

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8201 of 2014

1. Ranjeet Kumar son of Sri Jagdeo Ray,
2. Sanjeet Kumar son of Sri Chunni Lal Singh, both resident of village Sighwara, P.S. Sighwara, Dist. Darbhanga

... .. Petitioners

Versus

1. North Bihar Power Distribution Company Ltd. through its M.D. having its office at Vidhut Bhawan, Bailey Road, Patna
2. M.D. North Bihar Power Distribution Company Ltd. Vidhut Bhawan, Bailey Road, Patna
3. Electrical Executive Engineer, Electric Supply Division, Darbhanga
4. Saurav Kumar, Assistant Electrical Engineer, Electric Supply Sub Division, Darbhanga (Rural)

... .. Respondents

Appearance :

For the Petitioners	:	Mr. Prabhat Ranjan Singh, Mr. Umapati Jha, Advocates
For the Respondents	:	Mr. Anand Kumar Ojha, Mr. Ashok Kumar Karn, Advocates

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN
ORAL JUDGMENT

Date : 28-11-2018

The present writ petition has been filed for the following reliefs –

“(i) That, respondent officials should be stopped to act on the basis of so called raid dt. 21.2.14 in the premises of petitioners, for alleged electricity theft, as it has been conducted illegally and also without any basis. Petitioners are not the consumer of power Distribution Company. Petitioner No. 1 is generating power for his personal use from his own Diesel Generator,

whereas petitioner No. 2 is working as guard of a telecom tower, where commission of electric theft was allegedly going on and as such a guard (Petitioner No. 2) can not be a beneficiary of any such alleged theft and as



such entire action of respondent officials on the basis of said raid dt. 21.2.14 is illegal, unwarranted and colourable exercise of power against these innocent petitioners.

(ii) That, be further held that the very manner and mode of raid for alleged electric theft is not in consonance with the provision contained in section 135 of the Electricity Act 2003 as the FIR has been lodged after lapse of more than 24 hours from the time of raid and as such it smokes foul play on the part of raiding officials, and as such any prosecution either civil or criminal based on admitted suspicious ground can not be allowed to run against these innocent petitioners.

(iii) That, be further held that since no any assessment order either provision or final has been communicated to the petitioners as yet and as such entire prosecution either civil or criminal based on the basis of raid dt. 21.2.14 is illegal, unwarranted and against the provision of Electricity Act 2003 and as such should be quashed and set aside.

(iv) That, for any other relief(s) for which petitioners are found entitled in the eye of law.”

2. Without going into the detailed merits of the matter, learned counsel for the petitioners assails the action of the respondents in initiating prosecution against the petitioners under Electricity Act, 2003 and taking the matter forward without, however, supplying a copy of the provisional assessment order despite request by each of the petitioners made on 25.02.2014 (Annexure-2). It is submitted that such action has resulted in serious prejudice to the petitioners inasmuch as they have been prevented from filing objection against the provisional



assessment order as contemplated under Section 126(3) of the said Electricity Act.

3. Learned counsel for the respondent-North Bihar Power Distribution Company refers to the counter affidavit and submits that the petitioner no. 1 was requested to file objection against the provisional assessment order contained in Letter No. 354 A dated 26.04.2014 but the petitioner no. 1 did not file any objection and as such final assessment order was passed vide letter no. 424 dated 14.05.2014 which was issued to petitioner no. 1.

4. Having heard learned counsel for the parties and on careful consideration of the materials available on record, I find that the precaution taken by the respondents for compliance of natural justice was less than sufficient. A registered receipt no. 1205 dated 29.04.2014 has been appended to the issue register indicating issuance of the provisional assessment order but however, learned counsel for the respondents accepts that no material has been brought on record to indicate that such provisional assessment order was ever served upon the petitioners. The registered receipt aforesaid relates only to petitioner no. 1 and the counter affidavit is completely silent with reference to any detail of despatch of the provisional assessment order to the petitioner no. 2.

5. I am therefore of the view that if the specific stand of the petitioners with regard to non-service of the provisional assessment order has not been controverted, it must be held that the respondents



have acted in violation of the principles of natural justice. The copy of extract of the issuance register does not also bear any entry nor despatch details of the provisional assessment order to the petitioner no. 2 nor registered receipt in that regard. The petitioners have thus been prevented from filing their objections against the provisional assessment order for want of service of a copy thereof upon them and hence the final assessment order vide letter no. 424 dated 14.05.2014 could not have been passed against the petitioner no. 1.

6. In the above circumstances, the final assessment order vide letter no. 424 dated 14.05.2014 passed against the petitioner no. 1 is hereby quashed with direction to the concerned authority to ensure service of the provisional assessment order upon both the petitioners respectively before proceeding further in the matter.

7. As and when the final assessment order is passed, the respondents shall bring the same to the notice of the Special Court, in view of the statement made at the Bar by learned counsel for the petitioners that the proceeding under Section 154 of the Electricity Act, 2003 is yet pending.

8. I.A. No. 6416 of 2018 which has been filed, *inter alia*, with a prayer for quashing the order taking cognizance dated 08.04.2016, is permitted, as prayed, to be withdrawn, with liberty to the petitioners to challenge the said order of cognizance in appropriate proceeding.



9. The writ petition stands disposed of with the aforesaid observations and directions.

(Vikash Jain, J)

BT/Chandran

AFR/NAFR	NAFR
CAV DATE	N.A
Uploading Date	04.12.2018
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