

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6055 of 2013

- =====
1. The Bihar State Electricity Board Vidyut Bhawan Bailey Road Patna through its Chairman.
 2. The Assistant Electrical Engineer, New Capital Electrical Supply Sub – Division, B.S.E.B., Patna

..... Petitioners

Versus

1. M/s Harsh Advance Diagnostic and Research Pvt. Ltd., Incorporated Under the Companies Act 1956 having its Registered Office and Place of Business at Basement, Kumar Tower East Boring Road, through its Managing Director Sri Akhauri Harshwardhan Sinha, resident of Kumar Town, Boring Road, P.S. Budha Colony, Patna
2. The State of Bihar through Energy Secretary
3. The Electrical Inspector - cum - Appellate Authority, Electric Works Division, Patna

..... Respondents

=====

Appearance :

For the Petitioners	:	Mr. Vinay Kirti Singh, Sr. Advocate. Mr. Vijay Kumar Verma, Advocate. Mr. Akhileshwar Singh, Advocate.
For the State	:	Mr. R.B. Prasad Yadav, AAG-11 Mr. Jitendra Kumar, AC to AAG-11
For the Private Resp.	:	Mr. Sanjeev Kumar Mr. Digvijay Pratap Singh, Advocates.

=====

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 23-07-2018

Heard learned counsel for the petitioners and learned
counsel for the respondents.

2. The present writ petition has been filed for quashing of the part of the order dated 20.10.2011 (Annexure-5) passed by the Appellate Authority cum Electrical Inspector, Patna in Appeal No. 23/2010 whereby and whereunder he has set aside the



charge of meter tampering.

3. Learned counsel for the petitioners submits that in C.W.J.C. No. 506 of 2012 preferred by the respondent no. 1, this Court by its order dated 02.02.2012 (Annexure-A) had set aside the part of the impugned appellate order dated 20.10.2011 passed in Appeal No. 23/2010 (Annexure-5) with a direction to the Appellate Authority to examine the documents of the respondent no. 1 and pass appropriate order. It is submitted that the matter is still pending before the Appellate Authority. It is pointed out that in the part of the order of the Appellate Authority under challenge in the present writ petition, the Appellate Authority has written a finding that since the seal on the meter was not kept intact, it was not possible to carry out further testing of the meter itself. It is submitted that such finding of fact is *ex facie* contrary to the materials on record and as such this part of the impugned order is also liable to be set aside for fresh decision. It is stated that the meter in question had been removed under sealed and is lying in police custody in connection with the FIR in Budha Colony P.S. Case No. 138/2010 (Annexure-2). It is therefore submitted that contrary to the finding of the Appellate Authority, it is very much possible to have the meter re-tested.

4. Learned counsel for the respondent no. 1 appears and has been heard. He is unable to controvert the contention of the



petitioner that the meter had in fact been removed under sealed and is kept in police custody. He has further no objection if the said meter is sent for re-testing before an appropriate laboratory.

5. Having heard the parties, this Court *prima facie* finds materials on record to show that the meter had been removed from the petitioner's premises under sealed. This is evident from the inspection/seizure report dated 11.08.2010 itself (Annexure-1), VIII discloses that the meter was seized in course of inspection/search, as well as the written report in the aforesaid Budha Colony P.S. Case No. 138/2010 which clearly states that the meter was removed, wrapped in marked cloth, stitched and paper sealed before seizure.

6. In the above view of the matter, the finding of the Appellate Authority that the meter was not kept properly sealed and is not amenable to further testing is hereby quashed. The petitioner shall be at liberty to approach the police authorities for taking delivery of the subject meter for the purpose of re-testing after following due procedure and formalities. The respondent no. 1 shall also be at liberty to request the petitioner within a week from the date of receipt/production of a copy of this judgment for testing of the meter at any reputed Lab of its choice.

7. The result of such testing shall be placed before the Appellate Authority to be taken into consideration before final disposal



of the Appeal pursuant to the order of this Court in C.W.J.C. No. 506 of 2012.

8. The writ petition stands allowed.

(Vikash Jain, J)

Md. Ibrarul/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	25.07.2018
Transmission Date	N.A.

