IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.25624 of 2013

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The Bihar State Electricity Board @ Bihar State Power Holding Company, Through Its Chairman-Cum Managing Director, Vidyut Bhawan, Bailey Road, Patna.

2. The Electrical Executive Engineer, Electric Supply Division, Munger.

3. The Assistant Electrical Engineer- Cum- Assessing Officer, Electrical Supply Sub- Division, Munger.

.... Petitioner/s

Versus

1. Pankaj Kumar Sharma S/O Devendra Prasad Sharma, Resident of Mohalla- Kasim Bazar, P.S- Kasim Bazar, District- Munger.

2. The State of Bihar through Energy Department, Patna

3. The Electrical Executive Engineer, Electric Supply Works Division, Bhagalpur-cum-Appellate Authority, Under Electricity Act 2003

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. VINAY KIRTI SINGH, SR. ADV

For the Respondent/s : Mr. GIRIJA SHANKAR PD, ADV

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 05-11-2018

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

(i) To quash the order dated 21.05.2012 passed by the respondent no. 3, the appellate authority-cum-Electrical Executive Engineer, Electric Works Division, Bhagalpur in Appeal No. 1 of 2011 filed by the respondent no.1 against the petitioners by which the learned respondent no. 3 without got depositing the 50% of the final assessment made by the Assessing Officer admitted the appeal and set aside the final assessment order dated 14.06.2011 on wholly erroneous grounds.

(ii) To stay the operation of the order dated 21.06.2012 as the appeal as such filed by the respondent no. 1 was barred by limitation under Section 127(2) of the Electricity Act, 2003 (hereinafter referred to as 'the Act'.

(iii) To grant any other relief/reliefs for which the petitioners may be held entitled in law.

2. Mr. Vinay Kirti Singh, learned Senior Counsel appearing on behalf of the petitioner-power company makes a short submission to question the jurisdiction of the appellate authority to entertain the appeal of the respondent no. 1 in absence of pre-deposit of 50% of the amount finally assessed having been paid. He invites reference to the provisions of Section 127(2) of the Electricity Act, 2003 (hereinafter referred to as 'the Act') which mandates that an amount equal to half of the assessed amount shall be deposited as a pre-condition for an appeal to be entertained.

3. Learned counsel for the respondent no. 1 submits that no pre-deposit of half the assessed amount was made in the special circumstances obtaining in the present case. It is submitted that the

provisional assessment dated 04.03.2009 was challenged in CWJC No. 15137 of 2009 (Pankaj Kumar Sharma vs. The Bihar State Electricity Board and Ors.) (Annexure-3), which was disposed of on 26.08.2010, *inter alia*, directing the concerned authority to pass final orders against the petitioner and the petitioner would have the liberty to file an appeal. Thereafter, by order dated 20.07.2011 passed in MJC No. 755 of 2011 (Annexure-5), this Court took note that final assessment was passed on 14.06.2011 and granted liberty to the petitioner to challenge the same in appeal provided under the Statute. It is also submitted that in the impugned appellate order dated 21.05.2012 (Annexure-7) the appellate authority has specifically considered this aspect of the matter and observed that this Court had found both the provisional assessment and final assessment to be illegal and hence directed an appeal to be filed, in view of which the appellant was not required to make payment of the pre-deposit. It is also stated that the petitioner-authority had also not given any direction to the respondent no. 1 to make payment of 50% of the amount finally assessed.

4. Having heard the parties and on consideration of the materials on record, this Court finds merit in the writ petition. The provisions of Section 127(2) of the Act are clear and specific which mandate that an appeal cannot be entertained unless half the amount finally assessed has been deposited. The appellate authority has

clearly proceeded on a misreading of the orders of this Court, which merely granted liberty to the respondent no. 1 to prefer appeal against the final assessment order in accordance with law. In view of the specific requirement of Section 127(2) of the Act, no direction was required from the petitioner-authority to make such pre-deposit. The appellate authority cannot therefore have entertained the appeal and has acted without jurisdiction in proceeding to decide the appeal on its merits.

5. In the above view of the matter, the impugned order dated 21.05.2012 is accordingly set aside.

6. It is made clear that the appellate authority may entertain the appeal upon the respondent no. 1 making payment of the pre-deposit as required in accordance with Section 127(2) of the Act.

7. The writ petition stands allowed as above.

(Vikash Jain, J)

Chandran

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.11.2018
Transmission Date	NA