IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6475 of 2015

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Ram Gopal Goel son of late Mahavir Prasad Goel, resident of Village & P.O. Chakradaha, P.S. Narpatganj, District- Araria.

.... Petitioner/s

Versus

1. The Bihar State Power (Holding) Company Limited, Vidyut Bhagwan, Bailey Road, Patna, through its Chairman-cum-Managing Director
2. The North Bihar Power Distribution Company Ltd., Bidhyut Bhawan, Patna through its Managing Director
3. The Electrical Superintendent Engineer, Purnea Electric Circle, Purnea.
4. The Electrical Executive Engineer, Electric supply Division, Farbisganj, District Araria.
5. The Assistant Electrical Engineer, Electric Supply Sub circle, Farbisganj, District Araria.

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Suraj Samdarshi

For the Respondent/s : Mr. Vinay Kirti Singh

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 26-10-2016

Heard Mr. Suraj Samdarshi, learned counsel for the petitioner and Mr. Ratan Prasad Sinha, learned counsel appearing for the Bihar State Power Holding Company and its functionaries.

In the nature of the order which this Court proposes to pass it would not be required to delve deep into the merit of the case.

The petitioner is aggrieved by the assessment order dated 23.1.2014 impugned at Annexure-2 to the writ petition confirming the demand raised in the provisional assessment order and on the failure of the petitioner to raise objections thereto.

Mr. Suraj Samdarshi while questioning the assessment order has submitted that the final assessment order is resting on the inspection dated 13.6.2013, a copy of which report is present at Annexure-1 to the writ petition whereby as against a sanctioned load of 40 H.P., the petitioner was found drawing electricity at 138 H.P. It is submitted that the assessment order encloses a calculation sheet prepared in the light of the inspection report dated 13.6.2013 whereby the load has been quantified at Rs. 7,43,536.75 and an equivalent amount has been imposed by way of penalty to raise the final demand at Rs. 14,87,073.35.

Mr. Samdarshi, learned counsel for the petitioner while questioning the impugned order on several grounds has submitted that although the final assessment order dated 23.1.2014 refers to a provisional assessment order but no such order was served on the petitioner and this fact has been mentioned by the petitioner while questioning the assessment order vide objection dated 24.2.2014, a copy of which is present at Annexure-3. According to Mr. Samdarshi since the line of the petitioner was disconnected on 20.4.2014 despite the objection raised by the petitioner vide Annexure-3, that the petitioner is before this Court.

A counter affidavit has been filed enclosing a copy of the provisional assessment order at Annexure-C which is dated 31.12.2013. The covering letter enclosing a calculation sheet quantifies the demand at Rs. 7,54,096.75/- and an equivalent amount has been imposed as penalty. The provisional demand raised of Rs. 15,08,193.75 has been marginally reduced in the final assessment order.

It is the argument of Mr. Samdarshi that the provisional assessment order is an afterthought and has been prepared subsequently which is apparent from the covering letter dated 31.12.2013 issued more than 6 months after the inspection was carried out. According to Mr. Samdarshi it is after the objection was raised that the lapse was discovered resulting in the provisional assessment order. It is the submission of Mr. Samdarshi that since the provisional assessment order was never served on the petitioner, the right vested in him under Section 126(3) of the Electricity Act, stands curtailed to object against the provisional assessment order. He thus submits that where following the inspection held on 13.6.2013, it is the respondent who has failed to serve the provisional assessment order within reasonable time on the petitioner, the final assessment order becomes unsustainable.

I have heard learned counsel for the parties and perused the records. A counter affidavit is on record and though encloses a provisional assessment order stated to have been communicated to the petitioner but in absence of any evidence to support the communication, the statement made by the petitioner that no provisional assessment order was received by him, which is also specifically mentioned in his objection to the final assessment order filed on 24.2.2014, would have to be accepted.

This matter was last taken up on 21.10.2016 and considering the circumstances existing, the petitioner was required to inform regarding his willingness to deposit the principal demand, raised in the provisional assessment order present at Annexure-C. On instructions it is submitted by Mr. Samdarshi that the petitioner is willing to deposit the principal amount but makes a plea for its deposit in reasonable instalment of three months.

Although Mr. Sinha, learned counsel appearing on behalf of the respondents does contest the averments regarding non-service of the provisional assessment order and to submit to the failure of the petitioner to file any objection to the provisional assessment but as I have said in absence of any material to support the service of the provisional assessment order and considering that an objection to the final assessment was taken by the petitioner on 24.2.2014, also on grounds of non service of provisional assessment order, as well as taking note of the fact that the provisional assessment order is issued more than six months of the inspection, the objection is only taken to be rejected.

In the circumstances discussed, the final assessment order dated 23.1.2014 impugned in this writ petition which encloses a calculation sheet cannot be upheld and is accordingly set aside. The petitioner is directed to file his objection to the provisional assessment order present at Annexure-C by raising all issues as raised by him in his objection earlier filed as well as in this writ petition. The objection should be filed within two weeks from today and would be disposed of by the appropriate authority in accordance with law and after opportunity of hearing to the petitioner bearing in mind the legislative intent reflecting from the provisions underlying Section 126(3) of 'the Act'.

In so far the prayer for interim relief is concerned, I direct the petitioner to deposit the principal amount mentioned in the provisional assessment order present at Annexure-C calculated at Rs. 7,54,096.75/- in the following manner:-

(a) The petitioner would deposit an amount of Rs. 3,54,096.75 within two weeks from today by way of bank draft and no sooner such deposit is made that his electricity connection would be restored by the authority concerned within 48 hours thereafter;

(b) The petitioner would deposit the amount of Rs. two lakhs by 30th of November, 2016; and

(c) The remaining amount of Rs. two lakhs be deposited by 30th of December, 2016.

It goes without saying that in addition to the instalments aforementioned, the petitioner would continue to deposit the current bill as raised by the Department regularly without default failing which liberty is available with the respondents to proceed in accordance with law.

The writ petition is allowed with the stipulations above.

(Jyoti Saran, J)

S.Sb/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	10-11-2016
Transmission Date	NA