

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4204 of 2014

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Om Prakash Kumar, son of Late Shivlochan Sao, resident of Village-Dulhin Bazar, P.S. - Dulhin Bazar, District – Patna.

.... Petitioner/s

Versus

1. The South Bihar Power Distribution Company Ltd. through its M.D. having its Office at Vidhut Bhawan, Bailey Road, Patna.
2. The Chief Engineer, Electricity Supply Area, .
3. The Electrical Executive Engineer, Electric Supply Division, Bihta, Patna.
4. Electrical Superintending Engineer, Electric Supply Circle, Bihta, Patna.
5. The Assistant Electrical Engineer, Electric Supply Sub Division, Bikram, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Om Prakash Singh

For the Respondent/s : Mr. Vijay Kumar Verma

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

7 26-02-2015 Heard Mr. Om Prakash Singh, learned counsel appearing for the petitioner and Mr. Vijay Kumar Verma, learned counsel appearing for the respondent South Bihar Power Distribution Company Limited.

The petitioner while questioning the disconnection of his electricity line, has also questioned the inspection report dated 11.12.2013, a copy of which is placed at Annexure-6 to the writ petition on grounds of vague and presumptuous finding and while doing so has also questioned the punitive bill following the inspection report.

The facts of the case briefly stated is that an inspection took place in the premises of the petitioner on



11.12.2013 and when some alleged irregularities were found following which an FIR was instituted against the petitioner on 12.12.2013 giving rise to Dulhin Bazar P.S. Case No.193 of 2013 registered for the offence punishable under section 135 of the Electricity Act, 2003 (hereinafter referred to as 'the Act') and 'the Rules' framed thereunder. The matter is pending consideration before the Special Court under 'the Act' on the allegations.

It is on the basis of the inspection report that a provisional assessment order as to the loss caused by the petitioner was issued, a copy of which is placed at Annexure-A to the counter affidavit on 27.3.2014 raising a provisional bill of Rs.3,16,726/- and requiring the petitioner to file his objection thereto. No objection being filed, a second reminder was issued on 10.10.2014 placed at Annexure-B to the counter affidavit. It is stated by counsel for the petitioner that at the relevant time the petitioner was in police custody and hence he could not have responded to the notice in any case. It is further stated that the petitioner was released by this Court vide order passed on 19.11.2014 in Cr. Misc. No.35964 of 2014.

A supplementary counter affidavit has been filed enclosing a copy of the order passed on 4.2.2015 i.e. while the matter is being deliberated before this Court and while relying

upon some representation stated to be filed on 3.2.2015 by the petitioner that the provisional bill has been confirmed by the final assessment order under section 126(3) of 'the Act'.

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

It is manifest from the order itself that it is non-descriptive and does not bear any calculation as to the quantum. Another aspect of the matter is that whereas section 126(2) of 'the Act' mandates the assessing authority to hear the person aggrieved and pass order in accordance with law, this exercise is missing in the present case.

In the circumstances discussed, the provisional assessment order dated 27.3.2014 as contained Annexure-A to the counter affidavit as well as the final assessment order dated 4.2.2015 as contained in Annexure-C to the supplementary counter affidavit are set aside. The assessing authority who appears to be the Assistant Electrical Engineer, Electric Supply Sub-Division, Bikram, District- Patna is directed to pass a fresh provisional assessment order indicating the calculation and supply the same to the petitioner so as to enable him to file his objection in terms of section 126(3) of 'the Act' and whereafter the Assistant Electrical Engineer, Electric Supply Sub-Division, Bikram will pass final assessment order after giving a reasonable

opportunity to the petitioner as mandated under section 126(3) of 'the Act'.

Since the line of the petitioner stands restored under the interim order passed on 12.3.2014 it shall not be disturbed. However, the petitioner will continue making payment of the current charges exclusively as per the bill raised, failing which the Electricity Company would be at liberty to proceed in accordance with law. In so far as the amount of punitive bill is concerned, the same would be subject to passing of the final outcome of the proceedings arising from the punitive bill.

The writ petition is allowed with the directions aforementioned.

(Jyoti Saran, J)

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