

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11460 of 2013

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1. Lalita Devi Alias Laltia Devi Wife Of Late Shyam Sundar Prasad
Resident Of Mohalla- Main Road Fatuha, P.S. Fatuha, District- Patna

.... Petitioner/s

Versus

1. The Bihar State Power Holding Pvt. Company Through Its Managing
Director, Vidyut Bhawan- I Bailey Road, Patna
2. The Electrical Executive Engineer, Fatuha Sub-Division
3. The Electrical Assistant Engineer, Revenue Fatuha Sub Division, Patna

.... Respondent/s

with

Civil Writ Jurisdiction Case No.11735 of 2013

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1. Satya Narayan Prasad Son Of Late Rup Lal Sah Resident Of Mohalla -
Fatuha Road, Fatuha Proprietor Of M/S Durga Enterprises Fatuha, P.S.
Fatuha, District - Patna

.... Petitioner/s

Versus

1. The Bihar State Power Holding Company Through Its Managing
Director, Vidyut Bhawan, Bailey Road, Patna
2. The Assistant Electrical Engineer, Electric Supply Sub Division, Fatuha,
Patna

.... Respondent/s

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**CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP
SINGH**
ORAL ORDER

2 20-08-2015 As the issues involved in these writ applications are

similar, they have been heard together and are being disposed of

by this common order.

Both the petitioners have taken connection of L.T.I.S.-II
phase of 20 H.P. for running their Dal Mill bearing Consumer No.
FB3964 and Consumer No. FFT 10155/FB 2799 respectively. The
premises of the petitioners were raided by the S.T.F. team and a



punitive bill was raised on the allegations of tampering of meter and committing theft. A criminal case bearing Fatuha P.S. Case No. 476 of 2009, dated 10.12.2009 was registered under Section 379 of the IPC and under section 135 and 138 of the Electricity Act. Both the petitioners have been arrayed as an accused in the aforesaid case against raising of punitive bill under Section 126(3) of the Act. Both the petitioners have filed their objections and final assessment order was made confirming provisional assessment.

Being aggrieved, both the petitioners preferred appeals before the Electrical Inspector. The case of both the petitioners was heard together. The appellate authority allowed the appeals on the ground that there were no sufficient materials on record for coming to the conclusion that petitioners had tampered the meter and were drawing energy illegally. The appellate authority rejected the plea of the respondents and allowed the appeals.

The petitioners have filed the instant writ petition seeking a direction to the respondents to refund the amount. The petitioners submit that despite the order of the appellate authority under Section 127 of the Electricity Act, 2003 neither 50% of the amount deposited at the time of filing of appeal is refunded nor the same is adjusted. On the other hand, the respondents are charging

D.P.S. on the balance 50% of the amount.

The petitioners have filed Interlocutory Applications for not charging DPS on the balance of the 50% amount as the petitioners have succeeded in appeal under Section 127 of the Electricity Act, 2003. The petitioners have prayed for refund of their respective amount with interest @ 12% compound interest. It is stated that the petitioner of CWJC No. 11460 of 2013 deposited a sum of Rs. 1,18,336/- and the petitioner of CWJC No. 11735 of 2013 deposited a sum of Rs. 1,76,450/-.

Learned counsel for the Board submits that being aggrieved by the order dated 29.5.2010 passed by the Electrical Inspector under section 127 of the Electricity Act, the Bihar State Electricity Board moved this Court in C.W.J.C. No. 20566 of 2010 which was disposed of with an observation that any observation/remarks made by the respondent Electrical Inspector, Bihar in the impugned order shall be construed to be an observation/remarks only for the purposes of deciding the validity and correctness of the assessment orders passed under section 126 of the Act and it shall in no way prejudice the case of the parties before the learned Magistrate in the pending criminal trial.

Counsel for the Board submits that the petitioners would not be entitled to refund of the money deposited by them,

which would be subject to the result of the criminal case under Section 154(6) of the Electricity Act.

It appears that 50% of the amount deposited by the petitioners has not been refunded. It is made clear that if the petitioners succeed before the trial court, the said amount would be refunded to them with interest.

As the petitioners succeeded in appeal, the levy of delayed payment surcharge is not sustainable. The respondents would delete the delayed payment surcharge from the energy bill.

With the aforesaid observations and directions, this writ application stands disposed of.

(Samarendra Pratap Singh, J)

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