

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2213 of 2015

With

I.A. No.1634 of 2015

=====

M/s Mithila Autos, Proprietor- Mr. Anand Roy, son of Sri Ram Narayan Rai,
resident of N.H 31 near 4 Star Cinema, Bus Stand, P.S -K.Haat, District - Purnea.

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Energy Department, New Secretariat, Baily Road Patna – 800001.
2. North Bihar Power Distribution Co. Ltd through its Electric Supply Sub-Divisional, Purnea Rural.
3. Superintending Engineer, North Bihar Electricity Board, Purnea.
4. Assistant Electrical Engineer, Electric Supply Sub- Divisional, Purnea Rural.
5. Vikash Kumar, Assistant Electrical Engineer (S.D.O), Electric Supply Sub-Divisional, Purnea Rural.
6. Executive Engineer, North Bihar Electricity Board, Purnea.

.... Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Madhav Roy
		Mr. Rabindra Nath Tiwari
For the Respondent/s	:	Mr. Avinash Kumar, SC-30
For Distribution/Holding Co.	:	Ms. Nilu Agrawal

=====

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 27-02-2015

Heard Mr. Madhav Roy, learned counsel appearing for
the petitioner, Ms. Nilu Agrawal, learned counsel appearing for the
Power Distribution/Holding Company Limited and counsel for the
State.

With the consent of the parties the matter has been
taken up with a view to its final disposal at the stage of admission
itself.

The writ petition was filed for a direction in the
nature of mandamus to the respondents for passing the final

assessment order as also for interim relief.

The facts of the case briefly stated is that following an inspection report a provisional bill was raised on 22.5.2014 a copy of which is placed at Annexure-3 to the writ petition and whereunder a provisional bill to the tune of Rs.5,56,455/- was raised against the petitioner. The grievance of the petitioner is that an objection was filed by the petitioner on 9.6.2014 against the provisional bill, a copy of which is placed at Annexure-4 to the writ petition and along with the same he had deposited a sum of rupees two lacs against the provisional bill but neither any final assessment order was being passed and even the line of the petitioner stood disconnected since 27.8.2014. The petitioner is in business and thus is facing difficulty in operation of his business by way of disconnection.

A counter affidavit has been filed enclosing a copy of the final assessment order passed by the Assessing Authority -cum- Assistant Electrical Engineer, Electric Supply Sub-Division, Purnea (Rural) bearing Memo no.219 dated 2.7.2014, whereby the objection of the petitioner has been rejected and the provisional bill has been confirmed. A copy of such order is placed at Annexure-A to the Counter Affidavit.

An interlocutory application bearing I.A. No.1634 of

2015 has been filed seeking to question the final assessment order, inter alia on grounds that it is not in conformity with the provisions underlying section 126(3) of the Electricity Act, 2003 (hereinafter referred to as 'the Act') and which prayer is allowed.

I have heard learned counsel for the parties and I have perused the materials on record.

I am in total agreement with the contentions advanced by Mr. Madhav Roy, learned counsel appearing for the petitioner that the final assessment order dated 2.7.2014 is certainly not in conformity with the provisions underlying section 126(3) of 'the Act' which reads as under:

“126. Assessment.- .

....

(3) The person, on whom a notice has been served under sub-section (2), shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who may, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment of the electricity charges payable by such person.”

A bare perusal of the provisions would manifest that an obligation is cast upon the assessing authority to pass a final assessment order after affording a reasonable opportunity of hearing to the person aggrieved and which mandatory requirement is manifestly absent in the present case inasmuch as no hearing has



taken place before passing the final assessment order rather the same has been passed simply on perusal of the records which is in teeth of the statutory provisions and the obligation cast thereunder. On this sole count the final assessment order dated 2.7.2014 bearing Memo no. 219 placed at Annexure-A to the counter affidavit passed by the Assessing Officer –cum- Assistant Electrical Engineer, Purnea (Rural) cannot be upheld and is accordingly set aside.

At this stage Mr. Madhav Roy prays for interim relief stating therein that as against the provisional bill which is less than rupees six lacs the petitioner has already deposited two lacs and is ready to deposit further one lac pending final adjudication of the matter. The submission made by Mr. Roy cannot be contested by the other side rather appears to be reasonable and is upheld.

As the petitioner has already deposited rupees two lacs against the provisional bill as stated by Mr. Roy and is prepared to deposit further one lac against the provisional bill it is directed that no sooner the petitioner would deposit one lac against the provisional bill and produces the receipts of deposit of rupees three lacs i.e. two lacs deposited earlier and rupees one lac pursuant to undertaking given before this Court before Assessing Authority -cum- Assistant Electrical Engineer, Electric Supply Sub-Division, Purnea (Rural), respondent No.5, along with a copy of this order,

the line of the petitioner would be restored within 48 hours thereafter.

In so far as the issue of final assessment is concerned, the matter is remitted to the Assistant Electrical Engineer, Electric Supply Sub-Division, Purnea (Rural) for passing fresh order after giving an opportunity of hearing to the petitioner bearing in mind the statutory provisions underlying section 126(3) of 'the Act'

It goes without saying that consequent upon reconnection of the electrical line of the petitioner, he would continue making timely payment of current charges failing which the respondents would be at liberty to proceed in accordance with law. However the payment of the provisional bill which is put to objection by the petitioner, would be governed by the final outcome of the proceedings.

The writ petition is allowed with the direction aforementioned.

(Jyoti Saran, J)

SKPathak/-

U			
---	--	--	--