

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1081 of 2014

IN

Civil Writ Jurisdiction Case No. 8794 of 2011

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1. The Bihar State Electricity Board-Cum-South Bihar Power Distribution Company Limited through its Managing Director Vidyut Bhawan, Bailey Road, Patna.

2. The Executive Engineer, Bihar State Electricity Board, Electric Supply Division, Lakhisarai, Resident of P.O. + District - Lakhisarai - 811311.

.... Appellants

Versus

1. Pramod Kumar Drolia son of Late Parmeshwar Lal Drolia presently residing at Flat No. A-10/2, Adhunik Apartments, 164/3A, Lake Gardens, Kolkata - 700045.

2. Sri Prakash Kumar Prasad, the Assistant Electrical Engineer-cum-Assessing Officer, Electric Supply Sub-Division, Lakhisarai, P.O. + District - Lakhisarai - 811311.

3. Shri Naveen Mandal the Junior Electrical Engineer, Lakhisarai (North) Electric/Supply Sub-Division Lakhisarai Resident of P.O. + District Lakhisarai-811311.

.... Respondents

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Appearance :

For the Appellants	:	Mr. Vinay Kirti Singh, Senior Advocate Mr. Vijay Kr. Verma, Advocate Mr. Akhileshwar Singh, Advocate
For the Res. No.1	:	Mr. P.K. Drolia (in person)

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 31-01-2017

Heard counsel for the appellants and counsel for the private respondent.

2. The issue is creation of a liability to pay charges for electricity, which was fastened by the assessing authority upon the private respondent who is the legal heir now. He was before the learned Single Judge in the writ application, which was heard in quite



a detail and the writ was allowed and the bill was quashed with certain leeway to the appellants vide order dated 23.10.2013. The Court is not required to go into the other details but only take note of as to how the learned Single Judge had concluded which reads as under:

"It is the specific case of the petitioner that the Assistant Electrical Engineer has been designated as the Assessing Officer which has not been denied by the respondents. It is also evident from the inspection report dated 6.8.2010 that on that day it has not been signed by the Assistant Electrical Engineer rather he has signed the report on 9.8.2010 which clearly shows that the inspection has not been made or the report prepared by the Assistant Electrical Engineer. I further find that while the report makes a bald statement that the consumer was found utilizing energy in commercial premises but no details of the evidence substantiating the said fact is to be found in the report.

In any view of the matter, it is evident that in the present matter neither the inspection has been carried out in terms of the statutory provisions of the Electricity Supply Code nor is it the Assessing Officer who has made the provisional assessment.

When statute requires an action to be performed in a particular manner then it has to be performed in that very manner, as laid down in a long line of decisions of the Apex Court and this Court. Failure to do so would make the action of the concerned authorities illegal and without jurisdiction.

It is thus evident that the entire proceedings in the present matter are on the basis of an inspection not made by the Assessing Officer in terms of the provisions of the Act and the Code and thus every subsequent action of the respondents would be without jurisdiction, being based upon an illegal inspection and illegal inspection report.

In view of the aforesaid I see no reason to go into the issue of the calculation made in the quantum of penal bill, provisional or final, by the respondents.

The entire action of the respondents starting with the inspection report dated 6.8.2010 leading up to the final order of assessment dated 30.3.2011 are quashed and the writ application is, accordingly, allowed.

The respondents are directed to raise the bills for the unpaid period on the basis of domestic supply after adjusting the amounts already paid."

3. The principle of law has been rightly culled out by the learned Single Judge that when a statute requires an action to be



performed in a particular manner then it has to be performed in that very manner and any abrasion or deviation would make such a decision vulnerable.

4. There is no merit in the appeal. It is dismissed.

(Ajay Kumar Tripathi, J.)

(Nilu Agrawal, J.)

S.Kumar/-

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