

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9972 of 2014

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Kumar Vijay, son of Late Bidyanand Singh, resident of Sumati Palace, Boring Road, Police Station - Budha Colony, District - Patna.

.... Petitioner/s

Versus

1. The South Bihar Power Distribution Company Ltd through its M.D.
2. The Bihar State Electricity Board, through its Chairman, Vidyut Bhawan, Bailey Road, Patna.
3. The Chairman, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna.
4. The Assistant Electrical Engineer, Electric Supply Division, New Capital, Patna.
5. The State of Bihar through the Principal Secretary, Energy Department, Govt. of Bihar, Old Secretariat, Patna.
6. The Officer-in-charge, Budha Colony Police Station, District - Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s :	Mr. Sanjay Kumar Verma
	Mr. Bijay Bihari Sinha
For the Respondent/s :	Mr. Vinay Kirti Singh

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 02-04-2015

Heard the parties.

This writ petition has been filed with a prayer for restoration of the electricity line.

The facts of the case briefly stated is that following an inspection held in the premises of the petitioner on 20.3.2014 that certain irregularities were detected and which led to institution of an FIR. A provisional loss was estimated at Rs.1,62,580/-. A provisional assessment order was then issued to the petitioner vide letter no.240 dated 18.4.2014 by the Assessing Authority –cum-



Assistant Electrical Engineer, Electric Supply Division, New Capital, Patna and not being objected that a final assessment order was passed by the same authority bearing Memo no.297 dated 13.5.2014 confirming the loss estimated at Rs.1,62,580/-. The line of the petitioner stands disconnected since 20.3.2014 i.e. the date of inspection.

A counter affidavit has been filed enclosing the inspection report, the copy of the written report which is the basis of the FIR and addressed to the Station House Officer, Budha Colony, Patna , the copy of the provisional assessment order dated 18.4.2014 present at Annexure-A and the final assessment order dated 13.5.2014 present at Annexure-B.

Mr. Sanjay Kumar Verma, learned counsel appearing on behalf of the petitioner submits that neither the provisional assessment order was served on the petitioner as mandated under section 126(2) of the Electricity Act, 2003 (hereinafter referred to as 'the Act') nor the final assessment order was communicated to the petitioner and which has deprived him of his legal right vested under section 126(3) of 'the Act' to raise objection against the provisional assessment order. He further submits that the provisional assessment order dated 18.4.2014 is without any calculation except for endorsing the loss amount mentioned in the

FIR.

Mr. Vinay Kirti Singh, learned counsel appearing for the respondents while rebutting the allegations, has stated that the final assessment order dated 13.5.2014 confirms the provisional assessment and also accompanies a calculation chart. It is stated that the said calculation would also be the basis for the provisional assessment. Learned counsel however while making such submissions could not bring on record any document to show that the provisional assessment order was communicated to the petitioner.

Having heard learned counsel for the parties and taking note of the uncontested position regarding non-service of provisional assessment order dated 18.4.2014 as contained in Annexure-A to the counter affidavit on the petitioner as mandated under section 126(2) of 'the Act', the final assessment order dated 13.5.2014 would be rendered illegal and is accordingly set aside. The petitioner shall raise his objection against the provisional assessment order dated 18.4.2014 before the Assessing Authority within two weeks from today and which shall be considered and disposed of after giving an opportunity of hearing to the petitioner by the Assessing Authority –cum- Assistant Electrical Engineer, Electric Supply Division, New Capital, Patna by following

procedures as mandated under section 126(3) of 'the Act'.

In so far as the prayer for reconnection of electric line is concerned, the petitioner would deposit 50% of the penal amount which comes to Rs.81,290/- and produce the receipt thereof before the Executive Engineer of the Supply Division or the authority concerned and who shall ensure the restoration of electricity line of the petitioner within 48 hours thereafter.

The payment so made by the petitioner would be subject to the final disposal of the proceedings arising from section 126/135 of 'the Act'.

The writ petition is allowed with the direction aforementioned.

(Jyoti Saran, J)

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