

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.2078 of 2016

In
Civil Writ Jurisdiction Case No.11774 of 2008

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1. The Bihar State Electricity Board and Ors
 2. The General Manager-cum-Chief Engineer, Patna Electric Supply undertaking Mangles Road, Patna
 3. The Electrical Executive Engineer Supply, Patnacity, Patna
 4. The Assistant Electrical Engineer, Electricity Supply Sub-Division, Katra, P.O. Patna City, P.S.- M
 5. The Assistant Electrical Engineer MRT-II, Patna Electrical Supply undertaking East, Patna

... .. Petitioner/s

Versus

1. M/s Dina Metal Ltd and Ors Son of Late S.N. Prasad, resident of Ram Krishna Nagar P.O.- New Jaganpura, P.S.- Ram Krishna Nagar, District- Patna Bihar
2. The Director General of Vigilance, Bihar State Electricity Board, Patna null null
3. The Electrical Executive Engineer Vigilance, Bihar State Electricity Board, Patna
4. The Deputy Superintendent of Vigilance, Bihar State Electricity Board, Patna

... .. Opposite Party/s

with

Miscellaneous Jurisdiction Case No. 2079 of 2016

In
Civil Writ Jurisdiction Case No.14672 of 2008

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1. The Bihar State Electricity Board and Ors
 2. The General Manager-cum-Chief Engineer, Patna Electric Supply undertaking Mangles Road, Patna
 3. The Electrical Executive Engineer Supply, Patnacity, Patna

... .. Petitioner/s

Versus

1. M/s Dina Iron and Steel Ltd. and Ors son of At P.O. and P.S.- Chowk, Patnacity, District- Patna
2. The Director General of Vigilance, Bihar State Electricity Board, Patna
3. The Deputy Superintendent of Police Vigilance Bihar Electricity Board, Patna
4. The Electrical Executive Engineer Vigilance, Bihar State Electricity Board,



possible.

5. The supplementary counter affidavit on behalf of the opposite party no.1 who is Managing Director of the Company in para-5 a chart has been given which is incorporated hereinbelow:

Sl. No.	Date	Remarks
1.	22.4.2008	Upon inspection all the seals of the meter were found intact. However, the meter Was not displaying any consumption.
2.	7.5.2008	The defective meter was replaced by a new meter
3.	7.8.2008	The Department of Vigilance got the meter tested without presence of the consumer and the licensee and instituted an F.I.R. The petitioners challenged the testing and action of the Department of Vigilance vide C.W.J.C. No. 11774 of 2008.
4.	6.1.2011	The Hon'ble Court passed order for testing of the meter in National Physical Laboratory, Delhi.
5.	15.10.2012	For the first time a communication was made by the petitioner for deposit of testing fee on 15.10.2012, in furtherance whereof the testing fee was deposited and the date was fixed on 6.11.2012 for testing of the meter.
6.	6.11.2012	The petitioner along with other consumer presented themselves before the NPL. However, the meter was not deposited by the petitioners since it was not in their possession. The NPL categorically said that nobody will be allowed from outside National Physical Laboratory, to witness the testing. The next date was fixed by the NPL on 10.12.2012, but both the petitioners as also the consumer were against the stand of



		the NPL regarding testing of the meter without presence of the licensee as also the consumer. Consent of the petitioner was asked for vide a letter dated 3.12.2012.
7.	7.12.2012	The petitioner responded stating there that the meter should be tested in accordance with the procedure and do and not as per the wills of the authenticates. The matter was kept pending, as the meter was not available with the petitioners.
8.	25.6.2013	F.I.R. instituted by the Department of Vigilance for theft of electricity based on test report of the C.P.R.I, Bhopal was quashed by the Hon'ble Court as having been instituted without authority of law:
9.	3.11.2015	The Electrical Executive Engineer vide communication dated 3.11.2015 sought direction in this regard from the Chief Engineer (Commercial).
10.	29.9.2015	The petitioner insisted for testing from NPL, Delhi to which the opposite party responded on 12.10.2015, stating therein that testing by NPL, Delhi contrary to the statutory provisions and the law laid down by this Hon'ble Court in the case of Shakti Cold Storage Vs. Bihar State Electricity Board since reported in 2011 Volume 1 PUR 364 and in the case of Bihar State Electricity Board Vs. Shakti Cold Storage (L.P.A.) since reported in 2013 Volume 4 PLJR 677, which was affirmed upto the Hon'ble Apex Court is not advisable.
11.	29.9.2015	The petitioner insisted for testing of the meter by the NPL, Delhi without considering the fact that NPL was not permitting either the petitioner or the opposite party to witness the testing contrary to the provisions and the law laid down by this Hon'ble Court.
12.	12.10.2015	The opposite party responded to the letter and also raised the issue of quashing of the F.I.R. by this Hon'ble Court. The opposite party asserted that in view of the law laid



		down by this Hon'ble Court, testing has to be carried out by an independent laboratory to be witnessed by both the licensee and the consumer and in view of quashing of the F.I.R. nothing remains to be decided.
13.	3.11.2015	Even the Electrical Executive Engineer asked for suggestion from the Chief Engineer (Commercial) stating therein that the Electricity Supply Code, as also the order of the Hon'ble Patna High Court specifically says that the meter has be tested by an independent laboratory, that too of the choice of the consumer and the testing has to be witnessed by bath the licensee as also the consumer, but the NFL is not permitting to witness the meter testing. Also, the legal issues raised by the opposite party no.1 i.e. the consumer was referred to the Chief Engineer (Commercial)
14.	19.2.2016	The petitioner preferred the present M.J.C. on 19.2.2016 against the said communication, assuming that the opposite party is not cooperating in the proceedings and sought a direction, which is manifest from paragraph 5 of the application.
15.	12.10.2020	The meter was tested on 2.3.2020 by the NPL and it was informed that the meter is not responding when power is applied, as such, the meter test is not possible. This communication was made by the petitioner an 12. 10.2020 vide memo no. 2628.

6. In para-11, it has further been stated the manufacturer of the meter has already intimated that the life of the meter is 10 years when it is in power and only 3 years when it is not in power. As such, when the admitted fact is that the meter was not powered for the last more than 10 years, no data



could be retrieved.

7. To cut short the matter, with the consent of the parties, the case may be resolved in the following manner:

- (i) the State Electricity Board should take up the date when the applicant, Dina Metal gave application for replacement of the meter stating that the same is faulty;
- (ii) the date when it was replaced;
- (iii) the period when no bill was generated for the said meter;
- (iv) calculate the bills of next three months after the new meter was installed;
- (v) bring out the average of meter reading of the said three months after the installation of new meter;
- (vi) apply the average on the period when there was no meter reading.

8. The said exercise is to be completed within a period of eight weeks from today and a detailed report/charge/amount that is to be paid by M/s Dina Metals will be made available to it so that the necessary payment can be made accordingly.



9. It is expected that if the energy bill is very high, the Company will see to it that a reasonable installment is fixed so that it finally receives the amount which the Company should have been paid in 2008 itself.

10. The MJC No. 2078 of 2016 and MJC No. 2079 of 2016 stand disposed of with aforesaid observations.

(Rajiv Roy, J)

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