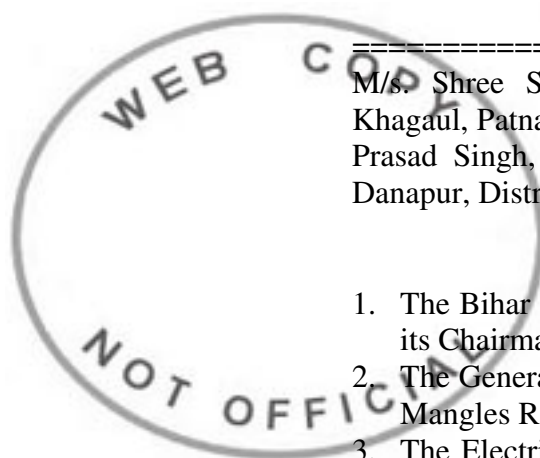




IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11271 of 2008

M/s. Shree Shankar Cooperative Cold Storage Samiti Ltd., Lakhani Bigha, Khagaul, Patna, through its Manager Pramod Kumar Singh, son of Late Nitya Nand Prasad Singh, resident of village Lakshmi Bigha, Khagaul, P.O. Khagaul, P.S. Danapur, District Patna.

.... Petitioner/s

Versus

1. The Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna through its Chairman officiating at Vidyut Bhawan, Bailey Road, Patna.
2. The General Manager cum Chief Engineer, Patna Electric Supply Undertaking, Mangles Road, Patna.
3. The Electrical Superintending Engineer, Electric Supply Circle, PESU (West), Patna.
4. The Electrical Executive Engineer, PESU (West), Patna.
5. The Assistant Electrical Engineer, Revenue Billing, West Circle, PESU, Patna.

.... Respondent/s

with

Civil Writ Jurisdiction Case No. 12406 of 2008

M/s. Shree Shankar Cold Storage, Nasriganj, Digha, Patna through its Partner Sanjay Kumar, son of Sri Ram Narayan Singh, C/o- Shree Shankar Cold Storage, Nasriganj, P.O. Digha, P.S. Danapur District Patna.

.... Petitioner/s

Versus

1. The Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna through its Chairman officiating at Vidyut Bhawan, Bailey Road, Patna.
2. The General Manager cum Chief Engineer, Patna Electric Supply Undertaking, Mangles Road, Patna.
3. The Electrical Superintending Engineer, Electric Supply Circle, PESU (West), Patna.
4. The Electrical Executive Engineer, PESU (West), Patna.

.... Respondent/s

with

Civil Writ Jurisdiction Case No. 8638 of 2008

M/s Dina Iron & Steel Ltd. (Rolling Mill), a Company incorporated under the Companies Act, having its registered Office at Abdul Rahmanpur Road, Deedarganj, Patna City P.O. & P.S. Chowk District Patna, through one of its Directors, Sanjay Kumar Bharatiya son of Late Din Dayal Bhartiya, resident of Rambagh Chowk, P.O. & P.S. Chowk Patna City, District Patna, Bihar.

.... Petitioner/s

Versus

1. The State of Bihar through Secretary Department of Energy, Govt. of Bihar, New Secretariat, Bailey Road, Patna.
2. The Bihar Electricity Regulatory Commission, Vidyut Bhavan-II, Bailey Road,

P.O. G.P.O., P.S. Kotwali, District Patna.

3. The Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna through its Chairman officiating at Vidyut Bhawan, Bailey Road, Patna.
4. The Chairman, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna.
5. The General Manager cum Chief Engineer, Patna Electric Supply Undertaking, Mangles Road, Patna.
6. The Electrical Executive Engineer, (Technical) Patna Electric Supply Undertaking (East) Shivalaya Market, Ashok Rajpath, P.O. Bankipur, P.S. Pirbahore, Patna.
7. The Assistant Electrical Engineer cum Assessing Officer, Electric Supply Sub-Division, Katra, P.O. Patna City, P.S. Malsalami, District Patna.
8. The Accounts Assistant, Patna Electric Supply Undertaking (East) Shivalaya Market, Ashok Rajpath, P.O. Bankipur, P.S. Pirbahore, Patna.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 12502 of 2008

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M/s Kamla Nutrition Processing Pvt. Ltd, Sharifaganj, Katra, Patna City, Patna, through its Director Ram Vinod Prasad, son of Shri Ravindra Prasad resident of Sharifaganj, P.S. Malsalami, P.O. Madhav Mills, Patna City, Patna.

.... Petitioner/s

Versus

1. The Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna through its Chairman.
2. The General Manager cum Chief Engineer, Patna Electric Supply Undertaking, Mangles Road, Patna.
3. The Electrical Superintending Engineer, Electric Supply Circle, PESU (East), Patna.
4. The Electrical Executive Engineer, PESU (East), Patna.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 12589 of 2008

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M/s Centuff Safety Glass Industries Pvt. Ltd., Guru Ka Bagh Road, Sharifaganj, Patna City, Patna, through its Director Ravi Kumar, son of Shri Munna Lal, resident of Kaimashikoh, Patna City, P.O. Jhauganj, P.S. Chowk, District Patna.

.... Petitioner/s

Versus

1. The Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna through its Chairman officiating at Vidyut Bhawan, Bailey Road, Patna
2. The General Manager cum Chief Engineer, Patna Electric Supply Undertaking, Mangles Road, Patna.
3. The Electrical Superintending Engineer, Electric Supply Circle, PESU (East), Patna.
4. The Electrical Executive Engineer, PESU (East), Patna.

.... Respondent/s

Appearance :**(In CWJC No. 11271 of 2008)**

For the Petitioner/s : Mr. Suraj Samdarshi

For the Respondent/s : Mr. Vinay Kirti Singh

(In CWJC No. 12406 of 2008)

For the Petitioner/s : Mr. Suraj Samdarshi

For the Respondent/s : Mr. Vinay Kirti Singh

(In CWJC No. 8638 of 2008)

For the Petitioner/s : Mr. Suraj Samdarshi

For the Respondent/s : Mr. Vinay Kirti Singh

(In CWJC No. 12502 of 2008)

For the Petitioner/s : Mr. Suraj Samdarshi

For the Respondent/s : Mr. Vinay Kirti Singh

(In CWJC No. 12589 of 2008)

For the Petitioner/s : Mr. Suraj Samdarshi

For the Respondent/s : Mr. Vinay Kirti Singh

for SBP DCL Mr. Chitranjan Sinha, Sr. Adv.

for the State Mr. Sunil Kr. Mandal, SC-24

Mr. Arjun Prasad, AC to SC-24

**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA****C.A.V. JUDGMENT****Date: 26-02-2015**

1. All the above stated petitions are taken enblock as in the above stated writ petitions almost common question of law and fact are involved and, accordingly, the said writ petitions are being disposed of by this common order.

2. In all the above stated writ petitions, the facts of the case lie within the narrow compass and it has been averred in writ petitions that new meters were installed at the premises of petitioners for the purpose of reading the consumption of electrical energy but subsequently, it was detected that the said meters were not functioning properly and accordingly, the meters were replaced by another meters and at the time of replacement of



the meters, the old meters were taken away by its supplier, namely, Secure Meters Ltd. without making any seal and seizure and without raising any objection regarding tampering with the aforesaid meters but after a long gap, the respondent-Board issued a letter to the petitioners by which and whereunder they were asked to depute one of their representatives for testing the aforesaid meters in the lab of its supplier, namely, Secure meters Ltd. The petitioners made protest writing letters to the Board but no heed was paid towards the above stated protest and subsequently, the meters were tested in the lab of Secure meters Ltd. and, accordingly, analysis report was sent to the Board informing that the tested meters were found to be tampered. The respondent-Board on the basis of said report, lodged the first information reports against the petitioners for theft of electrical energy under Section 135 of Electricity Act, 2003 and also issued punitive bills to the petitioners. However, petitioners deposited some amount of punitive bills to avoid their disconnection of power with protest and thereafter, filed above stated writ petitions before this court.

3. In CWJC No. 11271 of 2008, the electric meter was installed in the premises of the petitioner on 30.05.2007 and thereafter, the aforesaid meter was replaced on 31.10.2007 by



another meter upon the report of meter reader dated 06.10.2007 in which the concerned meter reader reported that the installed meter was not displaying the index. At the time of removal of old meter, the representatives of the petitioner, Board and Secure Meters Limited were present and furthermore, at the time of removal of the old meter, seals of meters were checked and found intact. After removal of the old meter, petitioner in CWJC No. 11271 of 2008 was informed vide letter no. 302 dated 29.05.2008 to depute his representative for testing of old meter. The petitioner in above stated CWJC No. 11271 of 2008 protested against the said letter mentioning this fact that the aforesaid meter was in custody of third party and made request to send the old meter for testing at an independent laboratory. Moreover, after testing of the aforesaid old meter in the laboratory of Secure Meters Limited, the analysis report dated 06.06.2008 was submitted and accordingly, Board lodged a first information report against the petitioner in CWJC No. 11271 of 2008 for loss to the Board to the tune of Rs. 17,10,000/- and also issued punitive bill of Rs. 17,95,720/- which was later on revised to the tune of Rs. 47,74,373/-. The petitioner in the above stated writ petition filed representation for deposit of the loss amount in installment to avoid his disconnection and, accordingly, the Board

vide letter no. 1556 dated 11.06.2008 granted installment facility to the above stated petitioner and accordingly, he deposited 25 % amount of the punitive bill under protest.

4. In CWJC No. 8638 of 2008, the electric meter was installed in the premises of the petitioner on 02.01.2008 and between 02.01.2008 to 01.03.2008, he paid all the charges of electric consumption and no dispute regarding tampering with the aforesaid meter was raised but on 01.04.2008, meter inspection was done in presence of representative of the petitioner and joint inspection team reported about non display of the meter though no doubt regarding any tampering with the aforesaid meter was raised and bill for the month of March 2008 was served upon the petitioner which was paid by the petitioner. Again, a thorough inspection of the meter was made on 04.04.2008 and the meter was found un-tampered and a new meter was installed on 06.04.2008 and a detailed report was prepared in presence of representative of the Board, supplier company and petitioner and the old meter was handed over to the representative of the supplier company, namely, Secure Meters Limited. Later on, petitioner was noticed to be present for testing of the old meter at the lab of supplier, namely, Secure Meters Limited and accordingly, the meter was tested in the lab of its supplier and



having found the said meter tampered, the concerned lab reported the matter to the Board and subsequently, Malsalami P.S. Case No. 87 of 2008 for the offences punishable under Sections 135 and 138 of the Electricity Act, 2003 was registered against the petitioner and on 14.05.2008, a punitive bill of theft of electricity worth Rs. 2,34,41,656/- was served upon the petitioner. The petitioner approached the board for making the payment of punitive bill in 24 interest free installments under protest but prayer of the petitioner was turned down and he was directed to make payment of 25 % amount of the punitive bill in one go and balance in four installments with compensation charges. However, on 14.05.2008 itself, the power connection of the petitioner was disconnected which compelled the petitioner to file the present writ petition.

5. In CWJC No. 12502 of 2008, the electric meter was installed on 11.04.2007 but on the report of meter reader, the meter was replaced on 18.05.2007. At the time of removal of old meter, no objection or dispute regarding tampering with the meter was raised but subsequently, petitioner received letter no. 302 dated 29.05.2008 by which and whereunder he was asked to depute an authorized representative to witness the analysis of the old meter in the lab of supplier, namely, Secure Meters Limited.



The petitioner made protest but his protest was unheard and accordingly, the aforesaid meter was checked in the lab of its supplier and it was detected that the aforesaid meter was tampered with and accordingly, first information report was lodged and punitive bill of Rs. 4,56,235/- was issued to him. The petitioner approached for deposit of punitive bill in installment and accordingly, with permission of the Board, he deposited 25 % amount of punitive bill under protest.

6. In CWJC No. 12589 of 2008, the electric meter was installed in the premises of the petitioner on 04.06.2007 and when it was found that the aforesaid meter was defective, the said electric meter was replaced on 14.06.2007 by another electric meter but again on the report of the meter reader, the above stated meter was replaced on 24.08.2007. The petitioner received letter no. 302 dated 29.05.2008 by which he was asked to depute an authorized representative to witness the analysis of the replaced meter to which the petitioner made protest but no heed was paid towards his protest and like the other cases, the replaced meter was found tampered with and accordingly, first information report was lodged against him under appropriate provision of Electricity Act, 2003 and punitive bill to the tune of Rs. 10,55,497/- was issued to him. The petitioner prayed for

installment facility and he was granted the said facility and accordingly, he deposited 25 % amount of the punitive bill under protest.

7. It is relevant to mention here that after filing of CWJC No. 11271 of 2008, petitioner of the above stated writ petition again filed CWJC No. 12406 of 2008 for some other reliefs and the fact of the aforesaid CWJC No. 12406 of 2008 is similar to the fact of CWJC No. 11271 of 2008.

8. It is also not out of place to mention here that respondent-Board entered into an agreement with Secure Meters Limited and according to the aforesaid agreement, the Secure Meters Limited supplied the electric meters to different consumers of the Board with responsibility that if the supplied meters are found defective or non-functional, the aforesaid meters would be replaced by the Secure Meters Limited. It is also not out of place to mention here that at the time of replacement of electrical meters, the removed meters were neither sealed nor any seizure was prepared and the electric meters were removed in presence of representatives of the Board as well as supplier of the meters and furthermore, the aforesaid meters were handed over to representatives of the Secure Meters Limited. Furthermore, it is also not out of place to mention here that after more than seven to



eight months of removal of the meters, the Board decided to send the removed meters to the lab of Secure Meters Limited for its checking and testing and after submission of analysis report, first information reports were lodged and punitive bill were issued.

9. Almost all the petitioners have prayed for quashing the issuance of punitive bills, for quashing the first information reports lodged against them, for restoration of their power connection, for adjustment/return of their deposit amount as well as for quashing the analysis report of lab of Secure Meters Limited.

10. Learned counsel Sri Suraj Samdarshi appearing in all the above stated writ petitions on behalf of petitioners submits that admittedly, at the time of removal of old meters, neither the representative of supplier of the meters nor the representative of the Board raised dispute regarding tampering of the removed meters rather at the time of removal of old meters, seals of all the meters were found intact and then the representatives of the supplier of the meters as well as Board decided to replace the old meters by new meters. It is further contended by him that it is also an admitted position that all the removed meters were taken away by the representatives of the supplier, namely, Secure Meters Limited and the aforesaid meters

were neither sealed nor any seizure was prepared. It is further contended by him that removed meters were lying in possession of its supplier for a long period and after that decision of testing of the aforesaid meters was taken.

11. Learned counsel Sri Samdarshi further submits that Para 8.14 (a) (iii) of Bihar Electricity Supply Code, 2007 lays down a procedure of sealing the defective meter and the aforesaid para of above stated Code says that if the consumer disputes the results of testing, or testing at consumer's premise is difficult, the defective meter shall be replaced by a new tested meter by the Licensee and the defective meter after sealing in presence of the consumer, shall be tested at licensee's lab/independent lab/Electrical Inspector, as agreed by the consumer in presence of representatives of both Licensee and the consumer. In view of aforesaid paragraph, learned counsel for the petitioners submits that it is the prerogative of the consumer to decide the forum where the defective meters to be tested but in the present case, the Board (Licensee) decided to send the defective meters to the lab of Secure Meters Limited who was none else than the supplier of the aforesaid meters and before sending the aforesaid defective meters, the petitioners were prevented to exercise their option and moreover, the Secure Meters Limited does not come under the

ambit of independent lab and, therefore, the respondent-Board violated the rules framed by Bihar Electricity Supply Code, 2007. He further submits that in view of the aforesaid specific provision, the report received from the lab of Secure Meters Limited cannot be used against the petitioners for any purposes.

12. Learned counsel for the petitioners further submits that so far as deposit of 25 % punitive bill amount is concerned, the same was deposited under threat of disconnection of power and the aforesaid deposit cannot be treated as acceptance of punitive bills in question.

13. Learned counsel for the petitioners referred decision of **M/s Shakti Cold Storage and another vs. Bihar State Electricity Board reported in 2008(4) BBCJ V-260** in which it has been held by a co-ordinate bench of this court that if the defective meter was not sealed in presence of consumer and was allowed to remain in custody of the Board/Supplier for more than a year, then, in that event, the authorities of the Board cannot be permitted to draw the inference that the same must have been tampered by the petitioners. In the said decision, it has further been held that the option where the test is to be carried out from among the three laboratories is that of consumer and not of the Electricity Board and decision to get the meter tested at

laboratory of supplier itself is a decision contrary to the provisions of Supply Code, 2007.

14. Learned counsel for the petitioners further submits that above stated decision of M/s Shakti Cold Storage (Supra) was confirmed by Division Bench of this Court in LPA No. 798 of 2008 vide judgment dated 16.07.2013 and furthermore, the above stated judgment of Division Bench passed in LPA No. 798 of 2008 was challenged by the Board before the Hon'ble Supreme Court in Special Leave to Appeal (Civil) No(s). 35067 of 2013 but the above stated Special Leave to Appeal was dismissed by the Hon'ble Apex Court vide order dated 25.11.2013. He further submits that case of the petitioners is squarely covered by the decision pronounced in M/s Shakti Cold Storage Case (Supra).

15. On the other hand, learned counsel Sri Vinay Kirti Singh appearing for the Board refuted the above stated submissions and submits that the case of the petitioners comes under **Para 8.20 (a) (ii) of Bihar Electricity Supply Code, 2007** which says that if after testing, it is found that the meter was rendered defective due to tampering or any other deliberate act by the consumer to interfere with the meter, the assessment shall be made under Section 126 of the Electricity Act, 2003 and shall be



punishable under Section 138 of the Electricity Act, 2003. He further submits that para 8.14 (a) (iii) of the Code is not applicable in the present case because petitioners did not raise any dispute regarding the results of testing and the aforesaid provision comes into play when any dispute regarding the result of testing is made by the consumer. He also submits that by depositing 25 % of punitive amount the petitioners accepted the punitive bill and now they cannot take a different stand because they entered into agreement with the Board to deposit the amount of punitive bill in installments.

16. Certain facts are admitted in this case. It is an admitted position that the meters were installed by the Secure Meters Limited under an agreement with the Board and subsequently, when the installed meters were found non-functional, the aforesaid installed meters were replaced by new meters. Furthermore, it is an admitted position that at the time of removal of installed meters, no sign of tampering with the aforesaid meters was found nor any report regarding tampering with the aforesaid meters was submitted by the officials who checked and replaced the installed meters.

17. **Para 8.14 (a) (ii) of Bihar Electricity Supply Code, 2007** says that if after testing the meter, in case



meter is found fast/slow by the licensee, and the consumer agrees to the report, the meter shall be replaced by a new meter within 15 days, and bills of previous three months prior to the month in which the dispute has arisen shall be revised in the subsequent bill as per the test results and furthermore, sub clause iii of the aforesaid para says that if the consumer disputes the results of testing, or testing at consumer's premises is difficult, the defective meter shall be replaced by a new tested meter by the Licensee, and, the defective meter after sealing in presence of consumer, shall be tested at Licensee's lab/Independent lab/Electrical Inspector, as agreed by consumer in presence of representatives of both Licensee and the consumer. The aforesaid provision makes two things clear. Firstly, if the consumer disputes the result of testing or testing at consumer's premises is difficult, the defective meter shall be tested at the labs as mentioned in the aforesaid provision and before taking away the defective meter, the same shall be sealed in presence of consumer. Secondly, the aforesaid provision makes it clear that it is the option of the consumer to select the lab among the above stated three categories of lab for sending the defective meters for testing. In the present case, admittedly, the aforesaid provision was violated by the Board because at the time of replacement of



old meters by new meters, the old meters were not sealed and furthermore, before sending the aforesaid meters to the lab of Secure Meters Limited, no opportunity was given to the petitioners to exercise their option as mentioned in the above stated provision. Moreover, the aforesaid provision says that the defective meters can only be tested at licensee's lab/independent lab/electrical inspector but admittedly, the defective meters were tested in the lab of Secure Meters Limited who was supplier of the aforesaid defective meters and, therefore, I am of the considered view that Secure Meters Limited does not come under the ambit of independent lab. So far as application of Para 8.20 (a) (ii) of the Code is concerned, in my view, the aforesaid provision is not applicable in the present case because in the present case, the procedure of sending the defective meters as well as analysis report of lab of Secure Meters Limited have been challenged and when the procedure for sending the meters was not complied with in accordance to Supply Code 2007, and the analysis report of lab of Secure Meters Limited does not have any legal identity in the eye of law, it cannot be said that the meters in question were tampered with and admittedly, the provision of Para 8.20 (a) (ii) of the Code comes into play when the result of testing establishes that the meter was rendered defective due to

tampering or any other deliberate act by the consumer to interfere with the meter.

18. So far as question of accepting the punitive bills by depositing 25 % amount of punitive bill is concerned, in my view, the aforesaid contention is not tenable because admittedly, after issuance of punitive bills, a notice for disconnection of the electric supply was given to the petitioners and under aforesaid threat and coercion they approached the Board for making payment in installments and thereafter, they deposited 25 % amount of punitive bills. Moreover, in CWJC No. 8638 of 2008, the petitioner of the aforesaid writ petition was permitted by this court vide order dated 28.05.2008 to deposit 25 % amount of the punitive bill.

19. It is not in dispute that all the aforesaid questions were raised in M/s Shakti Cold Storage Case (Supra) and a co-ordinate bench of this Court decided all the questions vide order dated 12.08.2008 which was upheld up to the Apex Court of this country and, therefore, in my view, in the light of discussions made above as well as findings given in M/s Shakti Cold Storage Case (Supra), all the above writ petitions are liable to be allowed but so far as question of quashing the respective first information reports lodged against the petitioners is

concerned, in my view, for quashing the respective first information reports lodged against the petitioners, petitioners may file separate petitions before appropriate forum and the aforesaid relief cannot be granted in these writ petitions.

20. On the basis of aforesaid discussions, all the above writ petitions are allowed and the respective punitive bills issued against the respective petitioners pursuant to the analysis reports submitted by Secure Meters Limited to the respondent-Board and subsequent steps taken by the respondents-Board in the light of analysis reports of lab of M/s Secure Meters Limited are, hereby quashed and the respondents are directed not to disconnect the electric connection of the petitioners in failure of deposit of above stated punitive bills and to restore their electric connection, if any, has been disconnected by the authorities of Board in failure of deposit of punitive bills in question and furthermore, the respondents are directed to adjust the amount already deposited by the petitioners against their dues, if any, in the future bills of the petitioners.

(Hemant Kumar Srivastava, J)

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