IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6047 of 2013

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1. M/S Lotus Nikko Hotel, Through Its Manager/General Manager Mr. Sachida Nand Dixit S/O Sri Gorakh Dixit At Bodh Gaya, Near Archeological Museum, Bodh Gaya, District - Gaya

.... Petitioner/s

Versus

1. The Bihar State Electricity Board, Through, The Secretary, Vidyut Bhawan, Bailey Road, Patna
2. The Electrical Superitending Engineer, Electrical Supply Circle B.S.E.B. Gaya, District - Gaya
3. The Electrical Executive Engineer (Commerce And Revenue), Electric Supply, Division, Gaya, District - Gaya
4. The Assistant Electrical Engineer, Electric Supply Division, Bodh Gaya (Gramin), District - Gaya

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Ravindra Kumar Sinha, Advocate
For the Respondent/s : Mr. Anand kumar Ojha, Advocate

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH
ORAL ORDER

6 26-08-2015 Heard learned counsel for the petitioner and learned counsel appearing on behalf of the Bihar State Electricity Board.

The petitioner prays for quashing the order dated 13.2.2013 issued by the Electricity Superintending Engineer, Electric Supply Circle, Gaya whereby he upheld the revised bill issued to the petitioner for a sum of Rs.25,45,370.00 for the period from April, 2010 to September, 2011.

The petitioner had earlier moved this Court in C.W.J.C. No.10274 of 2012 against revised demand dated 8.5.2012 raised by the Executive Engineer, Commerce and Revenue, Electric

Supply Circle, Gaya for a sum of Rs.25 lakhs and odd for the period April, 2010 to September, 2011. The bill was based on the premises that the petitioner having only a contract load of 115 KVA and was drawing energy from a transformer of 200 KVA. As per clause 16.4 of the tariff, the capacity of the transformer from which energy is being used, should not be more than 150% of the contract demand and if any consumer is violating the provisions, his service connection is to be disconnected and revised demand is to be raised in accordance with law.

The aforesaid writ application was disposed of by order dated 7.6.2012 with liberty to the petitioner to file his representation before the Superintending Engineer, Electric Supply Circle, Gaya who by the impugned order dated 13.2.2013 has upheld the revised demand of Rs.25 lacs and odd.

Before, I consider the rival submissions of the parties, it is relevant to notice the facts of the case in brief. The petitioner is a Hotel at Bodh Gaya, It took over the ownership of the premises from Hotel Bodh Gaya Ashok and entered into a fresh agreement with the Board for a contract demand of 115 KVA on 11 KV line. The petitioner started drawing electricity from the transformer of 200 KVA installed in its premises. As per clause 16.4 the capacity of the transformer should not be more than 150% of the contract demand and if any consumer violated the provisions the service connection will be disconnected and an appropriate demand would be raised.

The issue is whether the petitioner could be faulted for drawing electric line from a transformer installed in his premises which was more than 150% of the contract demand. It appears that the transformer installed in the premises of the petitioner of 200 KVA was not even noticed by the Electricity Board. In fact, it was the A.G. Audit which noticed the infirmity that the petitioner is using higher capacity of transformer then the admissible under its contract load and suggested to charge punitive bill from 4th October, 2010 to September, 2011 to the tune ofRs.25,45,370.00 which led to the issuance of the revised bill.

The case of the petitioner is that the transformer was installed from before and it was the onerous responsibility of the Board to have replaced the said transformer with another transformer or could have suitably reduced its capacity from 200 KVA proportionately.

This Court by order dated 21.3.2013 directed that pending decision of the case, the petitioner shall enter into an agreement of 133 KVA contract demand, shall pay the required extra security for 18 K.V.A. and shall pay the arrears on the excess

18 K.V.A. load calculated with effect from 8.5.2012 as per the letter of the Electrical Executive Engineer and on payment of the aforesaid amount, the electric connection shall be restored. The order dated 231.3.2013 which is relevant in the context is quoted herein below:

> " Pending final decision in this case, petitioner shall enter into an agreement for 133 K.V.A. contract demand, shall pay the required extra security for 18 K.V.A. and shall pay the arrears on the excess 18 K.V.A. load calculated with effect from 08.05.2012 as per the letter of the Electrical Executive Engineer as contained in Annexure-8. Pending signing of the agreement, a calculation chart shall be issued by the Electrical Executive Engineer to the petitioner, in terms of this order, within 48 hours of his filing application and on deposit of the amount; his electric connection shall be restored immediately".

It appears that pursuant to the order of this Court, the petitioner had entered into an agreement with the respondent Board of 133 KVA and has cleared the payment on excess of 18 KVA on 8.5.2012.

I find that the respondent Board had entered into an agreement with the petitioner perhaps being oblivious of the fact that it has installed transformer of 200 KVA on the premises of the petitioner which is coming from before. The said transformer was not installed by the petitioner. The Board being custodian of its property ought to have been more conscious and should have either replaced the transformer or reduced its capacity to 170

KVA to match the contract demand of 113 KVA.

This Court more or less in similar situation in the case of M/s Indo Hokke Hotels Ltd. vs Bihar State Electricity Board & Ors, reported in 2013(2) PLJR 213 has quashed the punitive bill raised on similar ground of drawing energy from a transformer of a higher capacity. This Court observed that it was for the Board to have replaced the transformer of a higher capacity installed in the premises from before and as such for their own mistake they cannot shift the burden on the consumer.

In the result, this writ application is allowed. The impugned order dated 13.2.2013 (Annexure-13) passed by the Electrical Superintending Engineer, respondent No.2 as well as order dated 8.5.2012(Annexure-8) passed by the Electrical Executive Engineer (C&R), Respondent No.3 are quashed.

(Samarendra Pratap Singh, J)

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