

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1040 of 2015

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Abhay Kumar, son of Late Mahesh Prasad, resident of Mohall - Belwarganj
Sindhua Toli, Police Station- Alamganj, Patna City, District Patna.

.... Petitioner/s

Versus

1. The South Bihar Power Distribution Company Ltd. through the Managing Director, Vidhut Bhawan, Bailey Road, Patna.
2. The Managing Director, South Bihar Power Distribution Company Ltd. Vidhut Bhawan, Bailey Road, Patna.
3. The Electrical Executive Engineer, Electric Supply Division, Meena Bazar, Guljarbagh, Patna.
4. The Assistant Electrical Engineer, Electric Supply Division, Meena Bazar, Guljarbagh, Patna.
5. The Junior Electrical Engineer, Electric Supply Division, Meena Bazar, Guljarbagh, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ravindra Kumar Singh

For the Respondent/s : Mr. Ashok Kumar Karna

AC to Mr. Anand Kumar Ojha

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 09-04-2015

Heard the parties.

The petitioner has prayed for quashing of the final assessment order bearing No.195 dated 11.9.2014 (incorrectly mentioned as 11.9.2016), a copy of which is placed at Annexure-4, whereby the Assessing Authority –cum- Assistant Electrical Engineer, Electric Supply Branch-II, Meena Bazar, Gulzarbagh has finally assessed the liability at Rs.1,42,602/- on account of loss caused by the petitioner for drawing electricity by unauthorized means.

The facts of the case briefly stated is that following



an inspection held on 31.5.2014 by a team of officers of the South Bihar Power Distribution Company and finding alleged irregularities in drawl of electricity by the petitioner that the electrical connection was disconnected and an FIR was instituted giving rise to Khajekalan P.S. Case No.143 of 2014 registered for the offence punishable under section 135 of the Electricity Act, 2003 (hereinafter referred to as 'the Act'). A loss was assessed at Rs.1,42,602/- which is besides the arrears outstanding against the petitioner to the tune of Rs.76,093/-. A calculation of provisional assessment was supplied to the petitioner under section 126 of 'the Act', a copy of which forms part of Annexure-2 series and whereafter a final assessment order under section 126(3) of 'the Act' was passed on 11.9.2014 vide Annexure-4 by the Assessing Authority. The petitioner questions the same in the present writ petition.

Although Mr. Ashok Kumar Karna, Assisting Counsel to Mr. Anand Kumar Ojha, learned counsel appearing for the respondents questions the right of the petitioner to challenge the final assessment order inter alia, on grounds that in absence of objection filed by the petitioner in terms of section 126(3) of 'the Act', the order of final assessment suffers from no infirmity but such arguments has been contested by Mr. Ravindra Kumar Singh, learned counsel appearing for the petitioner on grounds that he was

precluded from filing any objection in absence of supply of an order of provisional assessment as mandated under section 126(2) of 'the Act' by the Assessing Authority.

I have heard learned counsel for the parties and I have perused the records.

In the nature of the order which this Court proposes to pass it would not require awaiting filing of the counter affidavit. That the final assessment order is non-descriptive is apparent from a bare look of the same, even the provisional assessment, a copy of which is a part of Annexure-2 series does not accompany any order and thus unquestionably the petitioner was prejudiced from filing a purposeful objection in absence of any order. Section 126(2) of 'the Act' mandates that the order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in the manner prescribed and sub-section (3) of section 126 enables the petitioner on whom such order is served, to file his objection against the provisional assessment before the assessing officer who has to pass the final order after affording an opportunity to the person concerned. Apparently the procedures followed by the respondent Assessing Authority –cum- the Assistant Electrical Engineer is in utter violation of the statutory provisions for the provisional assessment bill does not accompany any order and the final

assessment order is sans any reason and has been passed without affording any opportunity of hearing to the petitioner as mandatorily required under section 126(3) of 'the Act'.

For the reasons aforementioned, the final assessment order dated 11.9.2014 placed at Annexure-4 cannot be upheld and is accordingly set aside. The Assessing Authority –cum- Assistant Electrical Engineer, Electrical Supply Branch-II, Meena Bazar, Gulzarbagh is directed to serve the provisional assessment order on the petitioner within a fortnight from the date of receipt/production of a copy of this order and no sooner such provisional assessment order is served on the petitioner he shall file his objection within four weeks thereafter and which would be disposed of by the Assessing Authority after giving a reasonable opportunity of hearing to the petitioner.

At this stage Mr. Singh, learned counsel appearing for the petitioner prays for interim relief.

This Court takes notice of the fact apparent from the records that there is a provisional assessment to the tune of Rs.1,42,602/- and besides that the petitioner was also in arrear of Rs.76,093/-. It is submitted by Mr. Ravindra Kumar Singh, learned counsel for the petitioner that the petitioner in the meantime has deposited a sum of Rs.68,695/- against the outstanding arrears. In my opinion, the said amount would not even meet the arrears. The

petitioner besides the punitive bill is still in arrears of Rs.7,398/-.

Thus considering the interim relief prayed for by the petitioner in the aforementioned circumstances, this Court is of the opinion that if the petitioner would deposit a sum of Rs.80,000/- which would be inclusive of the balance arrears outstanding against him of Rs.7,398/- and more than 50% of the punitive bill and produces a receipt of deposit before the Assistant Electrical Engineer/ Electrical Executive Engineer as the case may be, the authority concerned would ensure restoration of electricity connection of the petitioner within 48 hours thereafter.

It goes without saying that the balance amount of the punitive bill remaining shall be subject to the final outcome of the proceeding but the petitioner shall be under an obligation to make payment of the current bill failing which the respondents shall be at liberty to take appropriate action in accordance with law.

The writ petition is allowed with the direction aforementioned.

(Jyoti Saran, J)

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