

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6853 of 2015

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Md. Naseemuddin, son of Late Md. Saddique, H. Np. 35, Aman Vihar,
Haroon Nagar, Sector-II, Phulwarisharif, Patna. Petitioner

Versus

1. The South Bihar Power Distribution Company Ltd. Through its Managing Director Vidyut Bhawan.
2. The Managing Director, South Bihar Power Distribution Company Ltd. Vidyut Bhawan, Jawaharlal Nehru Marge, Patna.
3. The General Manager-cum-Chief Engineer, PESU Electric Supply Area, Patna Near Patna Secretariat Sardar Patel Marg (Mangles Road), Patna.
4. The Electrical Superintending Engineer, Electric Supply Circle, PESU (west), Near Patna Secretariat Sardar Patel Marg (Mangles Road), Patna. null null
5. The Electrical Executive Engineer, Electric Supply Division, Gardanibagh, Babu Bazar, Gardanibagh, Patna.
6. The Assistant Electric Engineer, Electric Supply Sub- Division Gardanibagh, Patna.
7. Mr. Parvez Alam father's name not known the Assistant Electric Engineer, Electric Supply Sub- Division Gardanibagh, Patna.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Sunil Kumar Singh, Advocate

For the Respondent/s : Mr. Vinay Kirti Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH
ORAL ORDER

6 28-09-2015 Heard learned counsel for the petitioner and the Power Holding Company. Respondent no.6, Assistant Electric Engineer, Electric Supply Sub- Division Gardanibagh, Patna has also been arrayed by name, as mala fide has been alleged against him.

The petitioner has moved this court against final assessment order dated 10.12.2014, passed by respondent no.7 under section 126 of the Electricity Act imposing charge of Rs.6,82,965/- and appellate order dated 16.3.2015, passed under

section 127 of the Indian Electricity Act, whereby his appeal against final assessment and for restoration of electricity connection bearing Consumer code no. 010205511585 under DS II category, was rejected.

Case of the petitioner, in short, is that he was constructing a house in Harun Nagar, Patna and had taken energy connection of DS II category with a sanctioned load of 2 KW for his house. An inspection was done on 27.11.2014 in which he was found using marble cutting machine and welding machine with a total connected load of 13.18 KW in place of sanctioned load of 2 KW. It was alleged that the petitioner was drawing energy through PVC wire, bye-passing the meter. A criminal case was also instituted under section 126 of the Electricity Act. The petitioner was also served a punitive bill for a sum of Rs. 6,82,965/- under section 126 of the Electricity Act. A provisional assessment order was also served upon him for the said amount. The petitioner's objection under section 126(3) of Electricity Act, 2003 was rejected on 10.12.2014. The petitioner deposited 50% of the assessed amount (Rs.3,41,483/-) at the time of filing of the objection on 24.12.2014. However, his appeal for restoration of electricity connection was also rejected on 16.3.2015.



The petitioner submits that both the criminal case and the proceeding under section 126 of the Electricity Act has been mischievously initiated against him at the behest of Fazal Ali and Kamal, both retired employees of the Bihar State Electricity Board, as his (petitioner's) boundary touched their boundaries. Both of them had altercation with him during construction of house. In order to wreak vengeance they managed an inspection of his premises through respondent no.6, who has also been arrayed as party respondent no.7. Nonetheless, it would appear from the inspection report that a new house was being constructed, for which a welding machine was borrowed on rent about a week before inspection to fix the grill settings. He submits that the total load of appliances would be 8 KW. However, the same has been erroneously assessed as 13.18 KW. He submits that the respondents, at the best, could have imposed a fine for five days, instead of 365 days, and ignoring all these aspects, respondent no.6 passed final assessment order.

Counter affidavit as well as suppl. counter affidavit have been filed on behalf of the Power Holding Company justifying their action. Mr. Vinay Kirti Singh, learned counsel appearing for the Power Holding Company submits that the decision has been taken independently on the merits of the case

without being influenced by any one. He further submits that the petitioner has not brought any tangible material to challenge the inspection report.

The issue before this Court is whether the petitioner was deprived of adequate opportunity to present his case before the Power Holding Company. The case of the Company is that sufficient opportunity was granted to the petitioner to present his case. It would appear from paragraph 6 of the suppl. counter affidavit that after inspection and lodging of FIR, the Assistant Electrical Engineer, electric Supply Division, issued a provisional assessment order dated 1.12.2014 asking the petitioner to file his objection within 15 days and to come to his office Chambers on 12.12.2014 for hearing. It was further stated in the notice that if no objection is received, then final assessment would be made on 15.12.2014. Again in paragraph 7 of the supplementary counter affidavit respondents state that the petitioner appeared before the Assessing officer and filed his objection on 6.12.2014, 9.12.2014 and 12.12.2014. It would appear from the suppl. counter affidavit that the objections were filed on 6.12.2014, 9.12.2014 & 12.12.2014. However, the Assessing officer passed a final assessment order on 10.12.2014. As such, I am of the considered view that the

petitioner was not provided adequate opportunity to represent his case before the Assessing officer. In the result, the final assessment order dated 10.12.2014 and the appellate order dated 16.3.2015 are set aside and the matter is remanded to the Assessing officer to proceed afresh after providing an opportunity of hearing to the petitioner.

The petitioner has already paid 50% of the punitive amount, as such, the Power Holding Company is directed to restore electricity connection in his premises bearing Consumer code no. 010205511585.

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The writ petition stands disposed of with aforesaid directions.

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(Samarendra Pratap Singh, J)