

**Jharkhand Induction Furnace Vs. Jharkhand State Electricity**

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**Court :** Appellate Tribunal for Electricity APTEL

**Decided On :** Jul-30-2007

**Reported in :** (2007)LCAPTEL1241

**Judge :** B T H.L., M Goel

**Appellant :** Jharkhand Induction Furnace

**Respondent :** Jharkhand State Electricity

**Judgement :**

1. The present appeal challenges an order dated 27th November, 2006, passed by the Jharkhand State Electricity Regulatory Commission (JSERC), in Case No. 5/2004-05. The Impugned Order was passed on an application filed by the appellant namely, the Jharkhand Induction Furnace Association, an Association of consumers of Electricity of the HTSS category. The Commission had issued its Tariff Order dated 27th December, 2003, for the year 2003-04 applicable with effect from 1st January, 2004. The Tariff Order inter alia made provisions for some load factor rebates. The respondent No. 2 namely, the Jharkhand State Electricity Board issued its bills for Electricity in which load factor rebate was granted to consumers including the members of the Petitioner Association. It appears that on 24th August, 2006, the Respondent. No.1A viz. the Jharkhand State Electricity Board, sought certain clarifications in respect of the load factor rebate available to HT consumers. The Commission then issued the letter dated 25th August, 2006 by way of clarification of the aforesaid Tariff Order. The Respondent No. 2 having realized that it had short charged the consumer of HT category raised bills for the

short charged amount. The bills came to be disputed in the application filed by the appellant before the Commission being Case No. 5/2006-07, alleging that the provision for load factor rebate has been misinterpreted and that the consumers cannot be penalized for wrong application of rebate after a lapse of two and a half years. These submissions were rejected by the impugned order.

2. It will be proper to refer to the details in a chronological fashion. In the Tariff Order applicable from 1st January, 2004, the Commission introduced a load factor rebate for all industrial consumers. The portion relevant of our purpose is reproduced below: For encouraging consumption, the Commission has also introduced a load factor rebate for all industrial consumers. For the entire consumption in excess of this defined load factor, a rebate is provided on the energy charges for such excess consumption. The Commission would have liked to align the tariff structure towards cost of supply during the current year itself, but it was constrained due to the huge tariff shock that it would translate into for other consumers and consequent increase that would have been required in tariff for other categories. Thus as a principle the Commission has taken the first step towards reducing this distortion in the tariff structure. The Commission is conscious of the fact that HT industry in Jharkhand has borne the brunt of cross subsidy in the past and the tariff applicable to them is above the cost of supply. The significance of this step should not, however, be judged by the quantitative decline but the signal and intent whereby the Commission intends to further rationalize the tariff in the future.

Approved tariff for HT consumers.

DESCRIPTION	TARIFF*	Rs./KVA/month
DEMAND CHARGE	HTS-I 140 HTS-II 140 EHTS 140	
ENERGY CHARGE	HTS-I 4.00 HTS-II 4.00 EHTS 4.00	
Minimum Monthly Charge (MMC)	HTS-I and HTS-II Rs. 250/k VA/month	EHTS Table 5.32: Voltage rebate for HT consumers
Load Factor	Voltage rebate	Supply at 33 kV 5% Supply at 132 kV 7.5%

\*The above rebate will be available only on monthly basis and consumer with arrears shall not be eligible for the above rebates.

Apart from the above, the Commission has also approved a TOD tariff for these consumers.

"5.25 Category - 8:HT Special Service (HTSS) (HT consumer with Induction furnace) This tariff schedule shall apply to all consumers who have a contracted demand of 300 k VA and more for induction furnace, however, it will not apply to casting units having induction furnace of melting capacity of 500 kg or below." The Commission has also approved certain rebate according to voltage of supply and load factor of these consumers. These are mentioned below: Table 5.37: Voltage rebate for HTSS consumers Load Factor Voltage rebate Supply at 33 kV 5% Supply at 132 kV 7.5% Table 5.38: Load factor rebate for HT consumers\* Load Factor Load factor rebate 40-60% 5% 60-70% 7.5% Above 70% 10% \*Consumers with arrears shall not be eligible for the above rebate.

The above rebate will be available only on monthly basis.

3. As mentioned earlier, the respondent No. 1A made certain mistakes in applying the schedule of load factor rebate. Perhaps, the mistake was realized only in the year 2006 and accordingly the letter dated 24th August, 2006, was addressed to the Commission seeking clarification regarding load factor rebate. The Commission replied by the letter dated 25th August, 2006 as under: Please refer to your letter No. 735 dated 24/08/2006 on the subject noted above, I am directed to clarify that the Tariff Order 2003- 04 for JSEB had laid down clearly the quantum of rebate available on the load factor for the H.T. Consumers. The Tariff Order clearly indicates that for the entire consumption in excess of the defined load factor, rebate is to be provided for energy charges for such excess consumption which has been indicated in the Table (5.33). For load factor between 40-60%, 5% rebate is admissible on the energy charge in excess of 40% of the load factor up to 60%. If the load factor is between 60 to 70%, the load factor rebate is 5% for consumption between load factor 40% to 60% and 7.5% beyond 60% up to 70%. For consumption greater than 70%, the load factor rebate shall be 5% for consumption between load factor 40% to 60%, 7.5% for consumption beyond load factor 60% up to 70% and 10% for consumption beyond load factor of 70%. It is not clear as to how the assumption has been made that rebate was available on entire consumption if load factors were above 10%, 20% and 30% for HTI. HT II. EHT which is totally irrelevant for this purpose.

It is strange that the Board has sought the clarification after 2 1/2 years of issue of Tariff Order. If the rebate has been allowed as indicated in your table then the loss sustained by the Board is the Board/s responsibility.

4. On 15th September, 2006, The Chief Engineer of the Jharkhand State Electricity Board, the respondent No. 2, wrote to its officers to revise the bills and the relevant part of the letter is as under.

The allowable rebate on load factor has been clarified by the Jharkhand State Electricity Regulatory Commission, Ranchi vide letter No. JSERC/or/388 dated 25.08.2006. According to the contents of the said letter the load factor rebate allowable to HTS I, HTS II, HTSS & EHT Consumers will be as follows: ii) Consumption between 40% to 60% L.F.= 5% rebate will be allowed on the excess consumption over 40% L.F iii) Consumption between 60% to 70% L.F = 5% rebate for excess consumption between 40% to 60% L.F. and 7.5% rebate for excess consumption over 60% L.F. iv) Consumption above 70% L.F. = 5% rebate for excess consumption between 40% to 60% L.F., 7.5% rebate for excess consumption between 60% to 70% L.F. & 10% rebate on excess over 70% L.F.5. A sample of the Bill raised after it has been placed on the record.

M/s. Riddhi Siddhi Iron (P) Ltd. received a bill dated 26.10.2006 stating that Rs.4,22,097/- was recoverable, as rebate already given was Rs.5,19,650/- whereas the rebate to be given was only Rs.99,553/-. This led to the filing the petition before the Commission.

6. It was contended before the Commission that the respondent No. 1A misinterpreted the clarifactory letter dated 25.08.2006 that the Commission had held that the loss sustained by the Board, i.e.

respondent 1A was Board's responsibility, that the letter dated 25.08.2006 did not mention the HTSS category at all and, therefore, the clarification did not apply to HTSS category and that on this premise the Board should not charge or penalize the HTSS consumers on the basis of the letter dated 25.08.2006. On behalf of the respondent No. 2, it was pleaded that the dispute related to bills and, therefore, the appropriate forum should have been consumer grievance redressal forum of

the licensee. The Commission in the Impugned Order held that the matter in fact related to interpretation of the load factor rebate clause of the Tariff Order of the Commission and not a simple billing dispute. The conclusion arrived at by the Commission is as under: JSEB has correctly applied the Load Factor Rebate to HTSS category of consumers also in the same manner as it has been applied to HT1, HT2 and EHT category of consumers because there is similar provision in letter, meaning and spirit of Load Factor Rebate Clause for the categories, HT1, HT2 and EHT as well as HTSS of consumers in the Tariff Order of the Commission. Respondent JSEB is itself responsible for the short charge in the past to the relevant category of consumers on account of Load Factor Rebate due to mis-interpretation and wrong application of the Rebate Clause for about two and a half years, and they cannot penalize the consumers for this Short payment by charging any interest or surcharge on this account.

7. The position taken by the Commission was reiterated further in the order dated 19.01.2007 on petition filed by the present appellate association in which it was contended that the bills have been raised in violation of the order dated 27.11.2006. The Commission in this order said: The points that have been raised are to be seen and examined in the context of the provisions of the Act/Regulation/Orders on the subject. The Commission had issued the Tariff Order for the Jharkhand State Electricity Board on 27th December, 2003, effective from 1st January, 2004, under the provisions of The Electricity Act, 2003 and the Regulations issued there under. The tariff so determined is binding on both i.e., the distribution licensee for charging and on the consumers for making the payments. The point at issue is the rebate, which is applicable for load factor was 40-60% - 5%, 60-70% - 7.5% and above 70% - 10%. The tariff so fixed was the amount recoverable by the licensee for the supply and the rebate to the consumer was to be provided as indicated in the tariff order, which is very clear. Due to some reason or the other the licensee, JSEB, allowed more rebate than what was permissible. This does not mean that the amount that was required to be recovered by the licensee got reduced. The Board has under-charged the said consumers by allowing rebate more than what was permissible. The Commission in its order dated 27.11.2006 has already stated that the responsibility for this short-recovery lies with the Board and for that the consumer-petitioner cannot be

penalized. But at the same time, the short-charge does not reduce the tariff as such or increase the admissibility of the rebate than what has been provided in the Tariff Order. As per the Tariff order the rebate granted was for all the consumers in the HT category. If the Board has recovered less than the short-recovery, for whatever reason, does not change that amount, which was due to the Board as per the Tariff Order.

Keeping this in view, the Commission ordered that no interest or surcharge on this amount which was short-recovered be recovered from such consumers as they could not be penalized for the fault of the Board....

i) The letter dated 25th August, 2006 is bad in as much as it was issued without hearing the appellant and, therefore, the same is in violation of the principles of natural justice.

ii) The letter dated 25th August, 2006 amounted to amending the Tariff Order for the year 2003-04 for which the Commission did not have any power.

iii) The Commission could not have adjudicated the dispute because it was a simple billing dispute.

iv) The letter dated 25th August, 2006 did not mentioned the category of HTSS and accordingly billing of HTSS consumers on the basis of the letter dated 25th August, 2006 was improper.

v) The bills raised after two and a half years were barred by the provisions of limitation as contained in Section 56(2) of The Electricity Act, 2003.

The letter dated 25th August, 2006 is not an order amending the Tariff Order of 2003-04. It has not altered the situation regarding load factor rebate in any way. Although, the word used in the letter is "clarify" actually the letter only reiterates what is already stated in the Tariff Order. For such an order or letter no public hearing was called for. Nor was the appellant required to be served with any notice before writing the letter.

9. Further, the appeal is not against the letter dated 25th August, 2006. The appeal is directed against the order dated 27th November, 2006. As it appears from the order dated 27th November, 2006, the appellant did not dispute the validity of the letter dated 25th August, 2006 before the Commission in Case No. 5 of 2006-07 is concerned. The actual grievance raised before the Commission was that the letter dated 25th August, 2006 was being misinterpreted. The plea basically was that although the category of HTSS had not been mentioned in the letter dated 25th August, 2006, the letter was being used to bill the HTSS category. So far as the proceedings of Case No. 5 of 2006-07, there is no allegation of violation of principle of natural justice. The appellant had ample opportunity of being heard on the question of interpretation of load factor surcharge at the time of hearing of Case No. 5 of 2006-07 as also at the subsequent hearing, when the order dated 19th July, 2007 was passed in the same matter when the appellant alleged non-compliance of the order dated 27th November, 2006.

10. As pointed out earlier, there is no change from the Tariff order and there has not been any amendment of the same. It is submitted before us that the Tariff Order was being rightly interpreted by the respondent No. 1A, when it provided the rebate for the entire electricity consumption and not only for the consumption in excess of the prescribed slabs of 40% to 60%, 60% to 70% and above 70%. The appellant says that it was only because of the letter dated 25th August, 2006 that the respondent No. 2 has reduced the rebate given earlier. On examining the Tariff Order, we find that the argument is entirely ill-founded. The Tariff Order says in so many words that the rebate was being given for the consumption in excess of the defined load factor. At the cost of repetition, we reproduce the following line from the Tariff Order: for the entire consumption in excess of this defined load factor, a rebate is provided on the energy charges for such excess consumption.

11. The letter dated 25th August, 2006 says nothing more. Thus, there is no amendment of the Tariff Order and none of the first two pleas can be sustained.

So far as the plea that it was merely a billing dispute and, therefore, the consumer dispute redressal forum should have been approached does not lie in the mouth of

the appellant. The appellant itself approached the Commission rather than approaching the Redressal Forum or Ombudsman appointed under Sub section (5) & (6) of Section 42 of The Electricity Act 2003. In fact, it was the respondent No. 1A who raised such an objection. The appellant still did not withdraw the application before the Commission. We fully subscribe the Commission's view that the matter related to interpretation of the load factor rebate and the Commission could entertain it.

The plea that HTSS consumers could not be billed on the basis of the letter dated 25.08.06 is also devoid of any merit. The claim of the respondent No. 2 arose out of the Tariff Order and not out of the letter dated 25th August, 2006. The Tariff Order, as reproduced earlier made no distinction between the different classes of HT consumers. The same rebate has to be provided for all HT consumers. The letter dated 25th August, 2006 merely clarifies the situation. The mere fact that 'HTSS' has not been mentioned therein does not mean that the load factor rebate for HTSS category could get some different interpretation.

The last point raised by the counsel for appellant is that the recovery of short charged amount is barred limitation. Unfortunately, the appeal has not raised the issue specifically. No attempt has been made by the appellant to show which bill of which of its members is barred by limitation. The respondent No. 1A is entitled to recover the short charged amount only to the extent, it can be permitted under the provision of Section 56 (2) of The Electricity Act, 2003. If any part of the claim is still recoverable, the respondent No. 2 is entitled to recover the same. We say no further.

The learned Counsel for the appellant raised a faint plea of equity.

According to him the members of the appellant association had already priced their end product for the period in question and had sold the same and if the cost of electricity is increased with retrospective effect those members would suffer financial loss. The learned Counsel did not make any effort to support the plea with any legal precedents.

On behalf of the respondent No. 1A, however, the plea has been sufficiently met by referring to two recent judgments of the Supreme Court namely Distt. Registrar & Collector v. Canara Bank and CST wherein it has been held that in giving effect to fiscal laws there was no scope for any consideration of equity and that even if equity has to play some role it could not be a justification for an application adverse to the interest of the State. On the above considerations the appeal is dismissed. The interim order of 16th May, 2007 stands vacated.

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