

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18782 of 2018

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Jitendra Kumar, Son of Vishwanath Prasad, Resident of Arya, Path,
Jehanabad, P.S. and District Jehanabad.

... .. Petitioner/s

Versus

1. The South Bihar Power Distribution Company Limited, Vidyut Bhawan,
Bailey Road, Patna, through its Managing Director
2. The Chief Engineer (Commercial), South Bihar Power Distribution
Company Limited, Vidyut Bhawan, Bailey Road, Patna.
3. The Electrical Executive Engineer, Jehanabad.
4. The Assistant Electrical Engineer, Electric Supply Division, Jehanabad.
5. The Junior Electrical Engineer, Electric Supply Section, Jehanabad (East),
Jehanabad.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Suraj Samdarshi, Adv. Mr. Vishal Vikram Rana, Adv.
For the Respondent/s	:	Mr. Ritesh Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 22-04-2019 Heard learned counsel for the petitioner as well as

learned counsel representing the State.

Petitioner, in the present case, is aggrieved by the
communication as contained in letter no.257 dated 31.07.2018
issued by the respondent no.4 by which the objection preferred
by the petitioner under Section 126 of the Electricity Act, 2003
has been rejected.

Learned counsel for the petitioner submits that the
impugned order as contained in Annexure-7 to the writ
application is fit to be quashed and cancelled and the matter is



required to be remitted to the Assistant Electrical Engineer (Assessing Officer) for a fresh consideration because while passing Annexure-7, the Assistant Electrical Engineer has not given an opportunity of hearing to the petitioner in accordance with the provisions of Section 126(3) of the Electricity Act, 2003. Learned counsel further submits that on perusal of Annexure-2 to the writ application it would appear that on 5.06.2018 the Assistant Electrical Engineer, Jehanabad had conducted an inspection in the premises of the petitioner. On 08.06.2018 the petitioner was directed to arrange for covered wires so that old wire which were having joints may be removed and be substituted by new wires.

Learned counsel submits that the letter dated 08.06.2018 (Annexure-2) nowhere talks of any unauthorized use of electricity by the petitioner, but on the very next day i.e. on 09.06.2018 another inspection was conducted and this time the allegations were made that the petitioner was committing theft of electricity by meter pass in the phase incoming service wire line by nail and chimta. One FIR has been lodged against the petitioner in this connection. Learned counsel submits that no provisional assessment proceeding was initiated but in the FIR itself since the allegation was made and it was alleged that the



petitioner had caused loss of revenue to the extent of Rs.11,28,707/-, the petitioner submitted his objection as contained in Annexure-6 to the writ application. In his objection, the petitioner submitted that the alleged loss has been assessed by taking as if the petitioner is liable to pay the loss by taking into consideration 365 days, but the fact remains that on 05.06.2018 itself the factory premise of the petitioner was inspected and on the said date no allegation of commission of theft of electricity was made against the petitioner.

Learned counsel submits that the specific objection taken by the petitioner has not at all been considered while passing the impugned order.

Learned counsel for the power company has though opposed the writ application, but on facts it is an admitted position that prior to assessing loss of Rs.11,28,707/- as disclosed in the FIR, no opportunity of hearing was given to the petitioner.

Having heard learned counsel for the petitioner and learned counsel for the power company, this Court finds that the alleged loss of Rs.11,28,707/- has been mentioned in the FIR, but prior to assessment of the alleged loss, no opportunity of hearing was given to the petitioner in terms of sub-section(3) of



Section 126 of the Electricity Act, 2003. Section 126 is quoted hereunder for a ready reference:-

“Section 126. Assessment. - (1) If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorized use of electricity, he shall provisionally assess to the best of his judgment the electricity charges payable by such person or by any other person benefited by such use.

(2) The order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such manner as may be prescribed.

²⁰[(3) The person, on whom an order has been served under sub- section (2), shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who shall, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment within thirty days from the date of service of such order of provisional assessment of the electricity charges payable by such person.]

(4) Any person served with the order of provisional assessment, may, accept such assessment and

20. Substituted by the Electricity (Amendment) Act, 2007 (26 of 2007), S. 11(i), for sub-S. (3) (w.e.f. 15-6-2007). Prior to its substitution, sub-S.

(3) read as under:- “(3) The person on whom a notice has been served under sub0section (2), shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who may, after affording a reasonable opportunity of hearing to such a person, pass a final order of assessment of the electricity charges payable by such person.”



deposit the assessed amount with the licensee within seven days of service of such provisional assessment order upon him:

²¹[***]

²²[(5) *If the assessing officer reaches to the conclusion that unauthorised use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorized use of electricity has taken place and if, however, the period during which such unauthorised use of electricity has taken place cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection.*]

(6) The assessment under this section shall be made at a rate equal to ²³[twice] the tariff rates applicable for the relevant category of services specified in sub-section (5).

It is also evident from Annexure-2 to the writ application that according to letter dated 08.06.2018 issued by the Junior Electrical Engineer, Electric Supply Section, East Jehanabad, the Assistant Electrical Engineer, Jehanabad had conducted an inspection of the premise of the petitioner on 05.06.2018. In the said letter, there is no allegation of commission of theft of electricity. If this is the position, the

21. Proviso omitted by the Electricity (Amendment) Act, 2007 (26 of 2007), S. 11(ii) (w.e.f. 15-6-2007). Prior to its omission, the proviso read as under:- "Provided that in case the person deposits the assessed amount, he shall not be subjected to any further liability or any action by any authority whatsoever."

22.Substituted by the electricity (Amendment) Act, 2007 (26 of 2007), S. 11(iii), for sub-S. (5) (w.e.f. 15-6-2007). Prior to its substitution sub-S. (5) read as under:- "(5) If the assessing officer reaches to the conclusion that unauthorised use of electricity has taken place, it shall be presumed that such unauthorised use of electricity was continuing for a period of three months immediately preceding the date of inspection in case of domestic and agricultural services and for a period of six months immediately preceding the date of inspection for all other categories of services, unless the onus is rebutted by the person, occupier or possessor of such premises or place."

23. Substituted by t he Electricity (Amendment Act, 2007 (26 of 2007), S.11(iv), for "one-and-half times" (w.e.f. 15-6-2007)



assessing officer is required to consider this aspect of the matter in accordance with the judicial pronouncement on the subject particularly when it was specifically agitated by the petitioner in his reply as contained in Annexure-6 to the writ application. That has not been done in the present case.

For the reasons aforementioned, the impugned order is hereby set aside. The Assistant Electrical Engineer (Assessing Officer) (respondent no.4) is directed to consider the objection of the petitioner afresh after giving him an opportunity of hearing and pass a fresh order in accordance with law within a period of 30 days from the date of receipt/production of a copy of this order.

Learned counsel for the petitioner at this stage submits that for the present this Court may direct for restoration of the electricity connection on payment of a reasonable amount. The petitioner has indicated that normal electricity bill of the petitioner was approximately Rs.13,000/- to 16,000/- per month.

After hearing learned counsel for the power company, this Court directs that if the petitioner deposits a sum of Rs.2.5 lacs for the present subject to final assessment and the order to be passed by the assessing officer, the electricity line of the



petitioner shall be restored within 48 hours.

The writ application stands disposed off accordingly.

(Rajeev Ranjan Prasad, J)

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