

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19726 of 2016

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Ibrar Ahmed, Son of Zakir Ahmed, resident of Tarni Prasad Lane, Mina Bazar, Patna City, P.O. Patna City, P.S. Khajekala, Patna - 800007

... .. Petitioner/s

Versus

1. The Bihar State Power (Holding) Company Limited, Vidyut Bhawan, Bailey Road, Patna, through its Chairman - Cum - Managing Director
2. The South Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna, through its Managing Director
3. The Electrical Executive Engineer, Electric Supply Division, Guljarbag, Patna City, Patna
4. The Assistant Electrical Engineer (Supply), Mina Bazar, Guljarbag Electric Supply Division, Patna City, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Suraj Samdarshi, Advocate Mr. Rajan Prakash, Advocate Mr. V.V. Rana, Advocate
For the Respondent/s	:	Mr. Anand Kumar Ojha, Advocate

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CORAM: HONOURABLE JUSTICE SMT. NILU AGRAWAL
ORAL JUDGMENT

Date : 16-07-2018

Re : I.A. No. 4777 of 2018

I.A. No. 4777 of 2018 has been filed challenging the final assessment order issued by the Assessing Officer vide letter No. 40 dated 02.02.2017 whereby a sum of Rs. 4,37,936/- as revenue loss has been assessed against the petitioner.

2. Considering the fact that final assessment order has been challenged, I.A. No. 4777 of 2018 is allowed.

3. Heard Mr. Suraj Samdarshi, learned counsel for the petitioner and Mr. Anand Kumar Ojha, learned counsel appearing for Bihar State Power Holding Company Ltd.



4. The petitioner in the present writ application has challenged the letter No. 485 dated 25.10.2016, Annexure-2 issued by the Assessing Officer cum Assistant Electrical Engineer (Supply), Sub-Division, Meena Bazar, Patna City, whereby without finding any irregularity in the inspection, provisional assessment has been carried out under Section 126 of the Electricity Act, 2003 (hereinafter referred to as the Act). The final assessment order has been passed vide letter No. 40 dated 02.02.2017 whereby a demand of Rs. 4,37,936/- has been raised against the petitioner which has also been challenged by way of Interlocutory Application.

5. The short facts of the case is that on 22.09.2016 an inspection was made by a team consisting of three Electrical Executive Engineers, three Assistant Electrical Engineers and one Junior Electrical Engineer of the STF and of the said jurisdiction where the petitioner's business premises was located. The petitioner held an LT connection, category was LTIS-II(D) and sanctioned load was 33.57 KW. On inspection, the connected load was found 23.82 KW and the maximum demand recorded by the installed meter was 31.96 KW, as per the inspection report contained in Annexure-1. As per the inspection report both the meter cells appeared normal and no defect or any tampering was



found in the meter cell. After about a month of the said inspection the petitioner was served with the impugned letter No. 485 dated 25.10.2016, Annexure-2 stating therein that as per the team, which has conducted the inspection and as per data provided by the RMR(Remote Meter Reading) Cell between 23.07.2014 to 22.09.2016, disturbance was found in one phase and on that account differences was found in the consumption of units for which the petitioner was sent a punitive bill for payment of Rs. 4,37,936/-. Thereafter the petitioner was served with the provisional assessment order dated 25.10.2016 under Section 126 of the Act, and, subsequently, a final order was passed vide letter No. 40 dated 02.02.2017 both of which have been challenged by the petitioner.

6. It is submitted by the learned counsel for the petitioner that since there was no discrepancy and the seals were found normal during inspection, no proceeding under Section 126 of the Act could have been initiated and no further demand under the RMR fault finding differences, as noted by the RMR Cell, could have been made in view of the judgment of this Court in the case of M/s Sri Ram Industries Vs. State of Bihar, since reported in AIR 2016 Patna 2. In this connection, he refers to paragraphs 4



and 13 of the aforesaid judgment, which is reproduced hereinbelow :

“4. The argument of Mr. Samdarshi has centered around the provisions underlying Section 126 of the Act to submit that the legislature has consciously provided that it is only in circumstances where the equipments, gadgets, machines and devices found connected in the premises of a consumer reveals of unauthorized use of electricity by the consumer concerned that he can be subjected to any proceeding under Section 126 of the Act and not in any other circumstance. He submits that since it is an admitted position that the connected load of the equipments, machines etc. installed at the premises of the petitioner was found within the sanctioned load, there was no occasion for the respondents to initiate penal proceeding against the petitioner simply on the basis of an erratic reading reflected in the electronic meter which was not in tune with the factual position. Learned counsel with reference to Clause 9.12 of the Electricity Supply Code submits that a duty has been cast upon the authorities to take monthly reading of the meter and which would also include taking recording of the maximum load in the month. It is contended that the failure on the part of the respondent authorities to download the meter reading instrument each month has resulted in a situation where the petitioner is saddled with a financial liability for past 12 months as per sub-section (5) of Section 126.



13. A plain reading of the provisions leaves no room for any discussion that unless the connected load in the premises of the petitioner or the records maintained by him confirms that he is indulging in unauthorized use of electricity, it cannot be left to the discretion of the respondents or the Inspecting Team to draw any such conclusion simply on the basis of the details recorded in the electronic meter unless the information recorded in the meter confirms to the factual position existing on ground that matches the connected load present in the premises of the consumer concerned. Subjecting a consumer to penal proceeding under Section 126 of the Act simply on the basis of the recordings in the electronic meter is capable of giving contrasting results as stands confirmed from the discussions above.”

7. He submits that simply because the RMR recording has been taken by the respondents at the headquarters, the petitioner cannot be saddled with the said liability. The aforesaid order has been affirmed by a Division Bench of this Court vide order dated 11.10.2017, passed in L.P.A. No. 1132 of 2016. He further submits that GPRS/GSM AMR Modem Installation was done by the respondents on 07.05.2015, which he has brought on record by way of supplementary affidavit vide Annexure-5 and could not have been for the period pre-existing i.e. from 23.07.2014



although the entire period between 23.07.2014 till 22.09.2016 has been taken to be the difference as per the RMR recording.

8. However, learned counsel appearing for the respondent Power Holding Company submits that final assessment order has been passed as the amount due was found as per the RMR Cell reporting and for the period 23.07.2014 to 22.09.2016 the RMR data showed the difference, hence, the provisional assessment order and the final assessment order has been passed. He further submits that the matter may be relegated to the authorities for fresh calculation of the dues as per the RMR Cell difference.

9. Considering the facts and circumstances and the observations in the case of M/s Sri Ram Industries (supra) and that there was no illegality or irregularity found during inspection and the penal action has been taken against the petitioner for deposit of dues as per the RMR Cell data, which has been taken electronically on the basis of the reading reflected in the electronic meter, the provisional assessment order No. 485 dated 25.10.2016, passed by the Assessing Officer cum Assistant Electrical Engineer (Supply), Sub-Division, Meena Bazar, Patna City and the final assessment order, passed by the Assessing Officer cum Assistant



Electrical Engineer (supply), Sub-Division, Meena Bazar, Patna
City vide letter No. 40 dated 02.02.2017 are hereby quashed.

10. The writ application is, accordingly, allowed.

(Nilu Agrawal, J)

Rajesh/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	18.07.2018
Transmission Date	NA

