

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Review No.191 of 2014

In
Civil Writ Jurisdiction Case No. 7123 of 2009

- =====
1. The Electrical Executive Engineer, Electric Supply Sub-Division, Rajendra Nagar, PESU (East) P.S. Kadamkuan, Town AND District- Patna
 2. The Asstt. Electrical Engineer-cum-Assessing Officer, Electric Supply Sub-Division, Rajendra Nagar, PESU (East) P.S. Kadamkuan, Town AND District- Patna
 3. Asst. Electrical Engineer (Rev.) Electric Supply Sub-Division, Rajendra Nagar, PESU (East), Rajendra Nagar

.... Petitioners

Versus

1. Sachidanand Prasad son of Late Ram Prasad Singh resident of O-63 Doctor Colony, P.S.- Patrakar Nagar, District- Patna, Director Nalanda Hospital and Scan Research Centre Pvt. Ltd. at Arya Kumar Road, P.S.- Kadamkuan, Town AND District- Patna
2. The State of Bihar
3. The Principal Secretary, Energy Department, Government of Bihar, Patna

.... Respondents

=====

with

Civil Writ Jurisdiction Case No.4024 of 2013

- =====
1. The Bihar State Electricity Board Through Its Chairman
 2. The Electrical Executive Engineer Electric Supply Division, Rajendra Nagar Patna
 3. The Assistant Electrical Engineer Electric Supply, Sub Division Rajendra Nagar, Patna

.... Petitioners

Versus

1. The State Of Bihar ,Through Secretary Energy Department
2. The Appellate Authority Under Section 127 Of The Electricity Act 2003 Electric Inspector At Bihar, Patna, South Baily Road, Patna Near Patha High Court
3. Sri Sachchidanand Prasad Son Of Late Ram Prasad Singh Resident Of Arya Kumar Road Rajendra Nagar Patna

.... Respondents

=====

Appearance :

(In C. REV. No.191 of 2014)

For the Petitioner/s : Mr. Vinay Kirti Singh, Advocate
: Mr. Akhileshwar Singh, Advocate
For the Respondent/s : Mr. Sanjay Kumar No.2, Advocate

(In CWJC No.4024 of 2013)

For the Petitioner/s : Mr. Vinay Kirti Singh, Advocate
: Mr. Akhileshwar Singh, Advocate
For the Respondent/s : Mr. S. Shankar Pandey, AC to G.P. 24
For Respondent no.3 : Mr. Manoj Kumar Sinha, Advocate

=====

**CORAM: HONOURABLE MR. JUSTICE SAMARENDRA
PRATAP SINGH**
ORAL ORDER

4 15-09-2015

Both the C. Rev. no. 191 of 2014 and C.W.J.C. No. 4024 of 2014 have been heard together and are being disposed of by the common order.

2. Civil Review has been filed on behalf of the Electricity Department for reviewing the order dated 29.03.2012 passed in C.W.J.C. No. 7123 of 2009 filed by the petitioner Sachidanand Prasad, wherein it was observed that the Board is obliged to abide by order passed under Section 127 of the Electricity Act, passed in Appeal No. 25 of 2010.

3. C.W.J.C. No. 4024 of 2013 is also preferred by the Electricity Board against the order dated 20.10.2011 passed by the Appellate Authority-cum-electrical Inspector, Bihar, Patna in Appeal No. 25 of 2010, whereby the Assessing officer was directed to revise the final assessment as per the calculation given by respondent no.2.

4. Before I consider both the applications, it would be necessary to notice the facts of the case in brief.

5. Respondent no.3 of C. Review No. 191 of 2014, Sachchidanand Prasad, has an electric connection under Non-domestic-II consumer for a sanctioned load of 43 KW for running



a Hospital and Research Centre located at Arya Kumar Road, Rajendra Nagar, Patna. The premises of respondent was inspected on 18.05.2009. In course of inspection, the meter body seal, terminal seal and even the meter was tampered. As per the Board, the electric current has been suppressed by the artificial means in order to conceal higher consumption. In view of the inspection, the Board instituted a case of theft under Section 135 of the Electricity Act. The Board raised a punitive bill for an amount of Rs.24,70,656/-. On the basis of inspection report, a provisional assessment order was also served upon the petitioner for the said amount vide letter dated 19.05.2009. The respondent no.3 (consumer) filed his objection before the petitioner no.3 of review petition. After hearing the parties, the petitioner no.3 passed final assessment order, revising the provisional assessment from Rs. 24,70,656/- to Rs. 16,47,547/- (Annexure-7 to the writ petition).

6. The respondent no.3, being aggrieved filed an appeal under Section 127 of the Electricity Act before the Electrical Executive Engineer (petitioner no.2). The appellate authority after hearing the parties, remitted the matter to the Assessing Officer for passing fresh order in the light of last meter reading, whereas no tampering of meter was alleged.

7. Being aggrieved by the appellate order, the Board



filed the instant writ applications. On the other hand, as the order of the appellate authority was not being implemented, the consumer filed C.W.J.C. No. 7123 of 2009, which was disposed of on 29.03.2012 with an observation that the respondent Board is obliged to abide by the decision of the appellate authority passed under Section 127 of the Electricity Act.

8. The Board seeks review of the order dated 29.03.2012 passed in C.W.J.C. No. 7123 of 2009, as it has now challenged the validity of the appellate order passed under Section 127 of the Electricity Act.

9. This Court in C.W.J.C. No. 7123 of 2009 did not decide any issue but rather observed that the Board should implement the statutory order dated 20.10.2011 passed under Section 127 of the Act by the appellate authority, who happened to be the own official of the Board itself. It is not in dispute that the Board had not challenged the order of the appellate authority till the date of passing of the order dated 29.03.2012, as such I do not find any error of record. However, as the Board has preferred the instant writ (C.W.J.C. No. 4024 of 2013) challenging the appellate order dated 20.10.2011 passed under Section 127 of the Act, the order dated 29.03.2012 passed in C.W.J.C. No. 7123 of 2009 would be subject to the result of this case.



10. Thus, I proceed to decide the validity of the order of the appellate authority challenged in C.W.J.C. No. 4024 of 2013 preferred by the Board. The Board submits that the inspection was conducted by the inspecting team in presence of a Magistrate from the District Magistrate Control Room. Furthermore, the appellate authority failed to take note of the load of UPS as per its rating and have wrongly recorded its load as 10 KW instead of 24 KW. The appellate authority was also not correct in coming to the conclusion that the consumer was liable to pay punitive bill only for 48 days from the date of checking of the meter.

11. I find substance in both the submissions of the petitioner. The appellate authority had not given any cogent reason for coming to the conclusion with the load of UPS would be 10 KW and not 24 KW. Furthermore, the reading taken by the meter reader would not amount to inspection under Clause 9.15 of the Supply Code. In this view of the matter, the order dated 20.10.2011 passed by the appellate authority under Section 127 of the Act is not sustainable in law and is accordingly set aside and the matter is remitted for fresh consideration in accordance with law.

12. At this juncture, the petitioner submits that as the amount is heavy, he may be permitted to make payment of the

balance amount after subtracting the amount already paid in six equal monthly installments.

13. In view of the facts of the case and also in view of the fact that the appellate order was in favour of the petitioner, it will be open for the petitioner to pay the balance amount in six equal monthly installments. The first installment must be paid within one month from today.

14. The review application and the writ application are disposed of in the aforesaid terms.

(Samarendra Pratap Singh, J.)

Uday/-

U			
---	--	--	--