

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

(APPELLATE JURISDICTION)

**I.A. NO.286 OF 2015
IN
DFR No.1344 OF 2015**

Dated: 22nd January, 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)/
		Applicant(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:2nd 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

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

Mr.Farrukh Rasheed for **R-2**

ORDER

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. There is 399 days' delay in filing the appeal. Hence, the Appellant has filed this application for condonation of delay.

2. For considering the prayer for condonation of delay it is necessary to have a look at certain facts which are brought on

record by Respondent No.1 in its reply. 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 has 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 1/1/2004. It is the case of Respondent No.1 that with effect from 1/1/2004 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 18/3/2008 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 4/9/2008. According to Respondent No1, they also filed an appeal for implementation of the said order and the same was allowed vide judgment dated 27/5/2009 with a direction to the Appellant to implement the order dated 18/3/2008 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 30/4/2015. 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.**¹. 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

¹ 2014(5) SCC 236

1999 and 2001 issued by Bihar State Electricity Board have no application in the State of Jharkhand with effect from 1/1/2004 and therefore with effect from 1/1/2004 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. It is submitted by the counsel for the Appellant that order of learned Single Judge of Jharkhand High Court dismissing the writ petition is challenged by the Appellant in LPA. However, no particulars of the said LPA have been furnished to us. We are informed that the Jharkhand High Court is to hear the said LPA in near future. It is stated by Respondent No.1 in its reply that in the meantime the Appellant had illegally disconnected the electricity line of Respondent No.1 without giving notice under Section 56 of Electricity Act,2003, hence, Respondent No.1 was compelled to challenge 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. Respondent No.1 has made a serious grievance that the Appellant has consistently refused to comply with the directions of VUSNF, Electricity Ombudsman and the Jharkhand High Court. Resultantly Respondent No.1 was compelled to remove its induction furnace. Respondent No.1 decided to continue only with its re-rolling mills. Respondent No.1 then applied for reduction of load on 12/2/2009 from 2175 KVA to 1500 KVA. However, the Board authorities refused to reduce the contract demand. It is the case of Respondent No.1 that on account of this continuous harassment meted out by the Appellant, Respondent No.1 decided to surrender its connection and finally decided to settle its account for which it served a notice on 28/9/2011 on the Appellant. However, the Appellant did not take any action and finally by a letter dated 25/4/2012 sent an arbitrary demand of

Rs.1,53,85,348/- without complying with the directions of various courts. Respondent No.1 then filed a detailed representation along with a detailed statement of accounts showing that in fact it was entitled for refund of Rs.12,63,446/-. However no action was taken by the Appellant on the said letter. It must be stated here that these factual averments pertaining to harassment are not denied by the Appellant in its rejoinder.

5. Due to the persistent harassment meted out to Respondent No.1 by the Appellant, Respondent No.1 moved a petition before the State Commission for implementation of Order dated 27/5/2009. By the impugned order dated 9/5/2014, the State Commission directed the Appellant to implement the order of Ombudsman.

6. Having narrated the background of the case we shall now go to the explanation offered by the Appellant for condonation of delay. In the application for condonation of delay regrettably the Appellant has given no explanation which can be accepted by this Tribunal. The application is very cryptic. It is only stated that after passing of the impugned order, Respondent No.1 filed

another case for the same or similar relief before the State Commission. It is further stated that by filing the said case before the State Commission, Respondent No.1 requested for the implementation of order dated 9/5/2014 and the Appellant was diligently pursuing the said case instead of filing an appeal against the order dated 9/5/2014. This took considerable time which has resulted into delay in filing the present case. This is hardly any explanation for delay of 399 days in filing the appeal. Respondent No.1 has refuted the contents of the application for condonation of delay in its reply.

7. The Appellant then filed a rejoinder merely narrating the details of the proceedings which have been brought on record by Respondent No.1 in its reply. The Appellant obviously tried to improve its case by filing this rejoinder. The reasons for delay ought to have appeared in the application for condonation of delay and not in the rejoinder. In our opinion, the application for condonation of delay was filed without application of mind and in a most negligent manner. In this appeal, the Appellant is trying to resist the order of the State Commission whereby the Appellant has been asked to implement the order of the

Ombudsman on the ground that the State Commission has exceeded its jurisdiction in passing the said order and the State Commission cannot pass any order when the High Court is seized of the matter. It is strenuously contended by the counsel for the Appellant that the judgement of the Supreme Court in **Jharkhand Electricity Board & Ors. v. Laxmi Business and Cement Company Private Ltd. & Anr.**, has no application to the present case and since the LPA has been admitted by the Jharkhand High Court, the delay may be condoned. Since a statement is made that Jharkhand High Court is seized of the Appellant's case we deem it appropriate to condone the delay but in the peculiar facts and circumstances of the case the delay can be condoned only if the Appellant produces before the Secretary, State Commission a Demand Draft in the sum of Rs.12,64,000/- (Rupees Twelve Lakhs Sixty Four Thousand only) within a period of 10 days from today drawn in favour of the Secretary, of the State Commission. The Secretary, State Commission shall then invest this amount in fixed deposit in any nationalised bank. The fixed deposit with accrued interest shall be renewed from time to time till the disposal of this appeal or till further order of this Tribunal. Needless to say that the said amount shall abide by

the final orders that may be passed in this appeal. Order accordingly.

8. If the Appellant does not follow the above direction the appeal shall stand dismissed. Needless to say that if the Appellant follows the above directions, the Registry shall register the appeal and place it on the board on **22/3/2016**.

9. We make it clear that we have not expressed any opinion on the merits of the case.

10. The Application is disposed of in the afore-stated terms.

11. Pronounced in the Open Court on this 22nd day of January, 2016.

I.J. Kapoor
[Technical Member]

Justice Ranjana P. Desai
[Chairperson]

√**REPORTABLE/NON-REPORTABLE**