

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.5441 of 2014**

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Pamer Agroventure Pvt. Ltd., Industrial Area, Hajipur, Vaishali through its Director, Rakesh Kumar, Son of Sri Baikunth Narayan Singh, Resident of Mohalla North Mandiri, Bapu Nagar, P.O. G.P.O. P.S. Budha Colony, District Patna

.... .... Petitioner

Versus

1. The State of Bihar
2. The North Bihar Power Distribution Company Ltd. through its Managing Director, its Head Office at Vidyut Bhawan, Bailey Road, Patna
3. The Electrical Executive Engineer, Electric Supply Division, Hajipur, Vaishali
4. The District Magistrate, Vaishali at Hajipur
5. The Certificate Officer, Vaishali at Hajipur

.... .... Respondents

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**Appearance :**

|                           |   |                                 |
|---------------------------|---|---------------------------------|
| For the Petitioner        | : | Mr. Suraj Samdarshi. Advocate   |
| For the Respondents 2 & 3 | : | Mr. Binod Kumar, Advocate       |
|                           |   | Mr. Ram Pravesh Kumar, Advocate |
| For the State             | : | AC to SC 11                     |

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**CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN**

**ORAL JUDGMENT**

**Date: 28-03-2016**

Heard learned counsel for the petitioner and learned counsel for the Respondent Power Company.

2. The present writ petition has been filed for quashing the order dated 14.02.2014 passed by the Certificate Officer, Vaishali in Certificate Case No. 29 of 2010-11 and for connected reliefs.

3. Mr. Suraj Samdarshi, learned counsel for the petitioner submits that the impugned order dated 14.02.2014 is not sustainable in law as the Certificate Officer, Vaishali has



straightaway proceeded on the assumption that the certificated demand has emanated from a proceeding under Section 126 of the Electricity Act, 2003 (for short the "Act"). It is submitted that the said provision first of all contemplates a provisional assessment to be made if the Assessing Officer concludes on the basis of an inspection that a person is indulging in unauthorized use of electricity. The concerned person is entitled to file objection against such provisional assessment and after consideration of the same and upon being heard, a final order of assessment is thereafter required to be made, quantifying the electricity charges payable. The final order of assessment so passed is appealable under Section 127 of the Act. Learned counsel for the petitioner has taken a categorical stand that neither any provisional assessment nor final assessment has been made prior to the requisition for recovery of the demand in question by resort of certificate proceedings. The Certificate Officer has proceeded on the assumption that an order of assessment has been passed by the Assessing Officer which has not been challenged before the appellate authority with reference to the aforesaid provisions of Section 126 and 127 of the Act and hence, the order of the Assessing Officer has become final. It is submitted therefore, that the impugned order suffers from error

of fact and hence stands vitiated.

4. Despite sufficient opportunity having been granted to the respondents in terms of orders dated 22.02.2016 and 01.03.2016 to support their claim that assessment orders were issued, no such material has been brought on the record. The respondents are therefore, unable to establish that the provisions of Section 126 of the Act were complied with by passing a provisional assessment order and thereafter a final assessment order quantifying the electricity charges payable by the petitioner.

5. Having heard the parties and on consideration of the materials on record, this Court is of the view that the impugned order dated 14.02.2014 passed by the Certificate Officer, Vaishali in Certificate Case No. 29 of 2010-11 cannot be sustained. No particulars or details of any provisional assessment or of final assessment have been stated in the impugned order nor furnished before this Court much less copies of such orders claimed to have been passed have been brought on record despite sufficient opportunity having been granted to the respondents.

6. The impugned order dated 14.02.2014 is accordingly hereby set aside. The Certificate Officer shall be at liberty to pass orders afresh after considering the objection petition of the petitioner after grant of opportunity of being heard in the matter.

7. The writ petition stands allowed.



Chandran

**(Vikash Jain, J)**

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