the Jharkhand High Court dismissing the writ petition is challenged by the Appellant in Letters Patent Appeal (“**LPA**”). The appeal was therefore adjourned. We are informed that the Jharkhand High Court has on 05/05/2016 by a detailed reasoned order dismissed the LPA. There is no dispute about this fact. Thus the Appellant’s contention has been rejected by learned Single Judge of the Jharkhand High Court as also the Division Bench of the Jharkhand High Court. Mr.

Aabhas Parimal learned counsel for the Appellant submitted that the matter may be adjourned as the Appellant has filed Special Leave Petition in the Supreme Court. We are not inclined to adjourn the matter. The Jharkhand High Court passed the order rejecting LPA on 05/05/2015. The Appellant has not been able to show that any order has been passed by the Supreme Court staying the operation of the Jharkhand High Court's order. The appeal cannot be adjourned in this manner, particularly when on facts and in law the High Court of Jharkhand has held against the Appellant. We are also of the opinion that the impugned order which merely directs the Appellant to implement the order of the Ombudsman merits no interference.

5. There is one another significant aspect which needs to be stated. When the matter was pending the Appellant illegally disconnected the electric line of Respondent No.1 without giving notice under Section 56 of the said Act. Respondent No.1 challenged the said action before VUSNF in Complaint Case No.19 of 2008. The said complaint was allowed by an order dated 23/12/2010 passed by VUSNF and it was held that disconnection of power supply to Respondent No.1 is illegal,

hence, no MMG charges can be levied after the date of disconnection. The said judgment was challenged by the Appellant in Writ Petition No.7266 of 2011 before the Jharkhand High Court. The said writ petition was dismissed by the Jharkhand High Court on 03/9/2015. Thus it appears that the Appellant has consistently been flouting the order of VUSNF and the Ombudsman. The High Court of Jharkhand having rejected the Appellant's case the Appellant will have to implement the impugned order. There is no merit in the appeal. In the circumstances the appeal is dismissed.

6. At the time of dealing with application for condonation of delay a statement was made by Respondent No.1 that it is entitled to a refund of Rs.12,63,446/- from the Appellant. While condoning the delay we had directed the Appellant to deposit a Demand Draft in the sum of Rs.12,64,000/- with the Secretary of the State Commission. The Secretary of the State Commission was directed to invest the said amount in any nationalised bank till further orders. We had directed that the said amount shall abide by the final orders passed in this appeal. We have dismissed the appeal. However, we have not gone into the case of

Respondent No.1 that it is entitled to a refund of Rs.12,63,446/-.  
The State Commission shall therefore look into this aspect and accordingly pass appropriate order in respect of the said amount along with accrued interest thereon in accordance with law.

7. With the above direction the appeal is dismissed.

8. In view of the dismissal of the appeal, the IAs do not survive and are dismissed accordingly.

**(I.J. Kapoor)**  
**Technical Member**

**(Justice Ranjana P. Desai)**  
**Chairperson**

✓ **REPORTABLE / ~~NON-REPORTABLE~~**