

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12753 of 2018

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Mithilesh Kumar S/o Late Ragho Prasad Singh, Resident of Verma Cell Gali,
Mithapur, P.S.- Jakkanpur, District- Patna. Petitioner

Versus

1. The Bihar State Power Holding Company Limited through its Chairman-cum-Managing Director, Vidyut Bhawan, Bailey Road, Patna
2. Chairman cum Managing Director, Bihar State Power Holding Company Limited, Vidyut Bhawan, Bailey Road, Patna
3. South Bihar Power Distribution Company Limited through its Managing Director, Vidyut Bhawan, Bailey Road, Patna
4. Managing Director, South Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna
5. Veerendra Kumar Choudhary, Electrical Superintending Engineer/Special Task Force, South Bihar Power Distribution Company Limited, Patna
6. Amrendra Kumar, Electrical Executive Engineer/Special Task Force, South Bihar Power Distribution Company Limited, Patna
7. Ajmal Hussain, Assistant Engineer Electrical/Special Task Force, South Bihar Power Distribution Company Limited, Patna
8. Manoj Kumar Singh, Assistant Engineer Electrical/Special Task Force, South Bihar Power Distribution Company Limited, Patna
9. Sunny Kumar, Electrical Executive Engineer/S/Gardanibagh Division, Patna Electrical Supply Unit, Patna
10. Chandan Kumar, Junior Electrical Engineer/S/Mithapur, Patna Electrical Supply Unit, Patna.
11. Neeraj, Assistant Electrical Engineer/S/Jakkanpur Sub Division, Patna Electrical Supply Unit, Patna
12. The State of Bihar through Director General of Police, Bihar, Patna.
13. Director General of Police, Bihar, Patna.
14. Senior Superintendent of Police, Patna.
15. Officer Incharge Jakkanpur Police Station, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Siddhartha Prasad, Advocate Mr. Kanstubh, Advocate Mr. Om Prakash, Advocate
For Electricity Board	:	Mr. Vinay Kirti Singh, Sr. Advocate Mr. Vijay Kumar Verma, Advoca Mr. Akhileshwar Singh, Advocate
For the Respondent/s	:	Mr.Sanjay Kumar AC to SC-8

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER



7 26-07-2019 The petitioner in this case filed this writ application being aggrieved by and dissatisfied with the provisional assessment order dated 12.05.2018.

By filing Interlocutory Application No. 6256 of 2018 the petitioner has sought to amend the prayer made in the writ application to add a relief for quashing the final assessment order dated 24.05.2018 communicated to the petitioner vide letter no. 347 dated 02.05.2018 issued by the Electrical Executive Engineer-cum-Assessing Officer, Electricity Supply Division, Gardanibagh.

The parties have already exchanged pleadings in detail and there is no objection to the amendment being allowed so as to consider the entire reliefs prayed by the writ petitioner in the present writ application.

I. A. No. 6256 of 2018 stands allowed.

Learned counsel for the petitioner has raised a short point at this stage. It is submitted that initially when the provisional assessment order was passed, the liability was determined by simply applying the given formula but without taking note of the requirement as contained in the Bihar Electricity Supply Code, 2007 as amended in the year 2015 (hereinafter referred to as the 'Supply Code of 2007'). It is contended that in terms of relevant provision of the Supply Code, 2007 the Assessing Officer has to determine the number of days during



which the unauthorized use has taken place after proper scrutiny and analysis of the inspection done, data collected in monthly meter reading, data stored in the meter, date of purchase and installation of device found during inspection and any other relevant factors. It further provides that the Assessing Officer has to ascertain at first the period during which unauthorized use of electricity has taken place , if it cannot be ascertained by the Assessing Officer even after the consideration of the above parameters, such period shall be limited to 12 months immediately proceeding the date of inspection and in that case the Assessing Officer has to give clear and reasoned order for using the period of 12 months and the reasons as to why the period could not be ascertained.

Mr. Siddharth Prasad, learned counsel representing the petitioner submits that the Supply Code, 2007 has got statutory force and the provision contained therein particularly relating to assessment procedures are mandatory in nature. The requirement as envisaged in Supply Code, 2007, to adopt twelve months formula may be adhered to only when the Assessing Officer provides a reason as to why the period could not be ascertained. It is only there upon twelve months period can be taken into consideration to calculate the liabilities. He has taken this Court through the final Assessment order which is available at Annexure



‘D’ to the counter affidavit. It has been shown from the final assessment order that while considering the objection of the petitioner, the Assessing Officer has proceeded to impose the penalty by recording as under:

“Reply to the objection dated 24.05.2018

1. In reply to the first point regarding details of connected load it is stated that the load has been assessed on the basis of the statement of present person at the time of inspection of the premises, it is also on the basis of technical know-how of the members of the inspecting team

2. That in reply to the ii point regarding LFDH formula for assessment of loss the factor has been taken 0.5 which is correct as per LTIS consumer in accordance with annexure 7 of the supply code.

3. The consideration of 22 hours is on the basis of average supply of electricity as per figure of the power substation.

That in the light of the discussion and the technical matter involved in the present case the assessment made herein is correct and the consumer is liable to pay Rs. 2,85,199/= to the SBPDCL. The calculation charge is enclosed herewith this final assessment order. This final assessment order has been made without prejudice.”

Learned counsel submits that in the objection filed by the petitioner he had raised a number of issues including the issues relating to method of calculation. It was his specific objection that the method of calculation has been wrongly applied and it is contended that the calculation should be made as per the



provisions of the Supply Code, 2007 without there being any deviation.

Learned counsel submits that the objection of the petitioner was based on certain reasons. In fact the premises of the petitioner was inspected only few days back and in course of that inspection no allegation of theft was made against the petitioner. If this was the position, then it is was all the more necessary for the Assessing Officer to give reasons as to why the formula of 12 months be applied in case of the petitioner, it is for this reason alone learned counsel submits that the impugned orders are liable to be set aside.

Mr. Vinay Kirti Singh, learned Senior Counsel representing the respondents submits that on 12.05.2018 at about 4:00 am. when the Special Task Force conducted a raid in the premise of the petitioner in presence of one independent witness who was the neighbour of the petitioner it was found that the Ice Factory was being run by committing theft of electricity and by passing the meter for which one FIR has been lodged against the petitioner giving rise to Jakkanpur P.S. Case No. 202 of 2018. The seizure list was accordingly, prepared and the meter along with meter box and service wire etc. were removed and wire connected over to poles.

Learned Senior Counsel submits that the provisional



order of assessment as well as the final order of assessment have been passed in accordance with the provisions of the Supply Code, 2007. It is submitted that in view of the materials which were collected in course of seizure it was evident that the petitioner was tapping the electricity connection wire which was just before entry into the meter. Learned Senior Counsel has also referred to the procedures adopted in course of passing of the assessment order. It is submitted that same has been passed after giving due opportunity of hearing to the petitioner.

Having heard learned counsel for the petitioner and learned Senior Counsel representing the respondent Corporation, this Court is of the considered opinion that the petitioner has been able to demonstrate before this Court that while passing the provisional assessment order as well as the final assessment order, the respondent Assessing Officer has not taken any effort to ascertain the period of unauthorized use of electricity. The Supply Code, 2007 imposed a duty upon the Assessing officer to give a clear and reasoned order for using the period of 12 months and the explanation as to why the period could not be ascertained.

In the opinion of this Court, the provision being statutory and mandatory in nature, the Assessing Officer who was acting as the statutory authority under the Supply Code, 2007, was obliged to abide by those requirements of the provisions of the



Supply Code of 2007 and if he has not followed those provisions, it will render the order passed by him illegal and violative of the statutory provisions.

In the present case, this Court finds that in the final assessment order though submission of the petitioner has been taken note of which was also the part of his objection petition but while considering the same and arriving at the final figure, the Assessing Officer has not dealt with the plea of the petitioner as to why the 12 months formula be applied in his case. This being the position, this Court finds that the impugned orders of provisional assessment as well as the final assessment order are liable to be held bad in law for non-observance of the provisions of the Supply Code, 2007 and for this reason alone, those are liable to be set aside and are accordingly, set-aside. This would, however, not come in the way of the Assessing Officer to proceed afresh with the assessment and pass a reasoned order in accordance with law.

The writ application is allowed to the extent indicated herienabove.

(Rajeev Ranjan Prasad, J)

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