

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18085 of 2012

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1. Binod Kumar Gupta S/O Badri Prasad Sah Resident Of Village
 Kadogaon, P.S. Thakurganj (Sukhani), District Kishanganj

.... Petitioner

Versus

1. The Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna
 Through Its Chairman
 2. The General Manager Cum Chief Engineer, Koshi Electric Supply
 Division, Saharsa
 3. The Electrical Superintending Engineer, Kishanganj Electric Supply
 Circle, Kishanganj
 4. The Electrical Executive Engineer, Kishanganj Electric Supply Division,
 Kishanganj
 5. The Assistant Electrical Engineer, Electric Supply Division, Thakurganj,
 Kishanganj
 6. The Junior Electrical Engineer, Electric Supply Division, Thakurganj,
 Kishanganj

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Suraj Samdarshi, Advocate

For the Respondent/s : Mr. Anand Kumar Ojha, Advocate

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

10 02-09-2015 Heard learned counsel for the petitioner and learned counsel
 appearing on behalf of the Bihar State Electricity Board.

The petitioner is a consumer of the Board having sanctioned
 load of 1 KW. On 14.2.2012, an inspection of the premises was
 carried out and it was found using electricity by directly hooking
 from the supply line of the Electricity Board. Pursuant to the said
 inspection, a bill for a sum of Rs.2,69,035/- was raised, as
 contained in Annexure-C/1 to the counter affidavit. At the same
 time a criminal case under section 135 of the Electricity Act was
 also instituted for the alleged theft.

As the punitive bill amounting to Rs.2,69,035/- was not paid, the electric line of the petitioner was disconnected. The petitioner submits that the disconnection of his electric line is bad and as such he sought restoration of his electric supply.

The petitioner submits that neither a copy of the inspection report nor provisional assessment order was served upon him and in absence of the same it was not possible for him to make meaningful objection under section 126 of the Electricity Act, 2003.

On the other hand, learned counsel for the Board submits that the petitioner could very well raise his objection under section 126 of the Electricity Act on the basis of the bill prepared pursuant to the institution of the F.I.R or if a consumer seeks restoration of electrical line, he ought to pay his electric demand raised consequent to inspection.

The issue is whether the petitioner can be directed to take resort to remedial measures under sections 126 and 127 of the Electricity Act in absence of inspection report or the provisional assessment order?

Clause 11.2.3. of the Bihar Electricity Supply Code, 2007 deals with the procedure to be adopted by licensee for Inspection, Provisional Assessment, Hearing and Final assessment in case of theft of electricity under section 135 of the

Act.

Sub clause (a)(v) of clause 11.2.3 of Supply Code states that in all cases of inspection, a report shall be prepared at site and a copy of the same is to be served on the consumer. Sub clause (a)(v) of clause 11.2.3 of Supply Code reads as under:

“11.2.3(a)(v)- In all cases of inspection, a report shall be prepared at site giving details of connected load, condition and details of old seals, working of meter, details of new seals and clearly mention any irregularity noticed which may lead to theft of electricity in the format given in Annexure-8. The Authorized Officer shall carry seals for this purpose. Any damage/destruction to the electric meter, metering equipments, apparatus, line, cable or electrical plant of the licensee caused or allowed to be caused by the person so as to interfere with the proper or accurate metering of electricity or for theft of electricity shall also be duly recorded in the report. The Authorized officer shall also prepare a diagram illustrating the arrangements found to have been made for theft of electricity, wherever feasible and such diagram shall form a part of inspection report”.

Sub-clause (b)(i) of Clause 11.2.3 of Supply Code requires service of provisional assessment and notice to the consumer if the Assessing Officer comes to the conclusion that theft of electricity has taken place in the premises. Sub-clause (c)(v) of clause 11.2.3 of Supply Code states that the licensee or supplier, as the case may be on deposit or payment of the assessed amount or electricity charges in accordance with complaint as referred to in the sub clause 11.2.3(a)(viii), restore the supply line of

electricity within forty eight hours of such deposit or payment.

Sub-clause (c) of clause 11.2.3 talks of hearing and final assessment. Sub-clause (c) (v) of clause 11.2.3 states that the consumer after final assessment would deposit or pay the assessed amount or electricity charges in accordance with complaint as referred to in the sub clause 11.2.3(a)(viii) and restore the supply line of electricity within forty eight hours of such deposit.

Sub-section (2) of Section 126 of the Electricity Act, 2003 which deals with assessment of unauthorized use of electricity mandates that order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such manner as may be prescribed. Thereafter, the Assessing officer under sub-section (3) of Section 126 of the Act would proceed to dispose of the matter. Either party aggrieved by the same may prefer an appeal under section 127 of the Electricity Act.

From perusal of the relevant provisions under the Supply Code as well as under the Electricity Act, 2003, it is evident that a copy of the inspection report as well as provisional assessment order is to be served upon the consumer in order to file his objection, if any.

In the instant case, neither inspection report nor the



provisional assessment order has been served upon the petitioner save and except a bill which is prepared on the basis of contents of the First Information Report. There is a purpose for making a specific provision for service of copy of Inspection Report. The Inspection Report contains the details of apparatus/appliances found and the total connected load. The service of provisional assessment order as stipulated is equally relevant as the objection is provided under section 126(3) of the Electricity Act against the provisional assessment which in term is based on connected load and other relevant factors mentioned in inspection report. The non-supply of the documents would deprive the consumer in making meaningful objection against the punitive demand.

A Division Bench of this Court in the case of Mosmat Swaran @ Swaran Manraw vs The State of Bihar, reported in 2012(2)PLJR 229 held that unauthorized user of electricity and theft of electricity are two distinct provisions and operate in different fields and have no commonality with each other. Furthermore, a learned Single Judge in the case of Krishna Prasad Vs The Bihar State Electricity Board passed in C.W.J.C. No.12740 of 2009 observed that the provisional assessment has to be made on the basis of inspection report and has to be communicated to the petitioner for his objection.

In such circumstances, in absence of service of inspection

report and the provisional assessment order, the Board cannot ask the petitioner to deposit the punitive amount for the purposes of restoration of electric connection. It is well settled that one cannot take advantage of its own default and deficiencies.

In the result, this writ application succeeds and it is, accordingly, allowed. The Power Holding Company is directed to restore the electric line of the petitioner without insisting for any payment. However, restoration of electric line would be subject to the final adjudication of the matter under section 154 of the Electricity Act by the Special Court.

(Samarendra Pratap Singh, J)

Md.Jamaluddin Khan
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