

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No 837 of 2013

IN

Civil Writ Jurisdiction Case No. 7284 of 2008

- =====
1. Bihar State Electricity Board @ Bihar State Power (Holding) Company Ltd Through Its Chairman Cum Managing Director, Vidyut Bhawan, Bailey Road, Patna
 2. The Superintending Engineer @ Electrical Superintending Engineer, Electric Supply Circle (Wrongly Made Division Gulzarbag), PESU East, Patna
 3. The Executive Engineer @ Electrical Executive Engineer, Electric Supply Division, Gulzarbag, Sandalpur Road, Patna
 4. The Assistant Executive Engineer @ Assistant Electrical Engineer, Electric Supply Division, Gulzarbag, Sandalpur Road, Patna
 5. The Junior Engineer @ Electrical Junior Engineer, Electric Supply Division, Gulzarbag, Sandalpur Road, Patna
 6. Santosh Kumar Singh @ Satish Kumar Singh Head Special Task Force, Bihar State Electricity Board, Patna

.... Appellant/s

Versus

M/s R S Fabricators, Through Its One Of The Partner, Ram Bachan Prasad Son Of Late Prasad Gope, Resident Of Mohalla- Sandalpur, P.S.- Sultanganj, District- Patna

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr Vinay Kirti Singh, Advocate

For the Respondent/s : Mr D K Sinha, Sr Advocate with
Mr Abhinay Raj, Advocate

=====

CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

And

HON'BLE JUSTICE SMT NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 21-07-2016

The erstwhile Bihar State Electricity Board (for brevity, *the Board*) is in this intra-Court appeal being aggrieved by the judgment and order dated 16.10.2012 passed in CWJC No 7284 of

2008 (*M/s R S Fabricators –Versus- The Bihar State Electricity Board & Others*) whereby the learned Single Judge was pleased to quash Annexure 2 to the writ petition being the demand notice dated 09.04.2008 as being not in accordance with law. The Board, being aggrieved, has preferred this intra-Court appeal.

The writ petitioner-respondent has appeared and the pleadings being complete, with consent of parties, this appeal is being disposed of at this stage itself.

The writ petitioner-respondent was an LTIS I consumer of electricity being supplied by the Board. It had a sanctioned connected load of 8 HP. On 07.04.2008, an inspection was conducted in the business premises in presence of one of the partners by a team of Special Task Force. As per the alleged inspection report, there was unauthorized excess load of 17 HP found. The report was given to the partner of the writ petitioner-respondent's firm. The writ petitioner-respondent immediately protested in writing to the authorities. Notwithstanding the aforesaid, by letter No 645 dated 09.04.2008 (Annexure 2 to the writ petition), a demand was raised including demand for additional security. Thereafter, by Annexure 4 to the writ petition, being Letter No 495 dated 15.04.2008, the protest of the writ petitioner-respondent was rejected. The writ petitioner filed the writ petition challenging the demand, as contained in the Letter dated



09.04.2008 (Annexure 2 to the writ petition). A counter affidavit was filed by the Board in which it was not disputed that apart from the letter of demand, no assessment order was passed or served on the writ petitioner but in support of the demand, a calculation sheet was annexed as Annexure E. It is not in dispute that this was never served on the writ petitioner-respondent. The learned Single Judge has quashed the demand.

Shri Vinay Kirti Singh, learned counsel appearing for the appellant submits that this demand raised was in accordance with the tariff and in accordance with law and the learned Single Judge was wrong in interfering with it. On the other hand, learned counsel for the writ petitioner-respondent submitted that Annexure 2 was not in accordance with law and had rightly been set aside by the learned Single Judge.

In order to appreciate the contentions, we must note the facts as relevant for the purposes of deciding this appeal. The consumer, being an LTIS-I consumer had a sanctioned load. There is penalty provisions if, upon inspection, excess unsanctioned load is found. In the present case, there was an inspection and, as per the inspection report, unauthorized load was found in the premises in the shape of a welding machine. Based on this, merely a letter of demand was served on the writ petitioner-respondent. In our view, this is not

permissible. Section 126 of the Electricity Act, 2003 (for brevity, *the Act*), which is in PART XII dealing with investigation and enforcement reads as follows:

“126. Assessment.-(1) If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorized use of electricity, he shall provisionally assess to the best of his judgment the electricity charges payable by such person or by any other person benefited by such use.

(2) The 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;

(3) The person, on whom an order has been served under sub-section (2), shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who shall, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment within thirty days from the date of service of such order of provisional assessment of the electricity charges payable by such person.

(4) Any person served with the order of provisional assessment may accept such assessment and deposit the assessed amount with the licensee within seven days of service of such provisional assessment order upon him.

(5) If the assessing officer reaches to the conclusion that unauthorized use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorized use of electricity has taken place and, however, the period during which such unauthorized use of

electricity has taken place cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection.

(6) The assessment under the section shall be made at a rate equal to twice the tariff applicable for the relevant category of services specified in sub-section (5)."

A plain reading of the aforesaid Section would show that if, upon inspection, irregularity is found for which there are penal consequences then a provisional assessment has to be made in terms of Section 126 (2) of the Act and served on the consumer. In terms of sub-section (3) of Section 126 of the Act, upon receipt of the provisional assessment, the consumer has a right to object to the assessment so made and after consideration of the objection and hearing the consumer, final assessment order has to be passed within 30 days of service of the provisional assessment. Once the final assessment order is passed, the consumer then has the remedy of statutory appeal under Section 127 of the Act. The demand can only be enforced after final assessment is made in terms of Section 126 (3) of the Act.

In the present case, even though there is an exhaustive counter affidavit to the writ proceedings, it has not been averred that ever a provisional assessment was made, much less, served on the consumer. Thus, on these undisputed facts, it is clear that there was

no assessment in accordance with the provisions of the Act much less a provisional assessment and, thereafter, grant of opportunity to object for the purposes of final assessment, making the final assessment after hearing the consumer. Raising any demand in absence of these statutory steps would be illegal and contrary to the statutory provisions which are mandatory, as noted above.

We, thus, see no reason to interfere. Annexure 2 to the writ petition was rightly quashed by the learned Single Judge which calls for no interference.

This appeal is, accordingly, dismissed.

(Navaniti Prasad Singh, J)

(Nilu Agrawal, J)

M.E.H./-AFR

U			
---	--	--	--