

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7021 of 2017

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Suresh Sah, Son of Daroga Sah, Resident of Village- Sitalpur Kamalpur, P.O.- Bidupur, District- Vaishali.

... .. Petitioner

Versus

1. The State of Bihar through Principal Secretary, Energy Department, Patna
2. The Bihar State Power (Holding) Company Limited, Vidyut Bhawan, Bailey Road, Patna, through its Chairman-cum-Managing Director
3. The North Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna through its Director
4. The Chief Engineer (Commercial), North Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna
5. The Additional Collector, Vaishali at Hajipur.
6. The Electrical Executive Engineer, Electric Supply Division, Hajipur, District- Vaishali.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr. Brajesh Kumar Singh, Advocate
for the Company	:	Mr. Vinay Kirti Singh, Sr. Advocate
		Mr. Prakash Kumar, Advocate
		Mr. Akhileshwar Singh, Advocate
For the Respondent/s	:	Mr. Rakesh Ambastha, A.C. to A.A.G.-07

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

7 29-07-2019 A pure question of law arises for consideration in the present case. Petitioner in the present case is aggrieved by and dissatisfied with the order dated 25.11.2016 passed by the Additional Collector-cum-District Electricity Appellate Officer, Vaishali by which the appeal preferred by the petitioner under Section 127 of the Electricity Act, 2003 (hereinafter referred to as the 'Act of 2003') has been rejected.

Learned counsel for the petitioner is contesting the



order rejecting his appeal on the grounds inter alia that the Additional Collector, Vaishali (Respondent No. 5) cannot be said to be the competent authority to adjudicate an appeal under Section 127 of the Act of 2003 particularly in view of the provisions of the Appeal to Appellate Authority Rules, 2004 (hereinafter referred to as the 'Rules of 2004') framed by the Central Government in exercise of its powers under Clause (u) of Sub-section (2) of Section 176 of the Act of 2003.

Considering the submissions of learned counsel for the petitioner when this Court found that in the counter affidavit earlier filed on behalf of the respondent nos. 2 to 6, there was no answer to the same, the Court passed order dated 26.06.2019 calling upon the respondent nos. 2 to 6 to supplement their counter affidavit. The order dated 26.06.2019 is quoted hereunder for ready reference:-

“The respondent nos. 2 to 6 are required to supplement their counter affidavit as they have not answered some of the relevant issues raised in the writ application which includes the issue relating to competence of the appellate authority in terms of Rule 3 of the Appellate Authority Rules, 2004. The respondents would also be required to answer as to how the case of the petitioner may be distinguished taking note of the ratio of the judgment dated 04.11.2015 passed by a learned coordinate Bench of this Court in CWJC No.1546 of 2014, a copy of which has been annexed as Annexure-5 to the writ application.
As prayed for by Mr. Prakash Kumar, as a matter of indulgence, let this cases be listed after two



weeks on 11th July, 2019 maintaining its position.”

A supplementary counter affidavit has now been filed on behalf of the aforesaid respondents. It is contended that under the provisions of Section 127 of the Act of 2003 it has been provided that any person aggrieved by a final order made under Section 126 of the Act of 2003 may prefer an appeal to an appellate authority as may be prescribed. It is stated that in the light of the provisions of Section 127 of the Act of 2003 the Energy Department, Government of Bihar vide its notification no. 44/2003-15 issued vide Memo No. 2782 dated 28.05.2013 and constituted the appellate authority under Rule 3 of the Rules of 2004.

It is stated that Rule 3 of the Appellate Authority Rules, 2004 was amended by the GSR 537(e) dated 07.09.2006 with effect from 07.09.2006 to the extent that by amendment it provided for a Multi Member Appellate Authority comprising one or more persons with one person having knowledge of matters related to assessment of electricity charges and not directly related to the affairs of the territorial jurisdiction of the licensee or supplier of electricity.

It is submitted that in the light of the amendment brought in Rule 3 of the Rules of 2004, the Energy Department, Government of Bihar resolved to effect a modification in the



earlier notification no. 15 dated 28.05.2013 to the extent of appointing and authorizing the Assistant Executive Engineer, Bihar State Power Transmission Company Ltd. (In short 'BSPTCL') to act and discharge all the powers and functions of member in the two Members Appellate Authority with the ADM already authorized as Chairperson to discharge his duties and jurisdiction of the Appellate Authority under Section 127 of the Act of 2003.

A copy of notification no. 05 dated 06.05.2016 issued by the Energy Department, Government of Bihar vide Memo No. 1488 dated 06.05.2016 has been brought on record as Annexure 'R/2' to the supplementary affidavit. The said notification (Annexure 'R/2') was published in the official gazette on 10.05.2016. It is, however, stated that pursuant to the notification dated 06.05.2016 the 'BSPTCL' notified the nomination of the Assistant Electrical Engineers of Grid Sub-station of different districts as member of two Members Appellate Authority vide notification no. 4395 dated 11.12.2018. They were authorized to act under the Chairmanship of A.D.Ms. of districts and authorized them to discharge all the powers and functions of a member as per provisions laid down under Section 127 of the Act of 2003. A



copy of the notification no. 4395 dated 11.12.2018 issued by GM(HR/Adm.), BSPTCL has been enclosed as Annexure 'R/3' to the supplementary counter affidavit.

Mr. Prakash Kumar learned counsel representing the respondents Power Company and its authorities submits that in the present case the impugned order has been passed by the A.D.M. of the district who happened to be a member of the Multi Member Appellate Authority notified vide Annexure 'R/2' on 06.05.2016. It is submitted that on the date of passing of the impugned order on 25.11.2016 the BSPTC had not nominated the Assistant Engineer to be a part of the appellate authority in terms of the notification dated 06.05.2016, therefore, in absence of the notification of the Assistant Engineers as member of the appellate authority, the Additional District Magistrate continued to exercise his power as appellate authority under Section 127 of the Act of 2003 and passed the impugned order herein. Learned counsel submits that in the given facts and circumstances of the case where there was no Additional Member in the Appellate Authority, the Additional District Magistrate could have very well passed the order of the nature passed in the present case as an appellate authority.

Learned counsel for the petitioner has while



contesting the submissions of Mr. Prakash Kumar, learned counsel for the respondents submits that the whole argument of learned counsel for the respondents is based on a complete misconception of law. It is submitted that once a Multi Member Appellate Authority has been notified vide notification dated 06.05.2016 as contained in Annexure 'R/2' to the supplementary counter affidavit, in absence of there being a specific power conferred by the statute or the rules framed thereunder or by any other instructions or notifications in accordance with law empowering the only member to act as an appellate authority, it cannot be allowed to be contended that the A.D.M. of the district shall alone be competent to act as an appellate authority.

Learned counsel submits that if the interpretation which is being sought to be given by learned counsel for the respondents is accepted then the whole purpose of constitution of Multi Member Appellate Authority will be negated by simply delaying the nomination of the Member by the Transmission Company as has been done in the present case. It is submitted that the facts of the case clearly reveal that notification dated 06.05.2016 though issued in the light of the amended Rule 3 of the Appeal to Appellate Authority Rules of 2004, the Transmission Company did not take any step for more than two



years to notify the name of the Assistant Engineers who were to be placed as Member on the Board of the Appellate Authority. Therefore, the delay on the part of the Transmission Company in notifying the members on the Board of the Appellate Authority cannot be allowed to be taken to their advantage and to the disadvantage of the petitioner in not getting the matter heard by an appropriate appellate authority in accordance with law.

It is submitted that the appellate authority is creature of a statute and such creature of statute derives their power from the four corner of the statute itself. If the statute has not conferred power upon the single member of the appellate authority to act as an appellate authority, any order passed by the single member cannot be said to be an order passed by the appellate authority.

Consideration

Having heard learned counsel for the petitioner and respondents, this Court finds substance in the submission of the learned counsel for the petitioner. Section 127 of the Act of 2003 reads as under:-

“127. Appeal to appellate authority.-(1) Any person aggrieved by a final order made under section 126 may, within thirty days of the said order, prefer an appeal in such form, verified in such manner and be accompanied by such fee as



may be specified by the State Commission, to an appellate authority as may be prescribed.

(2) No appeal against an order of assessment under sub-section (1) shall be entertained unless an amount equal to ²⁵[half of the assessed amount] is deposited in cash or by way of bank draft with the licensee and documentary evidence of such deposit has been enclosed alongwith the appeal.

(3) The appellate authority referred to in sub-section (1) shall dispose of the appeal after hearing the parties and pass appropriate order and send copy of the order to the assessing officer and the appellant.

(4) The order of the appellate authority referred to in sub-section (1) passed under sub-section (3) shall be final.

(5) No appeal shall lie to the appellate authority referred to in sub-section (1) against the final order made with the consent of the parties.

(6) When a person defaults in making payment of assessed amount, he, in addition to the assessed amount, shall be liable to pay, on the expiry of thirty days from the date of order of assessment, an amount of interest at the rate of sixteen per cent. per annum compounded every six months.

This clause provides for an appeal by any person aggrieved by a final order of the assessing officer to the adjudicating officer within a period of thirty days of the order. It also provides that no appeal shall be entertained unless an amount equal to one-third of the assessed amount is deposited with the licensee. The order of the adjudicating officer shall be final. (*Notes on Clauses*).”

Further Section 176 of the Act of 2003 confers power upon the Central Government to make rules for carrying out the purposes of the Act and in exercise of such power the Central Government has framed rules namely the Appeal to Appellate Authority Rules, 2004 which has been amended later on in the

25. Substituted by the Electricity (Amendment) Act, 2007 (26 of 2007), S. 12, for “one-third of the assessed amount” (w.e.f. 15-6-2007).



year 2006. Rule 3 of the Appellate Authority Rules was earlier providing formation of an appellate authority by the State Government by issuing a notification published in the official gazette wherein a person who is a gazetted officer of the State Government or has been District Judge or Officer or equivalent could have been notified as an appellate authority.

A bare perusal of the notification dated 28.05.2013 would show that in exercise of its power under Rule 3 of the Appellate Authority Rules the Government of Bihar in its Department of Energy appointed the Additional Collectors of the district to act as an appellate authority under Section 127 of the Act of 2003. Thereafter, notification no. 05 dated 06.05.2016 came to be published in the official gazette on 10.05.2016. The notification dated 06.05.2016 is quoted hereunder for a ready reference:-

**“GOVERNMENT OF BIHAR
ENERGY DEPARTMENT
NOTIFICATION**

No. Pr. 2/Vidhyut Dhara-44/2003-05 Patna, dated 06/05/2016

In exercise of power to constitute Appellate Authority under section 127 of the Electricity Act, 2003 and in compliance of the order of the Hon'ble High Court, Patna passed in C.W.J.C. No. 8623/2011 (M/s Saraogi Paper Mills Private Limited Vs. The Bihar State Electricity Board and others) as also in tune with the amended provision of the Appeal to the Appellate Authority Rules, 2004 as amended by GSR 537(E) dated 07.09.2006 w.e.f. 07.09.2006 amending Rule, 3 to



the extent of providing Multi Member Appellate Authority consisting of one or more persons with one person having knowledge of matters related to assessment of electricity charges and not directly related to the affairs of the territorial jurisdiction of the licensee or supplier of electricity, the Energy Department, Government of Bihar, resolves to effect Modification in the earlier Notification No. 15 dated 28.05.2013 to the extent of appointing and authorizing the Assistant Executive Engineer, Bihar State Power Transmission Company Limited to act and discharge all the powers and functions of a member in the two member Appellate Authority with Additional District Magistrate already authorized as Chairperson to discharge the duties and jurisdiction of Appellate Authority under section 127 of the Electricity Act, 2003.

The earlier provisions and the terms contained in the Notification No. 15 dated 28.05.2013 including those connected with authorization of the Additional District Magistrate except to the extent modified hereinabove shall remain in operation. The amendment / modification as indicated above shall come into force on the date of its Notification in the Official Gazette.

By the order of the Governor

Sd/-

(Pratyaya Amrit)

Principal Secretary”

A bare perusal of the notification dated 06.05.2016 (Annexure ‘R/2’) shows that it was issued in compliance of the order of this Court passed in CWJC No. 8623 of 2011 (**M/s Saraogi Paper Mills Private Limited Vs. The Bihar State Electricity Board and others**) as also it was to bring in tune with the amended provision of Appeal to Appellate Authority Rules, 2004 which was amended to the extent of providing a



Multi Member Appellate Authority consisting of one or more persons with one person having knowledge of matters related to assessment of electricity charges.

The whole purpose of bringing the notification dated 06.05.2016 was to give effect to the amended Rule 3 of the Appeal to Appellate Authority Rules, 2004. The notification dated 28.05.2013 was modified and thereby the Assistant Executive Engineer of the Transmission Company were brought as a Member of the Appellate Authority authorizing them to discharge all the powers and functions of a member in two Member Appellate Authority with Additional District Magistrate already authorized to act as a Chairperson.

It is, therefore, apparent to this Court that with effect from 06.05.2016 at least two Members Appellate Authority had been brought in effect and what was required to be done subsequently was to nominate the Assistant Executive Engineers on the Board of the Appellate Authority by the Transmission Company. The Transmission Company seems to have delayed the notifications nominating its Member on the two member appellate authority board. The nomination could be done only by notification no. 4395 dated 11. 12.2018 (Annexure 'R/3').

On consideration of the aforementioned provisions



there is no iota of doubt in the mind of this Court that on the date the impugned order of this case was passed, the Additional District Magistrate of the district was not competent to act alone as appellate authority. In terms of the notification of 2016 the appellate authority comprising two members would have only acted as appellate authority. This being the position the impugned order dated 25.11.2016 passed by respondent no. 5 as contained in Annexure '4' is hereby quashed and the matter is remitted to the appellate authority comprising two members to hear the appeal and pass a fresh reasoned order after hearing the parties within a period of 60 days from the date of receipt/production of a copy of this order.

The appeal stands allowed to the extent indicated above.

(Rajeev Ranjan Prasad, J)

vats/ved
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