

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1650 of 2012

IN

Civil Writ Jurisdiction Case No. 2610 of 2012

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M/S Vajra Cement Private Limited, a company registered under the provisions of Companies Act, 1956 having its registered Office at 16, Narmada Apartment, Exhibition Road, Patna-1, through its Director Rajesh Khemka S/O Shri Giridhari Lal Khemka, R/O 41, Narmada Apartment, Exhibition Road, P.S.- Gandhi Maidan, Patna.

.... Appellant

Versus

1. The Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna, through its Chairman.
2. The General Manager-Cum-Chief Engineer, Central Area Electricity Board, 9, Serpentine Road, Patna.
3. The Electrical Superintending Engineer, Patna Electric Supply Division, Patna.
4. The Electrical Executive Engineer, Bihta, Patna.
5. The Electrical Assistant Engineer, Bihta Supply Sub-Division, Patna.

.... Respondents

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Appearance :

For the Appellant : Mr. Suraj Samdarshi, Advocate

For the Respondents : Mr. Anand Kumar Ojha, Advocate

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

And

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 05-11-2015

The writ petitioner, who is appellant, is a company having an industrial unit, the mini cement plant at Bihta in the

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District of Patna. It appears that high tension meter as affixed in the industrial complex was alleged to be tampered, on the basis thereof, as envisaged under the Indian Electricity Act, 2003, a provisional assessment was made, and before that a First Information Report was lodged for meter tampering and theft of electricity, in which, it was alleged that, electric supply company had suffered a loss to the extent of about Rs. 80 Lacs. The provisional assessment was made to the extent of almost Rs. 2 Crores. Upon charge-sheet being filed and the trial being taken up, the accused persons who were the company and its Director, they have been acquitted, though not on merit. When it came to filing show cause as against the provisional assessment, on behalf of the writ petitioner, a show cause objection was filed which is Annexure – 13 to the writ petition, which clearly stated that consequent to acquittal in the criminal case, there is no liability under the provisional assessment. It was clearly stated that while taking this objection, objection on merits was not raised. The Assessing Officer having rejected the objection, vide order dated 14.12.2011 (Annexure – 14 of the writ petition), straightway proceeded to decide the matter on merit and make the final assessment raising a demand of about Rs. 1.99 Crores.

It may be noted that he has given remission to the

extent of amount paid earlier. Petitioner was aggrieved by this action which in its opinion was denial of natural justice. He filed a writ petition challenging this order of final assessment.

The learned Single Judge, before whom the matter came up for hearing, held that as against final assessment order, a statutory appeal was provided under Section 127 of the Electricity Act, 2003. It accordingly directed the writ petitioner to move in appeal permitting the appeal to be entertained beyond time and on payment of 50% of the final assessment order. The writ petitioner being aggrieved by this order has come to this Court in Intra-Court Appeal.

We have heard the parties and with consent this appeal is being disposed of at this stage itself.

Sri Suraj Samdarshi, learned counsel for the appellant submitted that if Annexure – 13 the show cause of the petitioner is seen, it would be evident that the petitioner had made no submission on merit. He raised technical objection as a preliminary issue. Thus, when the Assessing Officer disagreed with the preliminary objection, he should have granted an opportunity to the writ petitioner to address him on merit. Not having done so, the order of final assessment as passed, was clearly in violation of principles of natural justice.



On the other hand, Sri Anand Kumar Ojha, learned counsel for the erstwhile Electricity Board, submits that the writ petitioner having taken chance before the Assessing Officer, not submitted anything beyond the technical objection, his remedy now lay to the appellate court.

In our view, the first issue to be decided is whether there is violation of principles of natural justice, or not. If principles of natural justice have been violated, then undoubtedly, the Assessing Officer being a quasi-judicial authority, the effect would be to nullify the order. What has to be taken into account, while deciding the statutory rule of alternative remedy, it is well established that one of the exceptions to the rule of alternative remedy is violation of principles of natural justice. (See in the case of **Baburam Vs. Zila Parishad** since reported in **AIR 1969 SC 556**) The learned Single Judge clearly fell in error in directing the petitioner to go in appeal.

Why there was violation of principles of natural justice is clear from a reference to Annexure – 13, the show cause filed by the writ petitioner. He had clearly indicated to the authorities that he was taking a technical objection and not addressing on merit. This itself indicates that, if technical objection is not sustained, then, he has to be given a chance to defend himself on merit. It is



like in a suit, where a preliminary objection is taken, that does not mean that once the preliminary objection is rejected, the suit also is finally decided. After the preliminary objection had been decided as against the writ petitioner, it was incumbent upon the authority to give him an opportunity to make his submissions on merits of the matter. Heaven would not have fallen by grant of this opportunity, it is, because of this that, an opportunity had to be granted, especially when the liabilities and the consequences are so serious and stringent in nature.

Thus, there being violation of elementary principles of natural justice, the learned Single Judge was in error in relegating the petitioner to statutory alternative remedy, the proper course would be, which we adopt that, the order of final assessment, as contained in Annexure – 14, be set aside, and the matter is remitted for fresh hearing by the Assessing Officer on all aspects of the matter. It will be open to the petitioner to raise all the issues that are available in law and fact and the Assessing Officer to decide the same in accordance with law.

However, in fairness to Sri Ojha, learned counsel for the Electricity Board, he submits that, in the meantime, certificate proceedings, based on the final assessment order, has already been initiated.

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Needless to say that those proceedings would remain in abeyance which itself was predicated by the learned Single Judge when he permitted the writ petitioner to file an appeal against the final assessment order, and so long such assessment is not finalized, there could not have been any certificate proceedings.

Thus, the best option available to the Court is to direct that, the certificate proceeding, till finalization of the assessment proceeding, would remain stayed till finalization of assessment proceeding.

With this observation and direction, the appeal stands disposed of.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

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