

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1712 of 2013
IN
Civil Writ Jurisdiction Case No. 8166 of 2008**

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1. The Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna Through Its Chairman
 2. The Chairman, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna
 3. The General Manager-Cum-Chief Engineer, Tirhut Electric Supply Area, Muzaffarpur
 4. The Electrical Superintendent Engineer, Tirhut Electric Supply Area, Muzaffarpur
 5. The Electrical Executive Engineer, Chapra
 6. The Assistant Electrical Engineer, Power House, Chapra

.... Appellants

Versus

Shyam Chandra Sharma Son Of Late Ram Naresh Sharma Resident Of Gopeshwar Nagar (Near B.S.R.T.C. Bus Depot), Post Office- Chapra, Police Station- Chapra Town, District- Saran

.... Respondent

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Appearance :

For the Appellants : Mr. Anand Kumar Ojha, Advocate
For the Respondent : Mr.

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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: 15-03-2017

The sole private respondent was the petitioner before the writ Court in C.W.J.C. No. 8166 of 2008. He sought quashing of Annexure- 1 and 2 to the writ application, which are the seizure list and First Information Report lodged by a Junior Engineer of the erstwhile Electricity Board for so-called theft of electricity being committed by the private respondent, who was running a Hero Honda motorcycle showroom at Chapra.



Many a submissions were made for and against such a relief, but after considering the law, the learned single Judge concluded as under :

“6. To appreciate the rival submissions of the parties, it is meet and proper to consider the provisions of part XIV of the Act, which provides for offences and penalties for theft of electricity. The Act is in the nature of consolidating statute as while repealing the three enactment(s) the provisions of the repealed Act(s) have been consolidated in the Repealing Act. While enacting the consolidating Act initially part XIV of the Act provided for offences and penalties of theft of electricity. The provisions of Part-XIV as originally enacted did not contain any provision for institution of prosecution for detection of the offence of theft. Such omission was noticed by the Parliament and Electricity (Amendment) Act, 2007 was enacted with effect from 15.6.2007, whereunder Section 135(1-A) was inserted in part XIV of the Act providing for authorization by the appropriate commission in favour of the officers of the licensee or supplier or the officers of the rank higher than the rank so authorized by the appropriate commission for filing complaint/lodging FIR for prosecution of the offence of theft of electricity. Sub-Section-(2) of



Section 185 of the Electricity Act, 2003 saves the action which has already been taken in the light of the provisions of the repealed statutes. Sub-Section-(2) of Section 185 also saves such Rule, notification, order or notice made or issued under the repealed statutes, which are not in conflict with the provisions of the Act. Same is the position with regard to Sections 6, 24 of the General Clauses Act, 1897, which provides for effect of repeal and continuation of orders etc. issued under repealed enactment(s). The standing order dated 5.8.1988 issued under Section 50 of the Indian Electricity Act, 1910 is in conflict with Section 135(1-A) of the Act which was brought on the statute book w.e.f. 15.6.2007 as under Section-135(1-A) the authorization for detection of the offence of theft of electricity is required to be made by the appropriate commission in favour of an officer of the licensee (Board). Authorization has been issued by the appropriate commission in favour of all the Assistant Engineers of the Board on 4.6.2008. Thus, it is quite evident that during the period between 15.6.2007 when Section 135(1-A) of the Act was brought on the statute book mandating authorization by the appropriate commission and the date on which such authorization was issued by the appropriate commission i.e. 4.6.2008 there being no



authorization in favour of any of the officer of the licensee(Board) to lodge First Information Report for detection of theft of electricity, the seizure made and the First Information Report lodged against the petitioner on 25.12.2007, Annexures-1, 2 alleging theft of electricity being without any authority from the appropriate commission is required to be quashed, which is, accordingly, quashed with direction to the Board to adjust the amount of Rs.80,000/- which has been paid in the light of the contents of the First Information Report towards the future bills of the petitioner. Before parting with this order, I may like to observe that the petitioner had filed Cr. Misc. No.26221 of 2009 praying inter alia to quash the First Information Report, Annexure-2 and the application was permitted to be withdrawn under orders dated 24.11.2010 which has been placed before this Court. This Court having perused the said order is of the view that this Court while permitting the petitioner to withdraw the criminal miscellaneous application did not consider the submission of the petitioner which has been raised and considered in this order, as such, withdrawal of the application shall not be a ground to refuse the prayer made in the writ petition.

7. The writ application is, accordingly,



allowed.”

From a reading of the conclusion reached by the learned single Judge, it is evident that a Junior Engineer had no authority under law between 15.06.2007 and 04.06.2008 to either make an inspection or lodge First Information Report for so-called theft.

The writ application, therefore, was allowed by the learned single Judge and, therefore, the present appeal has been filed.

Submission of the counsel for the Electricity Board is in same terms as what has been noticed by the learned single Judge in paragraph 6, which has been quoted above.

The interpretation given by the learned single Judge is strict interpretation because it has serious fall out and consequence on a citizen, therefore, implementation and enforcement of law has to be strictly in the manner as well as in terms of the provisions of the statute.

In view of the above findings as well as the law, which has been discussed by the learned single Judge, no interference is warranted with the impugned order even if a stand is taken by the learned counsel for the appellants that the petitioner should have been precluded from invoking the jurisdiction of the learned single Judge since he had filed a quashing application and subsequently withdrawn it.



A writ Court cannot be barred from entertaining applications if a case is made out and such withdrawal of a quashing application is another issue altogether.

Appeal has not merit. It is dismissed.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Pawan/-

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