

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13053 of 2012

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Md.Saquib S/O Md. Soyaeb Resident of Mohalla- Hariganj,
D.S. College Road, P.O And P.S- Katihar, Distt- Katihar,
Proprietor of Ice Factory, Industria Estate, Katihar- 854105

... .. Petitioner/s

Versus

1. The Bihar State Electricity Board through the Chairman,
Vidyut Bhawan, Bailey Raod, Patna.
2. The Electrical Executive Engineer, Bihar State Electricity
Board, Electric Supply Division, Katihar.
3. The Assessing Officer-Cum- Assistant Electrical Engineer
(Urban) Bihar State Electricity Board, Electric Supply Sub-
Division, Katihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mukesh Kumar Singh, Adv
For the Respondent/s : Mr. Vinay Kirti Singh, Sr. Adv
Mr. Vijay Kumar Verma, Adv
Mr. Akhileshwar Singh, Adv

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date : 22-11-2018

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

*(i) For a direction that in case the connected load of
the consumer's premises is found in excess of load
contracted without any other irregularities, then it
does not come within the purview of unauthorized use
of electricity as defined under Section 126 of the*



Electricity Act, 2003 so as to compute the punitive charges vide formula under $L \times F \times D \times H$ as per Annexure-7 appended to the Bihar Electricity Supply Code, 2007.

(ii) For a direction that the punitive charges of electricity in case the connected load of the consumer's premises is found in excess load contracted, then the same relates to clause 6.31 of the Bihar Electricity Supply Code, 2007, the calculation of which would be as per letter no. 58 dated 18.01.2010 issued by the Chief Engineer (Commercial), BSEB(Annexure-11 to the writ petition).

(iii) For a direction to dispose of the objection petition dated 18.04.2012 (Annexure-9 to the writ application) of the petitioner issued in pursuance to the provisional assessment order dated 02.04.2012 by the respondent no. 3 inviting objection on the provisional assessment order from the petitioner.

(iv) For quashing the letter dated 02.04.2012 (Annexure-8 to the writ application) issued by the office of the respondent no. 3 whereby a demand has been raised on wrong findings of excess load alleged to have found in the premises of the petitioner.



2. The short facts of the case according to the petitioner are that he applied for 1KW electric connection in March, 2009, which was granted by the respondent authorities by D/S connection on 24.03.2009 (Annexure-2). Thereafter, the petitioner once again applied for 10 HP LTIS connection for establishing an Ice factory in the Industrial Estate, Katihar which was also sanctioned on 31.07.2010 (Annexure-3). Energy bill for the month of November, 2011 for Rs. 41,448/- was raised which was duly deposited by the petitioner on 28.12.2011 (Annexure-5). On 20.02.2012 the petitioner informed the respondent no. 3 that while installing machinery of the ice factory, it was detected that the red/green light in the meter was not blinking and the meter was not working. The respondent officials however, did not take any immediate action and conducted inspection only on 14.03.2012. The inspection team submitted its report (Annexure-7), according to which, while the meter was found defective, the meter seal was found intact and no irregularity was found. Provisional assessment order



dated 02.04.2012 (Annexure-8) was passed raising a punitive demand aggregating to Rs. 3,99,768/-.

3. Learned counsel for the petitioner submits that the provisional assessment has been arbitrarily made and the demand raised is wholly illegal and unjustified. It is pointed out from the inspection report that as against the sanctioned load of 10 HP for the ice factory, a total connected load of 10.5 HP was found without any other irregularity having been alleged, apart from the defective meter for which the petitioner had already intimated the authorities. At the highest therefore, all that can be said is that there was excess connected load of 0.5 HP over and above the sanctioned load of 10 HP. In this regard reference has been made to the respondent's letter no. 18.01.2010 (Annexure-11) observing that connected load found/detected in excess over sanctioned load without any other irregularities does not come within the purview of "Unauthorised Use of Electricity" as defined in Section 126 of the Electricity Act, 2003 (for short 'the Act'). In such cases, the same will be charged against the fixed charge for the excess



load at double rate, together with the balance between minimum consumption as stipulated in the tariff and consumption recorded at twice the normal rate prior to the date of inspection.

4. Learned senior counsel appearing for the respondents submits that the letter dated 18.01.2010 relied upon by the petitioner does not come to his aid inasmuch as the connected load was admittedly in excess of the sanctioned load. In addition to that, there was another irregularity by way of defective meter found at the time of inspection. As such the case of petitioner is covered under Section 126 of the Act for which the provisional assessment has rightly been passed.

5. Having heard the parties and on consideration of the materials on record, this Court finds merit in the writ petition. As far as the defective meter is concerned, the same was detected by the petitioner and intimation was duly given to the respondent authorities, which fact is not in dispute. After some delay, the respondents carried out inspection, in course of which no other irregularity was found and the seal of the meter was also



found intact. It is thus manifest that apart from the connected load of 0.5 HP being in excess of the sanctioned load of 10 HP, no other irregularity was found attributable to the petitioner. The letter dated 18.01.2010 treating such cases as being outside the purview of "Unauthorised Use of Electricity" is thus applicable, hence no punitive bill with reference to Section 126 of the Act could have been raised against the petitioner. The averment made in para 14 of the counter affidavit that final assessment has been passed rejecting the petitioner's claim, may also be taken note of. Except a bald submission, however, the respondents have not brought on record a copy of such order, if any, passed against the petitioner. On the other hand, learned counsel for the petitioner makes a statement at the Bar that till date the petitioner has not received any communication in this behalf, much less a copy of the final assessment order said to have been passed.

6. In the above view of the matter and with the consent of the parties, the provisional assessment order dated 02.04.2012 is hereby quashed with the



observation that the petitioner shall be liable to make payment of all applicable charges in respect of the excess connected load of 0.5 HP over and above the sanctioned load of 10 HP as contemplated in the letter dated 18.01.2010 (Annexure-11).

7. The writ petition stands disposed of as above.

Chandran

(Vikash Jain, J)

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	26.11.2018
Transmission Date	NA

