

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.545 of 2006
IN
Civil Writ Jurisdiction Case No. 2112 of 2006**

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1. Chairman, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna.
 2. Electrical Executive Engineer, Bihar State Electricity Board, Rajendra Nagar, Patna.
 3. Assistant Electrical Engineer, Bihar State Electricity Board, Machuatoli, Patna.
 4. Assistant Electrical Engineer (Revenue), Gulzarbagh, Division, Rajendra Nagar, Patna

.... Respondents/Appellants

Versus

Snehlata Gupta, wife of Ravi Gupta, resident of Mohalla Chaitola, P.S. Kadamkuan Town, District-Patna.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Vinay Kirti Singh, Advocate.

For the Respondent/s : Mr. Laxmi Narayan Das, Advocate.

Mr. Akhilesh Dutta Verma, Advocate.

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 04-05-2015

Heard learned counsel for the Bihar State Electricity Board (hereinafter referred to as the 'Board') and the learned counsel for the respondent.

2. The erstwhile Bihar State Electricity Board has filed Intra-Court appeal being aggrieved against the judgment dated 26.06.2006 passed by the learned Single Judge in C.W.J.C. No. 2112 of 2006.

3. The writ petitioner, who is the sole respondent of



this appeal, has a multi storeyed house in one of the bye laws at Chaitola- Kadamkuan, District -Patna. She and her husband being not available at Patna because of sad demise of her mother, the house was locked. Allegedly, inspection was conducted by Officers of the Board on 16.01.2006. The inspection report was signed by one Pinku. Subsequently based on the aforesaid inspection which found the connected load to be about 14 K.W. as against sanctioned load of 4 K.W., the bill dated 25.01.2006 was served upon the writ petitioner being supplementary bill and also demand for enhanced security. Petitioner had challenged this before the Writ Court. It appears that the Writ Court directed the Board that immediately premises be inspected in presence of the consumer and the findings thereof be indicated in the counter affidavit. Pursuant to the inspection in presence of the consumer on 11.03.2006, a report was drawn up by the authorities and submitted to the Court, which is Annexure A to the counter affidavit of the Board filed in the writ proceedings which shows that this time the total load was found only 7 K.W. The second inspection was conducted on 11.03.2006. The learned Single Judge on the basis of second inspection, that was conducted, directed the bill to be revised on the basis of load found on 7 K.W. The Court also held that merely because in a small part of the house tenants have been

found, being students, the house cannot be said to be non-residential house because they are also using the premises as residential. Being aggrieved, the erstwhile electricity Board had filed this Intra-Court appeal.

4. Sri Vinay Kriti Singh, learned counsel for the Electricity Board, submits that learned Single Judge was not correct in ordering revision of the bill, which was earlier served on the basis of the first inspection. He further submitted that as the premises was allegedly found being used as hostel, it cannot be deemed to be a residential premises. The sole respondent, who was the writ petitioner, has also appeared. It is submitted on her behalf that if inspection is conducted and as consequences whereof any unauthorized load is found being used, then the procedure prescribed under Section 126 of the Electricity Act, 2003 would apply. The procedure, intra alia, is that the inspection report with provisional assessment has to be given to the consumer on which consumer has been given a right to object. Upon objection being heard the matter has then to be adjudicated and a final assessment is to be made, which final assessment is then subject to appeal and other remedies. Even though counter affidavit was filed by the Board in the writ proceedings and this L.P.A. has been filed by the Board, nothing has been brought on record to show

that any such procedure was at all followed by the Board. The bill dated 25.01.2006 was issued showing it to be supplementary bill and not a provisional bill.

5. In our view, this is itself enough to set aside the supplementary bill dated 25.01.2006, which is not in accordance with the Electricity Act, 2006 and Section 126 thereof. It is well established that no person can be deprived of his property except by procedure established by law. When the procedure is prescribed then it is for the authorities to follow the procedure and not having followed the procedure, they have to blame themselves. Thus, in our view, the supplementary bill dated 25.01.2006 itself was unenforceable. Then we come to the aspect of the second inspection that was conducted on 11.03.2006. There cannot be any dispute that on that inspection, the load was found to be only 7 K.W. The bill for the period thereafter would only be raised on that basis, but the question remains whether that inspection can be taken note of for raising any bill as was done in the month of January that is preceding the inspection as has been ordered by the learned Single Judge. In our view, the learned Single Judge was clearly in error there. The inspection conducted on 11th March, 2006 cannot have retrospective application. What would be the basis for raising the bill as between



16.01.2006 and 11.03.2006 would be a subject matter of adjudication in accordance with the provision of Section 126 of the Electricity Act. That cannot be substituted by bill based on 7 K.W. being the load found on subsequent date. Thus to that extent the order of the learned Single Judge cannot be accepted.

6. We then have one other issue, i.e., ex parte inspection report dated 16.01.2006. We call it ex parte because it is not the case of the Board that the writ petitioner was present and either refused to cooperate or refused to take the inspection report or refused to sign it. Thus, it is evident that the inspection was conducted in absence of the landlord or landlord's authorized representative. Mere noting therein that the boys hostel was being run cannot be taken to be gospel truth. In any case, the ex parte inspection report cannot bind the consumer. That, as noted above, is a subject matter of adjudication which the Board has not done in terms of Section 126 of the Act. It goes without saying that what is said in ex parte report is not the gospel truth. Unfortunately, the Court is not deciding that issue. A forum had been created which the Board itself chose not to follow. In any view of the matter, except the bald statement of the inspecting authority, there is no material on record to substantiate the claim that there was any hostel. No evidence has been recorded. No



statement of tenants taken. Even when in the second inspection the inspection team tried to reiterate this, in writing on the inspection report itself the petitioner protested. No other evidence has been brought by the Board to substantiate the claim. Although, the premises is tenanted but is used for domestic purposes, merely, because it is tenanted cannot make it non residential. It is the nature of usage that is important and not the nomenclature used. Therefore, the learned Single Judge was right in holding that the charge would be as per domestic tariff and not as per the commercial tariff. We see no reason to take a different view of the matter. This appeal is thus disposed of in terms aforesaid.

(Navaniti Prasad Singh, J)

(Rajendra Kumar Mishra, J)

Bhardwaj/AFR

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