

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11196 of 2018

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1. M/s Dhan Kuwar Cold Storage Private Limited, a Company incorporated under the provisions of the Companies Act, 1956 having its office at kabristan Gali, Jitendra Poultry Farm, Nasirganj, P.O. Digha, P.S. Danapur, District Patna, through its Director, Satyendra Kumar Son of Shri Brahmadeo Singh Resident of Kabristan Gali, Jitendra Poultry Farm, Nasirganj, P.O. Digha, P.S. Danapur, District Patna.
 2. Jitendra Kumar Son of Shri Brahmadeo Singh Resident of Kabristan Gali, Jitendra Poultry Farm, Nasirganj, P.O. Digha, P.S. Danapur, District Patna.

... .. Petitioners

Versus

1. The State of Bihar through the Principal Secretary, Department of Energy, Government of Bihar, Patna.
2. The South Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna, through its Managing Director.
3. The Chief Engineer Commercial, South Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna.
4. The Electrical Executive Engineer, Electric Supply Division, Danapur, PESU (West), Patna.
5. The Assistant Electrical Engineer, Electric Supply Sub Division, Digha Danapur, PESU (West), Patna.

... .. Respondents

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with

Civil Writ Jurisdiction Case No. 15344 of 2018

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1. The South Bihar Power Distribution Company Ltd. Through Its Managing Director, Vidyut Bhawan, Bailey Road, Patna.
2. The Electrical Executive Engineer, Electric Supply Division, Danapur-cum-Assessing Officer.

... .. Petitioners

Versus

1. Dhankuwar Cold Storage Private Limited, a Company incorporated under the provisions of the Companies Act, 1956 having its office at kabristan Gali, Jitendra Poultry Farm, Nasirganj, P.O. Digha, P.S. Danapur, District Patna, through its Director, Satyendra Kumar Son of Shri Brahmadeo Singh Resident of Kabristan Gali, Jitendra Poultry Farm, Nasirganj, P.O. Digha, P.S. Danapur, District Patna.
2. That Appellate Authority under Section 127 of Electricity Act 2003 cum Addl. Collector, Govt. of Bihar.
3. The State of Bihar through Energy Secretary, Govt. of Bihar, Patna.

... .. Respondents

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Appearance :

(In Civil Writ Jurisdiction Case No. 11196 of 2018)

For the Petitioner/s : Mr. Suraj Samdarshi, Advocate
For the State : Mr. Ravish Chandra- AC to SC-6
For Electricity Board: Mr. Vinay Kirti Singh, Sr. Advocate
Mr. Akhileswar Singh, Advocate

(In Civil Writ Jurisdiction Case No. 15344 of 2018)

For the Petitioner/s : Mr. Vinay Kirti Singh, Sr. Advocate
Mr. Akhileshwar Singh, Advocate
For the Respondent/s: Mr. Yogesh Kumar AC to SC-9
For the Pvt. Res. : Mr. Suraj Samdarshi, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
C.A.V. JUDGMENT
Date : 19-02-2019

Both these writ applications were listed under heading
'For Orders' on the request of the parties.

Since both the writ applications were raising similar
questions, with the consent of the parties the writ applications have
been heard together and are being disposed of by this common order.

C.W.J.C. No. 11196 of 2018

The petitioner in the present writ application is a private
limited company and one of its Director who has moved this Court for
following reliefs:-

- “(i) For issuance of a Writ in the nature of
Mandamus, directing the respondent no. 4 to pass
final assessment order in light of the order dated
19.01.2018 passed by the Appellate Authority under
Section 127 of the Electricity Act, 2003.
(ii) For issuance of a Writ in the nature of Mandamus
directing the respondent authorities and in particular
the respondent no. 4 and 5 to grant fresh electrical
connection in the name of the petitioner no. 2,
application whereof is pending since 22.08.2017
under Section 43 of the Electricity Act, 2003.



(iii) For a direction to the respondent authorities to pay compensation as per Section 43(3) of the Electricity Act, 2003 for the delay in grant of fresh electrical connection, despite an order passed in favour of the petitioner no. 1 in furtherance of the order passed by this Hon'ble Court; and for any other relief or reliefs to which the petitioners are found entitled.”

It is the case of the petitioners that earlier one High Tension Supply -I (HTS-I) category electric connection was obtained by petitioner no. 1 through the licensee namely, South Bihar Power Distribution Company Limited for a contract demand of 160 KVA for the purpose of running a Cold Storage. There was no dispute whatsoever prior to 05.07.2011 when an inspection was carried out and according to the petitioners, an allegation was made for the first time that the seals of the meter were tampered. The petitioners claimed that the meter was running and functional and the Inspecting Team did not find any irregularity with regard to the equipments installed vis-a-vis the parameter reflecting in the meter.

It appears that pursuant to the inspection held on 05.07.2011 by the Special Task Force (STF), one first information report was lodged alleging that the petitioner no. 1 company was availing power in its premises by tampering of meter. The meter was removed and a case under Section 135 of the Electricity Act, 2003 for theft of electricity was lodged. The loss arising out of the alleged theft was provisionally estimated at Rs. 64,71,747/- by the Assessing Officer-cum-Electrical Executive Engineer, Danapur vide order dated 12.07.2011. Vide order dated 03.08.2011 the Assessing Officer finalised the assessment order



under Section 126 of the Act of Electricity Act, 2003 (hereinafter referred to as 'the Act of 2003').

It is the case of the petitioners that against the final order under Section 126 of the Act, 2003, the petitioner no. 1 pursued its remedy under Section 127 of the Act of 2003 before the Appellate Authority in Electricity Appeal No. 32 of 2013-14. Petitioner no. 1 deposited a sum of Rs. 25 lakhs in terms of order dated 22.07.2011 passed by learned Co-ordinate bench of this Court in C.W.J.C. No. 11313 of 2011 for purpose of restoration of line. As the disposal of appeal preferred by the petitioner no. 1 was getting delayed, petitioner no. 1 moved this Court in C.W.J.C. No. 14129 of 2017. Vide order dated 08.11.2017, a learned Co-ordinate Bench of this Court directed the appellate authority to decide the appeal on its own merit.

Learned counsel for the petitioners further submits that during pendency of the appeal before the Appellate Authority, one of the Directors of the petitioner company who is petitioner no. 2 herein made an application for grant of fresh electric connection under Domestic Category for a load of 2 K.W. as the petitioners in their wisdom decided not to continue with the business of Cold Storage. The application for fresh connection was submitted on 22.08.2017 in the name of petitioner no. 2 which will be evident from the money receipts as contained in Annexure-2 to the writ application.

It is submitted that after the Appellate Authority passed the order dated 19.01.2018 (Annexure-4), the petitioners represented to



respondent no. 4 vide Annexure-5 to the writ application and requested him to grant fresh electric connection to the petitioners. Copy of representation submitted on behalf of the petitioner no. 1 by one of the Directors is available at Annexure-5 to the writ application. The Appellate Authority came to a conclusion that the assessment order dated 03.08.2011 was not done in accordance with Annexure-7 to the Electricity Supply Code, 2007 (First Rectification) in which method of calculation of the loss of revenue has been provided in the following manner:- “L(Connected Load) X F(Load Factor) X D(Day) X H(Hours).

The Appellate Authority referred the judgment of this Court in the case of **Kamaljeet Singh Vs. The Bihar State Electricity Board** reported in **2010 (3) PLJR 514** wherein this Court has held that if seals are found broken or tampered then Meter Reader is duty bound to report the same. Non-reporting the same will only lead to presumption that there was no seal tampering when the reading was taken. The Appellate Authority, thus, came to a conclusion that in the light of the judgment of this Court, the calculation of estimated loss should be done taking the ‘D’ Factor as on 04.06.2011. The Appellate Authority, therefore, directed the Assessing Officer to prepare a revised demand. The order of the Appellate Authority is available at Annexure-4 to the writ application.

Learned counsel for the petitioners submits that the order passed by the Appellate Authority as contained in Annexure- ‘4’ is



under challenge at the instance of the distribution licensee in the connected writ application.

Mr. Suraj Samdarshi, learned counsel for the petitioners has taken this Court through the provisions as contained in Sections 43, 47 and 50 of the Act, 2003 together with regulations 7.15 of the Bihar Electricity Supply Code 2007 (hereinafter referred to as 'Supply Code 2007'). Learned counsel submits that in terms of Section 154 (5) of the Act 2003, the final determination of the loss and damages will be done by the Special Court only, still as on date the petitioner no. 1 has already deposited 50 % of the assessed amount and the petitioner no. 1 is ready to undertake to pay the balance amount on final determination of liability in terms of Section 154 (4) of the Act 2003.

It is submitted that on perusal of the aforementioned provisions of the Act of 2003 it would appear that the licensee is obliged to provide electricity connection as a fresh connection after taking adequate security from the petitioners. Relying upon paragraphs 21 and 24 of the judgment in the case of **Mosmat Swaran @ Swaran Manraw vs. The State of Bihar & Anr.** reported in **2012 (2) PLJR 229** the Hon'ble Division Bench of this Court has been pleased to take a view that the reason for combining Section 126 and the consequence of Section 135 by virtue of sub-section (6) of Section 154 is that where an unauthorized user is with a dishonest intention proved, it would be subject to what is stated in Section 135, a theft of electricity. Thus, upon detection of dishonest unauthorised user of electricity which amounts



to theft the authority has a right to assess the amount under Section 126, subject to adjustment after final determination by the Criminal Court.

Learned counsel submits that in case of theft of electricity covered under Section 135 of the Act of 2003, the procedure for assessment will be the same as provided under Section 126, which would be subject to final determination of civil liability by the criminal court. The order under Section 126 is an appealable order under Section 127 of the Act, therefore, there is no reason as to why in case of theft also the order of assessment be not challenged in appeal under Section 127 before the Appellate Authority. It is submitted that the Appellate Authority may see the correctness of the assessment order and there is no bar to that extent as the whole exercise under Sections 126 and 127 will be subject to final determination of liability by the criminal court.

Learned counsel for the petitioners submits that Section 127 of the Act, 2003 talks of final order made under Section 126 and not the final assessment, it is submitted that the final determination of liability in case of theft under Section 135 of the Act 2003 would always be as determined by the Special court.

Relying upon the judgment of this Court in the case of **Dr. Bharat Prasad & Anr. vs. The Bihar State Power (Holding)** reported in **2015 (4) PLJR 58 (paragraph 19, 21 and 23)**, learned counsel for the petitioners submits that the Supreme Court has, in the judgment discussed in paragraphs 19 and 21 in the case of **Dr. Bharat Prasad** (supra), held that where the outstanding so claimed by the licensee is



yet to be finally determined by the statutory forum before whom the recovery proceedings are pending, the action of the respondent-Distribution Company in holding the permanent electricity connection to the petitioners would be an arbitrary act neither supported by the statutory provisions nor by judgments so relied upon. Learned counsel submits that in the present case while the final determination by the Special Court is likely to take much time, there is no reason why the licensee would not provide fresh electricity connection to the petitioner no. 2 particularly when 50% of the amount assessed under Section 126 of the Act of 2003 has already been deposited and the petitioners are ready and willing to provide an undertaking to abide by the order of the Special Court in the matter of final determination of the civil liability.

Mr. Suraj Samdarshi, learned counsel representing the petitioner has also submitted that the tampering of seal does not presupposes tampering of meters. It is submitted that only where interference with actual calibration of meters is made by a consumer, it will be a case of tampering with meter. Learned counsel has taken this Court through the various reports which are available with the counter affidavit of the licensee /respondents. Attention of this Court has been drawn towards the joint/check meter reading of 11 KV consumer dated 04.06.2011 which has been signed by at least 3 Assistant Electrical Engineers of the respondent company. It is submitted that the circuit has been shown 'Ok' in the said report. Learned counsel submits that since the petitioner no. 1 was a High Tension consumer, in its case the meter



reading was being signed by three Assistant Electrical Engineers and if three Engineers have submitted a report on 04.06.2011 that the parameters reflecting in the meter were correct, there is no reason why there will not be a presumption that the meter was 'Ok' on the said date. It is further submitted that the meter in question was capable of recording any type of tampering of meter. The Cumulative Tamper Report which is available on the record shows that all the parameters were found correct and the word 'not occurred' has been recorded against all the parameters meaning thereby that there was nothing to suggest that the meter was ever tampered.

Learned counsel submits that under these circumstances it would not be just and proper on the part of the licensee / respondents to compel the petitioners to deposit the entire amount in terms of assessment order under Section 126 of the Act of 2003 as a condition precedent to provide a fresh electric connection in the premises.

Learned counsel submits that it is well settled that the electricity dues are not attached to the premises rather the outstanding are to be realised from the consumer who is liable to pay the same as an arrears of land revenue. Learned counsel has also relied upon the judgment of this Court in the case of **M/s Shree Ram Wire vs. The Bihar State Electricity** reported in **2013 (4) PLJR 109**. It is submitted that in the case of **Shri Shree Ram Wire** (supra) it is held that the second proviso to sub-section 1 of Section 135 does draw a presumption of theft of electricity but that is limited to cases where artificial means



or means not authorized by the Board are found to exist. Where there is no such allegation, even the statutory presumption of theft does not arise and merely because seals were found tampered, there would be no legal or factual presumption that it would be a case of meter tampering.

He has further relied on the judgment of this Court in the case of **Kamaljeet Singh** (supra) wherein it is held that if seals are found broken and tampered then the meter reader is duty bound to report the same and non-reporting the same would only lead to presumption that there was no seal tampering when the reading was taken. In paragraph '3' of the said judgment, it is submitted, that the Hon'ble court has held that the assessment has to be done in accordance with the provisions of the Act of 2003 but Section 135 itself does not provide the mode and manner of assessment. The mode and manner of assessment is provided under sub-section (5) of Section 126 of the Act of 2003. It is those provisions that would apply. This Court also held that the assessment made in terms of Section 126 (5) is appealable in terms of Section 127 to the Appellate Authority. Section 127 does not restrict the appellate jurisdiction in any manner to exclude assessment in theft cases. The Court noticed that sub-Section (4) of Section 127 provides that order of the Appellate Authority referred to in sub-Section(1) passed under Sub-Section (3) shall be final. This finality is final, so far as the party and the authorities are concerned but so long as the criminal case is pending trial, the ultimate authority in terms of Section 154 of the Act of 2003 to determine the civil liability against the



consumer for theft of energy is the special court. Sub-Section 6 of Section 154 provides that the civil liability so determined finally by the special court, if found less than the amount deposited by the consumer then the excess amount deposited will be refunded. This deposit by consumer would have a reference now to Section 127 (4). Thus, if the Appellate Authority in terms of the Section 127 determines any amount in *quasi* judicial proceedings that would give way to the determination by special court in a judicial proceeding.

It is submitted that the learned Single Judge in the case of **Kamaljeet Singh** (supra) held that in the scheme of the Act there is no any contradiction or conflict. The Court also rejected the contention of learned counsel for the then Bihar State Electricity Board that the scheme of the Bihar Electricity Supply Code, 2007 does not contemplate an appeal against the final order of assessment in terms of Section 126 of the Act of 2003 in theft cases. In the said case the learned Single Judge gave liberty to the petitioner to file an appeal under Section 127 (1) of the Act of 2003 and the Appellate Authority was directed to entertain the appeal on merit.

On the aforementioned grounds, learned counsel for the petitioner submits that the licensee /respondents are liable to abide by the order passed by the Appellate Authority subject to final determination under Section 154 (5) by the special court. It is, thus, submitted that the respondents be directed to draw a revised demand and as the petitioner has already deposited 50% of the assessed amount



under Section 126 of the Act of 2003 they may be directed to provide a fresh connection to the petitioner no. 2 subject to such security which may be required from the petitioners in accordance with the provisions of the Act of 2003 and the Supply Code 2007.

State of the SBPDCL

On the other hand, Mr. Vinay Kirti Singh, learned Senior Counsel representing the licensee /respondents who are writ petitioners in C.W.J.C. No. 15344 of 2018 submits that an FIR has been lodged in the present case for theft, hence, the assessment has to be made under Section 135 of the Act, 2003. Learned Senior Counsel relied upon Regulations 11.2.3 of the Supply Code to submit that the procedures which are required to be adopted by licensee for inspection, provisional assessment, hearing and final assessment in case of theft of electricity under Section 135 of the Act are provided under the aforesaid regulations. Attention of this Court has been drawn towards clause (b) and (c) of the Regulation 11.2.3 of the Supply Code, 2007.

Learned Senior Counsel, however, submits that the final assessment done by the Assessing Officer under the Supply Code, 2007 will be subject to the determination by the Special Court in terms of the Section 154 (5) of the Act, 2003. The emphasis of learned Senior Counsel is that in no case the petitioner could have preferred an appeal under Section 127 of the Act, 2003 because in case of theft, no appeal would lie under Section 127, from an order of assessment under Section 126. In this connection, learned Senior Counsel has drawn the attention



of this Court towards paragraph 25 of the judgment of the Hon'ble Division in the case of **Mosmat Swaran** (supra). It is submitted that the Hon'ble Division Bench in the aforesaid paragraph has held that the scheme of the Act is that where unauthorized user of electricity within Section 126 of the Act is detected an assessment is to be made and to be paid by the consumer, subject to appeal remedy as provided under Section 127 of the Act. If it is coupled with dishonest intention which would make it an offence under Section 135 of the Act, being theft of electricity, then again the person would be liable to pay the assessed amount as is required to be assessed under Section 126 of the Act and in the trial before the Special Court, the Special Court has to determine the amount on the same basis that is the same rate and period upon evidence and if the assessment is less than what is assessed under Section 126 of the Act, the consumer is entitled to a refund otherwise he is liable to pay it as a civil liability.

Learned Senior Counsel submits that in the case of **Mosmat Swaran** (supra) the Hon'ble Division Bench has, thus, held that in case of theft, there is only forum against the assessed amount and i.e. the Special Court where the final determination may take place. Learned Senior Counsel has also relied upon the Division Bench judgment of the Hon'ble Jharkhand High Court in the case of **Ramgarh Refractory & Mineral Company Vs. Jharkhand Urja vikas Nigan and Anr.** reported in **(2016) 3 JLJR 138**. It is submitted that the judgment of the Hon'ble Division Bench of the Jharkhand High Court was challenged



before the Hon'ble Supreme Court but the Special Leave Petition was dismissed in limine. Learned Senior Counsel has also relied upon a Single Bench decision of the Hon'ble Jharkhand High Court in the case of **Harihar Cold Storage vs. Jharkhand State Electricity Board** reported in **(2015) 1 AIR JharR 55**. Both these judgments are on the point that the final assessment order is subject to determination of the civil liability by the Special Court in terms of Section 154 (5) of the Act 2003 and an appeal against the order of the Special court would lie to the High Court under Section 156 of the Act.

The submission of learned Senior Counsel is, thus, that the reliance placed by the learned counsel for the petitioners on the judgment of this Court, as discussed above is misplaced inasmuch as, the petitioners are neither the transferee of premises nor they are the tenants and therefore, in this case a fresh meter/connection may be provided only when they deposit the entire amount as assessed against them subject to final determination of civil liability by the Special Court. It is, thus, submitted that the order passed by the Appellate Authority as contained in Annexure-4 to the first writ application and impugned in the second writ application filed by the licensee is wholly without jurisdiction.

Consideration

After hearing learned counsel for the parties and upon perusal of the records, this Court finds that the parties are unanimous in their submissions that in a case of theft of electricity registered under



Section 135 of the Act of 2003, the Special Court constituted under Section 153 shall be the competent Court to determine the civil liability against a consumer or a person in terms of money for theft of energy. Section 154 (5) clearly stipulates that the civil liability which is to be determined by the Special Court shall not be less than an amount equivalent to two times of the tariff rate applicable for a period of twelve months preceding the date of detection of theft of energy or the exact period of theft if determined whichever is less. The civil liability so determined shall be recovered taking it as a decree of a Civil Court.

The provision of sub-section (5) of Section 154 insofar as, it provides for the period of liability to be considered, it is apparent that in case the Special Court comes to a conclusion that the exact period of theft is less than a period of twelve months preceding the date of detection of theft of energy, the civil liability will be determined taking into consideration the lesser period. This has to be read along with the Judgment of this Court in the case of **Kamaljeet Singh** (Supra) wherein a learned Coordinate Bench of this Court has, in my opinion, rightly taken a view that a Meter Reader while taking the meter reading is duty bound to report in case the seals of meter are found broken or tampered with. If the Meter Reader has not reported the same, it would only lead to a presumption that there was no seal tampering when reading was taken. The Assessing Authority, while passing an order of provisional assessment and the final assessment under Section 126 of the Act of 2003 would be required to look into this aspect of the matter. This Court



also agrees with the view of the learned Coordinate Bench in the case of **Kamaljeet Singh** (Supra) that in case of electronic meters which record all incidence and attempt to tamper as those are stored in the microchip contained therein, such information will be a relevant consideration for the Assessing Authorities as that would avoid an assessment based on 'surmises and conjectures'.

To me it appears that the word 'civil liability' as occurring under sub-section (5) of Section 4 is to be understood keeping in mind the manner in which a Court of law comes to a conclusion as with regard to civil liability of person. It requires taking of evidence in the manner prescribed to the Civil Court. No doubt, power to determine the civil liability under sub-section (5) of Section 154 is vested with the Special Court which is a Criminal Court but it would not make difference when it comes to receive evidences and determine the liability. The determination of civil liabilities is, therefore, certainly different from that of an assessment 'provisional or final' as envisaged under Section 126 of the Act of 2003 done in a quasi judicial proceeding.

Both the parties are also unanimous in arguing that in case of theft no separate procedure for assessment has been provided under the Act. Third Proviso to Section 135 (1-A) provides that "the licensee or supplier, as the case may be, on deposit or payment of the assessed amount or electricity charges in accordance with the provisions of this Act, shall, without prejudice to the obligation to lodge the complaint as



referred to in the second proviso to this clause, restore the supply line of electricity within forty-eight hours of such deposit or payment.” Although it is contention of Mr. Singh, learned Senior Counsel that in case of theft the procedures required to be adopted are provided under Regulations 11.2.3 of the Supply Code of 2007 but according to this Court, the manner and procedure provided therein would not take away the settled position that it is an assessment under Section 126 of the Act of 2003.

In the case of **Kamaljeet Singh** (supra) the learned Coordinate Bench of this Court had occasion to consider the third Proviso to Section 135 (1-A). The learned writ Court in the said case also considered an issue as to whether an order of assessment under Section 126 (5) in case of theft would be appealable in terms of Section 127 before the Appellate Authority. The writ Court held that Section 127 does not restrict the appellate jurisdiction in any manner to exclude assessment in theft cases. Simultaneously, it was also held that sub-section (4) of Section 127 provides that order of the Appellate Authority referred to in sub-section (1) passed under sub-section (3) shall be final but then taking note of this provision, the learned writ Court concluded that so far as this finality is final only insofar as it concerns the party and the authorities but so long as the criminal case is pending trial, the ultimate authority to determine the civil liability against the consumer for theft of energy is upon the Special Court. The writ Court has dealt with various sub-sections of Section 154 of the Act of 2003 and held



that any amount determined by the Appellate Authority in terms of Section 127 in the quashi judicial proceeding would give way to the determination by Special Court in a judicial proceeding. In the said case also there was an argument on behalf of the the then Electricity Board that the Bihar Electricity Supply Code, 2007 does not contemplate an appeal against final order of assessment in terms of Section 126 of the Act in theft cases but the said argument was rejected by the learned writ Court holding that the Bihar Electricity Supply Code is a Code issued with reference to Section 181 and other Sections of the Act. This being a piece of subordinate legislation cannot alter and over-ride substantive provision of the Electricity Act. This equally applies to the submission of Mr. Vinay Kirti Singh, learned Senior Counsel who sought to rely upon the provision of the Supply Code, 2007.

In order to strengthen his submission, learned Senior Counsel for the Power Company has relied on 'Paragraph 25' of the Division Bench Judgment of this Court in the case **Mosmat Swaran @ Swaran Manraw** (supra). The Hon'ble Judge who had authored the Judgment in the case of **Kamaljeet Singh** (supra) was presiding over the Division Bench in the case of **Mosmat Swaran @ Swaran Manraw** (supra). The Division Bench referred the issues arising out of the two conflicting Judgments of the learned Single Judge of this Court in the case of **Vinod Giri vs. the State of Bihar and anr.** reported in **(2007)2 PLJR 578** and in the case of **Gopal Saw and another vs. The State of Bihar and anr.** reported in **(2010) 1 PLJR 614**. In the first



case, upon detection of theft of electricity, amount of loss and penalty quantified by the Board was fully paid and accepted by the authority under Section 152 (1) of the Act of 2003. The learned writ Court had concluded that it would amount to compounding of the offenses resulting in acquittal and subsequently no prosecution would continue but in the second case, the learned Coordinate Bench held that quantification of loss for unauthorized dues of electricity in terms of Section 126 of the Act and payment thereof is totally different from the provisions of Section 152 of the Act. This time, it was held that Section 152 provides for payment of compounding fee, thus, the two liabilities are different and distinct. Payment of assessed amount under Section 126 of the Act would not absolve the petitioner of his criminal prosecution unless the compounding fee as envisaged under Section 152 (2) of the Act is separately paid. Thus, the Division Bench was looking to answer and resolve the conflicts in the two Judgments and in that context the Division Bench was examining the scheme of the Act.

The Division Bench has in 'Paragraph 31' of the Judgment in the case of **Mosmat Swaran @ Swaran Manraw** (supra) concurred and approved the decision of this Court in the case of **Kamaljeet Singh (supra)** and held that it is in-consonance with the scheme of the Act. Thus, this Court is unable to accept the submission of learned Senior Counsel that in Paragraph 25 of the Judgment in the case of **Mosmat Swaran @ Swaran Manraw (supra)** the Hon'ble Division Bench has



taken any view other than what has been held in the case of **Kamaljeet Singh** (supra).

This Court finds that in the case of **Harihar Cold Storage** (supra) Hon'ble Jharkhand High Court accepted the argument of the power company that assessment procedure in case of theft shall be as prescribed under Clause 15.8 of the Regulation framed by Jharkhand State Electricity Regulators Committee. Here the views of this Hon'ble Court in case of **Kamaljeet** (supra) affirmed in **Mosmat Swaran @ Swaran Manraw** (supra) is different from the view of **Harihar Cold Storage** (supra). In such circumstance the views expressed by this Hon'ble Court would be the binding precedent.

In the present case, it is apparent from the records that the Assessing Officer proceeded to assess the electricity charges payable by the petitioner no. 1 who had allegedly benefited by use of electricity by committing theft. The Assessing Officer estimated the total amount payable by the petitioner no. 1 at Rs.64, 71, 747/-. This order was challenged before the appellate authority in Electricity Appeal No.32 of 2013-14. In order to entertain the appeal, the petitioner no. 1 complied with the statutory requirement and deposited 50% of the amount assessed. The respondents who are writ-petitioners in the second writ application accepted the deposit of 50%, participated in course of hearing of the appeal and thereupon the Appellate Authority passed the order under challenge in CWJC No.15344 of 2018 whereby the Appellate Authority concluded that the assessment was not done in



accordance with Annexure-7 to the Electricity Supply Code, 2007 (1st rectification) in which method of calculation of loss of revenue has been provided. The Appellate Authority relied on the judgment of **Kamaljeet Singh** (supra) for this purpose.

I am unable to accept the challenge to the order of the Appellate Authority at the instance of the writ-petitioners in CWJC No.15344 of 2018 on the ground of jurisdiction because this Court has come to a conclusion that in the case of **Kamaljeet Singh** (supra) the availability of appeal remedy under Section 127 of the Act of 2003 in case of theft assessment order has been crystallized. The same needs no reiteration.

Mr. Suraj Samdarshi, learned counsel has rightly argued that the appeal was entertained only after deposit of 50 % of the assessed amount. The respondent in first writ accepted the deposit of 50 %, further in C.W.J.C. No. 14129 of 2017 a learned co-ordinate Bench of this Court directed the appellate authority to dispose of the appeal. The question of jurisdiction was not raised at these point of time hence, it would not lie in the mouth of the power company to raise a question of jurisdiction of the appellate authority in entertaining the appeal and disposing it of on its own merit.

The order passed by the Assessing Authority or the Appellate Authority are in a quashi judicial proceeding, thus, upon determination of civil liability under sub-section (5) of Section 154 of the Act of 2003 by the Special Court, the consumer may either be entitled to get a



refund or will be liable to pay in terms of determination if it is in excess of the amount deposited by the consumer.

For the present, in the opinion of this Court, no fault may be found with the order of the Appellate Authority. As a result, thereof, CWJC No.15344 of 2018 is liable to fail.

Since, this Court has upheld the validity of the order passed by the Appellate Authority, the respondent Nos. 2 to 5 in CWJC No.11196 of 2018 are directed to issue a demand in terms of the appellate order which of course will be subject to the final determination of civil liability of the petitioner no. 1 under sub-section (5) of Section 154 of the Act of 2003. This Court finds that the direction of the Appellate Authority is in-consonance with the Judgment of this Court in the case of **Kamaljeet Singh** (supra) which has been affirmed by the Hon'ble Division Bench in the case of **Mosmat Swaran @ Swaran Manraw** (supra), thus, in the opinion of this Court, the Appellate Authority has only directed the Assessing Authority to act in terms of the Judgment of this Court, hence, the authorities concerned are obliged to abide by the same subject to final determination of civil liability by the Special Court.

Learned counsel for the petitioners has made specific statement at the Bar that the petitioners are ready to furnish adequate security for the purpose of fresh connection as a domestic supply consumer. He has also submitted that the petitioners would undertake to abide by the final outcome under sub-section (5) of Section 154 of the



Act of 2003 and in case it is found that the civil liability of petitioner no. 1 is more than what has already been deposited, the petitioner no. 1 would pay the entire amount as per determination of the Special Court subject to the remedy whatsoever available to the petitioner no. 1.

This Court, thus, finds that now the petitioner no. 2 has applied for electricity connection in the premises as a domestic supply category consumer. Looking to the various provisions of the Electricity Act, this Court is of the considered opinion that under Section 43 of the Act, save as otherwise provided in the Act, every distribution licensee, is obliged to provide electricity to such premises in respect of which an application has been filed by the owner or the occupier of the premises. It is a case of fresh connection and not of restoration as envisaged under third Proviso to Section 135 (1-A) of the Act of 2003. There is no reason, as to why, the respondents in CWJC No. 11196 of 2018 shall not consider the request of the petitioner no. 2 to provide a fresh connection subject to the petitioners complying with the conditions of providing adequate security and/or any other condition under the Act and the Rules framed thereunder. The application of the petitioner no. 2 for fresh connection cannot be withheld in the nature of the disputes of this case, as the final determination of civil liability in terms of sub section (5) of Section 154 of the Act of 2003 is to be done by the Special Court which is likely to take years together. The dues as per the civil liability of course shall be liable to be recovered as arrears of land revenue against the petitioner no. 1 and from those who may be liable under the



order of the Special Court under sub-section (5) of Section 154 of the Act of 2003.

In result, the CWJC No.11196 of 2018 is allowed as with respect to prayer made in Paragraph 1 (i) and 1 (ii). In the nature of the dispute and the contest between the parties, this Court does not find it fit to allow any compensation to the petitioners in terms of Section 43 (3) of the Act of 2003. Thus, the prayer in terms of Paragraph 1 (iii) is not fit to be allowed.

The respondents in CWJC No.11196 of 2018 are directed to process the application of the petitioner No. 2 for fresh connection within a period of 30 days from today and subject to fulfillment of the requirement for fresh connection, the same shall be provided within a period of seven days from the date of submission of the requirements by the petitioners.

Both the applications are disposed of in terms indicated hereinabove.

(Rajeev Ranjan Prasad, J)

Avin/R.R.Ojha

AFR/NAFR	AFR
CAV DATE	05.02.2019
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