

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.357 of 2015

Hotel Yuvraj, Zero Mile , Barauni, P.S. Barauni, District Begusarai, through its Proprietor, Pramod Kumar Singh, son of Shri Kailash Singh, resident of village & P.S. Bihat, Tola Masnedpur, P.S. Barauni, District Begusarai.

.... Petitioner/s

Versus

1. The Bihar State Power Holding Company Limited, Vidyut Bhawan, Bailey Road, Patna, through its Chairman –cum- Managing Director.
2. The North Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road , Patna, through its Managing Director.
3. The Electrical, Superintending Engineer, North Bihar Power Distribution Company Limited, Electric Supply Division, Barauni, District Begusarai.
4. The Additional Collector, Begusarai.
5. The State of Bihar through the Principal Secretary Department of Energy.
6. The Electrical Executive Engineer –cum- Assessing Officer, Electric Supply Division, Barauni Division, Begusarai.

.... Respondent/s

with

Civil Writ Jurisdiction Case No. 11110 of 2014

The North Bihar Power Distribution Company Ltd. through the Assistant Electrical Engineer, Electric Supply Sub-Division, Barauni, Begusarai, Praveen Kumar, son of Sri Upendra Pandit presently posted as Assistant Electrical Engineer, Electric Supply Sub-Division, Barauni, Begusarai, resident of village- Jatdumri, P.S.- Punpun, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar through Additional District Magistrate, Begusarai having office at Collectorate at Begusarai.
2. The Additional District Magistrate cum Appellate Authority having office at Collectorate at Begusarai.
3. Hotel Yuvraj through its Proprietor Sri Pramod Kumar Singh, son of Kailash Prasad Singh, Zeromile, Maslanpur, Behat, P.S. Zeromile, District- Begusarai.

.... Respondent/s

Appearance :

(In CWJC No. 357 of 2015)

For the Petitioner/s : Mr. Suraj Samdarshi
For the Respondent-State : Mr. Ashok Priyadarshi, GA-4
For the Holding/Distribution Co. : Mr. Anand Kumar Ojha

(In CWJC No. 11110 of 2014)

For the Petitioner/s : Mr. Anand Kumar Ojha
For the Respondent-State : Mr. Avinash Kumar, SC-30
For the Private Respondent : Mr. Suraj Samdarshi

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 17-03-2015

Learned counsel appearing for the petitioner in CWJC No.357 of 2015 is permitted to add the Assessing Officer –cum- Electrical Executive Engineer, Electric Supply Division, Barauni, district- Begusarai as respondent no.6 to the writ petition during the course of the day.

Heard Mr. Suraj Samdarshi learned counsel appearing for the petitioner in CWJC No.357 of 2015 and private respondent no.3 in CWJC No.11110 of 2014, and Mr. Anand Kumar Ojha for the respondent authorities who are writ petitioner in CWJC No.11110 of 2014.

Since both the writ petitioners while raising other issues, have also questioned the order passed by appellate authority under section 127 of Electricity Act, 2003 (hereinafter referred to as 'the Act') hence these writ petitions have been heard together and with the consent of the parties are being disposed of at the stage of admission itself.

Whereas the petitioner in CWJC No.357 of 2015 while questioning the provisional bill dated 16.11.2012 issued under section 126 of 'the Act' as well as the final assessment order dated 19.1.2013 passed under section 126 of the Act, has also questioned the order of the appellate authority dated 30.10.2013 passed under section 127 of 'the Act', the respondent Holding/Distribution company has questioned the order of the appellate authority

exclusively on a different ground.

In the nature of the order which this Court intends to pass considering the issues raised herein it would not be required to enter into the intricacy of the matter.

For the sake of convenience I shall be referring to the pleadings and annexures as occurring in CWJC No.357 of 2015 unless specified with reference to the other writ petition.

The facts of the case briefly stated is that the writ petitioner filed an application for enhancement of load from 43 K.W. to 75 K.W on 19.10.2010 (Annexure-1) i.e. from Low Tension Industrial category to High Tension Industrial category. The matter remained pending when a second application is stated to have been filed by the petitioner on 26.3.2011, a copy of which has been brought on record by the respondent-Holding/Distribution Company vide Annexure-C/1 to the counter affidavit and whereby the petitioner placed a request for enhancing load from 43 K.W. to 60 K.W. i.e. within the Low Tension Industrial category itself. An inspection took place on 15.11.2012, a copy of which is placed at Annexure-3 to the writ petition and when it was found that the petitioner was consuming electricity at a load of 158.28 K.W. A provisional bill under section 126 of 'the Act' was drawn on 16.11.2012, a copy of which is placed at Annexure-4 and since according to the respondent, the petitioner did not respond to the



notice issued in this regard that a final assessment order was passed on 19.1.2013 vide Annexure-5 raising a punitive bill of Rs.9,02,080/- after deducting the amount already paid by the petitioner. The petitioner being aggrieved preferred statutory appeal under section 127 of 'the Act' and which has been disposed of vide order passed by the appellate authority on 30.11.2013 placed at Annexure-6. The petitioner not being satisfied by the disposal of the appeal as well as the punitive bill has preferred this writ petition and at the same time the respondent-Holding/Distribution Company being aggrieved by the very maintainability of the appeal has preferred the other writ petition questioning the appellate order.

While it is the contention of Mr. Samdarshi, learned counsel appearing for the writ petitioner-consumer that in view of the provisions underlying clause 7.8(v) of the Bihar Electricity Supply Code, 2007 there could be no question of issuance of a bill under section 126 of 'the Act', it is further contested that even if such argument fails yet the bills so issued by the respondent-Company has to be in tune with the provisions of the Supply Code which is not satisfied in the present case. Learned counsel in support has relied upon an amendment issued vide notification dated 16.8.2010 to the Electricity Supply Code, 2007 published in the Bihar Gazette Extraordinary dated 18.8.2010, more particularly clause 3 of the provisions relatable to "Assessment in cases of

Unauthorized Use of Electricity” which runs as follows:

“3. If the connected load of LT consumer is found in excess of contracted load and no tampering or bypassing of the meter or theft is detected and meter is found working satisfactorily, then in such cases the short fall in units in Monthly Minimum Consumption (MMC) in energy consumption, if any, and the fixed charge for the excess load detected during the inspection/raid shall be charged at twice the applicable tariff rate for the period stated in ‘D’ above.”

The issue raised by Mr. Samdarshi has been contested by Mr. Ojha to submit that these were not the issues raised by the petitioner before the appellate authority inasmuch as the validity of the bill was never in question and even otherwise since the enhancement has taken place as per the request of the petitioner hence he can not question the bills on the anvil of section-126 of ‘the Act’. It is also the argument of Mr. Ojha that for the delay in preferring the appeal, in absence of any explanation and/or any condonation by the appellate authority, the appeal itself was not maintainable and thus the appellate order is fit to be set aside. He further submits that the finding of the appellate authority regarding levy of punitive bill since 2010 is contrary to the records inasmuch as the bill has been issued in tune with the statutory provisions dating back one year from the date of inspection and thus there is error on the face of record of the appellate order.

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

One thing is clear and that is that both the contesting parties herein do agree that the appellate order is unsustainable and thus pray for remand. The issue in the circumstances discussed would be a remand to which forum, whether appellate or the Assessing Authority.

In is not in dispute that the inspection was ex-parte and the report does not carry the signature of the petitioner. It is also not in dispute that the final assessment order placed at Annexure-5 is also ex-parte and according to the recordings made thereunder the petitioner did not choose to respond to the notice. On the other hand the appellate order while taking note on the notice has held that the notices were never served on the petitioner. Meaning thereby the final assessment order was passed in absence of the petitioner. A statutory right vests in every consumer under the provisions of section 126(3) of 'the Act' of being given an opportunity of hearing in defence of his stand and since there is a conclusive finding by the appellate authority regarding non-service of notice it is apparent that the petitioner was deprived of such opportunity so granted to him under the provisions of 'the Act'. Although there has been contesting arguments by learned counsel for the respective parties in the matter of issuance of the punitive bill but since the issues raised and contested could not be deliberated upon by the assessing officer while passing the final order primarily on account of

absence of the petitioner, this Court is of the opinion that the matter requires a reconsideration by the Assessing Officer.

It is not in dispute that the petitioner has already deposited the punitive bill amount and thus there is nothing outstanding against him except whether he is legally obliged to deposit such bill.

The two issues which emanate from the arguments raised by the contesting parties are:

- (a) Whether there could be a punitive assessment under section 126 of 'the Act' in the present case and if the answer to such issue is in the affirmative, then;
- (b) Whether the bills so raised is in terms of the provisions of the Bihar Electricity Supply Code, 2007 as amended vide Amendment Act, 2010.

Since the petitioner was deprived of the opportunity to contest the matter on such issue before the Assessing Authority and also bearing in mind that the punitive bill amount has already been deposited by the petitioner, this Court is of the considered opinion that the matter requires a reconsideration and the petitioner deserves an opportunity of hearing before a final assessment order is passed.

For the opinion drawn by me hereinabove it would be a completion of formality to hold the final assessment order dated 19.1.2013 as well as the appellate order dated 30.10.2013

unsustainable in law and both are accordingly set aside. The matter is remitted back to the Assessing Officer –cum- Electrical Executive Engineer, Electrical Supply Division, Barauni, Begusarai, respondent no.6 to pass a fresh final assessment order in accordance with law bearing in mind the statutory provisions provided under section 126(3) of ‘the Act’ and after giving an opportunity of hearing to the petitioner.

The petitioner shall appear before the Assessing Officer –cum- Electrical Executive Engineer, Electrical Supply Division, Barauni, Begusarai along with a copy of the objection petition as well as a copy of this order on or before 6.4.2015 and whereafter the Assessing Authority would proceed to pass the final assessment order in accordance with law.

The two writ petitions are allowed.

(Jyoti Saran, J)

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