

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.348 of 2017
In
Civil Writ Jurisdiction Case No. 12453 of 2008
With
Interlocutory Application No. 7186 of 2017**

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M/s. Ujjwal Moldings Limited, Sabalpur, Patna City, Patna, through its Director, Vikas Kumar Kamalia, son of Rajendra Prasad Kamalia, resident of 4th Floor, Sita Bhawan, South Gandhi Maidan, PO- Bankipur, PS- Gandhi Maidan, Patna.

.... Appellant

Versus

1. The Bihar State Power (Holding) Company Limited, Vidyut Bhawan, Bailey Road, Patna, through its Chairman-cum-Managing Director, Officiating at Vidyut Bhawan, Bailey Road, Patna.
2. The General Manager-cum-Chief Engineer, South Bihar Power Distribution Company Limited, Patna Electric Supply Undertaking, Serpentine Road, Patna
3. The Electrical Superintending Engineer, South Bihar Power Distribution Company Limited, Patna Electric Supply Undertaking (East), Patna.
4. The Electrical Executive Engineer, South Bihar Power Distribution Company Limited, Patna Electric Supply Undertaking (East), Patna.
5. The South Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna, through its Managing Director.

.... Respondents

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Appearance:

For the Appellant/s : Mr. Suraj Samdarshi, Advocate.

For the Respondent/s : Mr. Vinay Kirti Singh, Sr. Advocate,
Mr. Vijay Kumar Verma and
Mr. Akhileshwar Singh, Advocates.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 19-02-2018

Re. I.A. No. 7186 of 2017.

This Interlocutory Application has been filed for
condonation of delay of 1 year 8 days occurred in filing of the Letters
Patent Appeal.



2. For the reasons stated in the Interlocutory Application, the delay is condoned.

3. The Interlocutory Application stands disposed of.

Re. L.P.A. No. 348 of 2017.

4. Challenging the order dated 05.05.2015 passed by the learned Writ Court in CWJC No. 12453 of 2008, the writ petitioner is in appeal before us.

5. By the impugned order the learned single Judge has refused to quash the punitive bills under challenge and took a view that the petitioner has a statutory remedy available against the said punitive bills in terms of a statutory appeal. Liberty has been granted to the petitioner to avail the statutory remedy.

6. Learned counsel representing the appellant has raised a limited argument based on the judicial pronouncement of this Court in the case of **M/s. Shakti Cold Storage & Anr. Vs. Bihar State Electricity Board**, reported in 2008 SCC On Line Pat 386 : (2011) 1 PLJR 264.

7. Learned counsel submits that earlier this Writ Application was tagged with the batch of Writ Applications, the lead case being CWJC No. 11271/2008 (**M/s Shree Shankar Cooperative Cold Storage Samiti Ltd. Vs. The Bihar State Electricity Board & Ors.**). When the matter was taken up on 10.10.2014, this case was



detached or taken out from the batch of cases only on the ground that in the present case the meter in question was sealed. Reference in this regard has been made to the order dated 10.10.2014. Learned counsel submits that in the case of **M/s. Shakti Cold Storage** (Supra) a learned single Judge of this Court while taking note of the provisions of the 'Supply Code', especially Clause 8.8 (Second Proviso), Clause 8.12 (e) & Clause 8.14(a)(iii) held that the non-functional meter should be sealed and sent to either the Board's Lab or an independent Lab as agreed by the consumer for testing the said meter. The learned single Judge had, therefore, vide order dated 12.08.2008 allowed the Writ Application of **M/s Shakti Cold Storage & Anr.** The said order of the learned single Judge was challenged in intra-court appeal vide LPA No. 798 of 2008 which was also dismissed and then the Special Leave Petition preferred by the then Bihar State Electricity Board before the Hon'ble Apex Court failed.

8. Learned counsel has referred the order dated 16.04.2010 passed in the case of **M/s Shree Shankar Cooperative Cold Storage Samiti Ltd.** in which interim order was passed in favour of the petitioners keeping the matter pending and to be taken up after disposal of the L.P.A. from the judgment of this Court in **M/s Shakti Cold Storage** (Supra).

9. At this stage it is further pointed out by learned counsel



for the appellant that recently in LPA No. 870/2008 (**The Bihar State Electricity Board & Ors. Vs. M/S J.M.D. Alloys Ltd.**) which had travelled to this Court from the order passed by the learned Writ Court in CWJC No. 10139 of 2008, vide judgment dated 04.01.2018 the Hon'ble Division Bench presided over by Hon'ble the Chief Justice had occasion to discuss the judgment of this Court in **M/S Shakti Cold Storage** (Supra) and the case before the Hon'ble Division Bench was distinguished holding that **M/S Shakti Cold Storage** (Supra) is not attracted in the said case because in the said case the defective and non-functional meter was sealed in presence of the consumer and it was sent for examination with the seal and signature of the consumer, which was not the case in **M/S Shakti Cold Storage** (Supra). It was because of this distinction that the Hon'ble Division Bench in the case of **M/S J.M.D. Alloys** (Supra) held that the learned Writ Court was not justified in quashing the punitive bill raised against the petitioner in the said case.

10. Learned counsel has categorically argued that in **M/S J.M.D. Alloys** (Supra) it was never argued that the meter even if sealed in presence of the consumer was not tested in the Board's Lab or in an independent Lab in terms of the judgment in the case of **M/S Shakti Cold Storage** (Supra), therefore, the case of **M/S J.M.D. Alloys** (Supra) cannot be applied in the facts and pleadings of the



present case.

11. On the other hand learned counsel representing the respondents submits that the learned Writ Court has committed no error in relegating the petitioner back to an alternative statutory remedy.

12. We have heard learned counsel for the parties and perused the records. The only ground which has been specifically raised and pleaded on behalf of the appellant is that if the defective meter was not tested in an independent lab or the Board's lab, as has been held in the case of **M/S Shakti Cold Storage** (Supra), the punitive bill raised by the respondents would be liable to be quashed.

13. In course of argument learned counsel for the respondents could not deny the facts specifically pleaded and argued on behalf of the appellant that the meter in question was not tested either in the Board's lab or in an independent lab. In absence of a denial of the specific pleading of the petitioner-appellant, we find no reason to take a different view from the view which has been taken in the case of **M/S Shakti Cold Storage** (Supra) followed by the judgment in the batch of Writ Applications of **M/S Shankar Cooperative Cold Storage Samiti Ltd.** (Supra). We also find that the judgment of the Hon'ble Division Bench of this Court in the case of **M/S J.M.D. Alloys** (Supra) does not consider the issue raised by the



appellant in the present case before us and, therefore, the same cannot be applied in the facts of the present case. This case would be covered by the ratio of the judgments of **M/S Shakti Cold Storage** (Supra) and **M/S Shankar Cooperative Cold Storage Samiti Ltd.** (Supra).

14. In these circumstances we are of the view that the order passed by the learned Writ Court in CWJC No. 12453 of 2008 relegating the writ petitioner to an alternative remedy cannot be sustained. The impugned order passed by learned Writ Court impugned is hereby set aside. Appeal is allowed.

15. The Writ Application is remitted back to the learned Writ Court for a fresh consideration in the light of the discussions made here-in-above.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Dilip, AR

AFR/NAFR	NAFR
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