

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14537 of 2015

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Kamla Rani Arora, wife of Late Kishan Lal Arora, resident of Supriya Cinema Road, Behind Hotel Kishan, P.O., P.S. and Town Bettiah, District West Champaran.

... .. Petitioner/s

Versus

1. The Bihar State Power (Holding) Company Limited, Vidyut Bhawan, Bailey Road, Patna through its Chairman-cum-Managing Director.
2. The North Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Raod, Patna, through its Managing Director.
3. The Electrical Superintending Engineer, North Bihar State Power Distribution Company Limited, Motihari.
4. The Electrical Executive Engineer, Electric Supply Division, Bettiah, District- West Champaran.
5. The Assistant Electrical Engineer, Electric Supply Division, Bettiah, District- West Champaran.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Suraj Samdarshi, Advocate with
Mr. Vijay Shanker Tiwari, Advocate.
Mr. Rohit Singh, Advocate.
Mr. Avinash Shakhar, Advocate.
Mr. Piyush Ranjan, Advocate.

For the Respondent/s : Mr. S.K. Giri, Advocate.

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CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY

CAV JUDGMENT

Date : 18-12-2023

Heard learned counsel for the parties.

2. The present Writ Petition has been filled for the following reliefs:-

“(i) For a declaration that the energy bills issued to the petitioner, particularly bill dated 13.6.2015 on the basis of connected load of 64 Kilo



Watt (K.W.) as being wholly illegal and contrary to the provisions of the Bihar Electricity Supply Code, 2007.

(ii) For a direction to the respondent licensee not to take any coercive step for non-payment of the demand as raised vide energy bill dated 13.6.2015, which is wholly erroneous.

(iii) For a declaration that once an application for enhancement of load is accepted/received by the respondent licensee, the penal demand as per the provision under Section 126 of the Electricity Act, 2003, for excess load cannot be initiated in terms of the Bihar Electricity Supply Code, 2007, as also the law laid down by this Hon'ble Court.

(iv) For a declaration that without initiation of a proceeding under Section 126 of the Electricity Act, 2003, within the time frame as stipulated under the Bihar Electricity Supply Code, 2007, the respondent licensee cannot raise any demand under Section 126 of the Electricity Act, 2003.

(v) For a declaration that the disconnection notice 28.08.2015 as being wholly illegal and contrary to the settled law of this Hon'ble Court.

(vi) For a direction to the respondent authorities to regularize the energy bill of the petitioner and further, not to disconnect the electric supply of the petitioner till final adjudication of the present writ application; and for any other relief or reliefs to which the



petitioner is found entitled.”

3. The admitted facts are that the petitioner was having two connections one of 17 K.W. load and another having 13 K.W. load having Consumer Nos. BT-15237 and BT-50111 respectively.

4. The case of the petitioner is that duly taking into consideration the suggestion given by the Electrical Executive Engineer of the Department, the petitioner has made an application for closing the 13 K.W. line and enhancing the 17 K.W. to 45 K.W. Though the request was made orally initially, subsequently the petitioner has vide application dated 12.02.2013 made an application for enhancing the 17 K.W. load to 45 K.W. load.

5. Pursuant to the application made by the petitioner the authorities have inspected the subject premises on 22.03.2013. During the course of their inspection, the authorities have taken due note of the closure of the 13 K.W. line and also the fact that the load was at 25 K.W. and the connected load was at 64 K.W. Thereafter the authorities have issued the demand for enhanced energy charges based on the connected load by imposing the penalty as envisaged under the Electricity Act. The case of the petitioner that once an application has been made by



the petitioner for enhancing the load from 17 K.W. to 45 K.W., the authority concerned without passing any orders on the said application or taking a decision on the same cannot impose the penalty on the petitioner on the basis of the connected load. Further, it is stated by the counsel that even as per the inspection report, the authorities duly taking into consideration the fact that there was no tampering made by the petitioner and that the actual load was only 25 K.W. whereas the connection load was 64 K.W. have not recommended for any penal action. Therefore, learned counsel has stated that issuance of the bills imposing penalty on the ground that the petitioner is having a connected load of 64 K.W. is without any substance and contrary to the provisions of Electricity Act. Learned counsel has stated that as per the resolution most specifically Clause 7.11(5) of the Bihar Electricity Supply Code, 2007, the authorities cannot impose any penalty when the application for enhanced load is pending and, in case, the authorities have not taken any decision on the application made by the petitioner, it would be deemed to have been sanctioned after a period of 30 days from the date of the receipt of the said application. Further learned counsel has stated that the actual load as on the date of inspection was found to be only 24 K.W., the authorities cannot issue the revised bills



on the basis of the connected load. More so when the inspection team has not recommended for any penal action. Therefore, the learned counsel for the petitioner has prayed this Court to allow the present writ petition. Further learned counsel for the petitioner has stated that the Section 126 is not applicable to the facts of the present case as the petitioner was not put on prior notice. Moreover, it was not a case of unauthorized use and there was no tampering of the meter by the petitioner. That once it is established that the application made by the petitioner for enhancement of the load is pending, the authorities cannot take any penal action against the petitioner contrary to the provisions of the Electricity Act.

6. Learned counsel for the petitioner has relied on the Judgement in case of ***Shiv Sai Metal Products Pvt. Ltd. V. Bihar State Power Holding Company Ltd.*** reported in 2015 SCC OnLine Pat 1897 in which it has been observed as under:-

“In the opinion of this Court neither Clause 7.8 (v) of the Supply Code permitted the Electrical Executive Engineer to raise any punitive bill under Section 126 of the Act nor the inspection reported present at Annexure-5 reports any unauthorized usage by the petitioner and there is no other material on record to support the action of the respondents for raising a punitive bill under Section 126 of the Act.”



And an unreported Judgement in the case of *the Bihar State Power (Holding) Company Ltd & Ors Vs. M/s Sri Ram Industries* passed in LPA No. 1132 of 2016 (in CWJC No. 1546 of 2014) in which it has been observed as under:-

“..... the Hon’ble Supreme Court in the case of Executive Engineer, Southern Electricity Supply Company of Orissa Ltd. & Ors. Vs. Sri Seeta Ram Rice Mill, (2012) 2 SCC 108, learned Writ Court has found that the provisions of Section 126 of the Act cannot be resorted to mechanically and penal action cannot be taken when there is no illegality found in the meter.”

7. Per contra the learned counsel appearing on behalf of the respondents has vehemently opposed the very maintainability of the present writ petitioner and stated that the petitioner has an alternative and efficacious remedy of approaching of the CGRF, if he is aggrieved. Learned counsel has stated that the application made by the petitioner for enhancing the load was not in a proper format nor any fees was paid by the petitioner while making the said application. That the authorities are not expected to take any action on the mere representation made by the petitioner. Unless and until the petitioner makes an application in the proper format and pays necessary fees along with the said application, the application of



Clause 7.11 (5) of the Bihar Electricity Supply Code, amended is not applicable. That pursuant to the inspection the authorities have informed the petitioner that the connected load was 64 K.W and they have issued the revised bills duly imposing the penalty and other charges in accordance with the provisions of the Electricity Act. Learned counsel has stated that the authorities have taken action as per Section 126 of the Electricity Act and therefore, prayed this Court to dismiss the present writ petition.

8. As seen from the record, in this particular case, admittedly, the petitioner was having two meters one having 17 K.W. load and other having 13 K.W. load, the petitioner has surrendered the 13 K.W. load and made an application for enhancing the 17 K.W. load to 45 K.W. load. The petitioner has made an application to the authorities concerned on 12.02.2013. Pursuant to which an inspection was made by the authority concerned on 22.03.2013.

9. A perusal of the inspection report shows that there is no tampering of the meter by the petitioner and the inspecting team found that the meter of the petitioner was having a load of only 25 K.W., whereas the connected load was found to be 64 K.W. The fact that the petitioner has not made an application



seeking enhancement of the load, has not been denied in the counter affidavit. The only ground taken by the authority concerned is that the petitioner has not made the application in the proper format and not paid the necessary application fees along with the said application. However, it is to be noted that once an application has been made by the petitioner on 12.02.2013 (Annexure 2), the authority ought to have issued notice to the petitioner intimating him that the application made for conversion was not in proper format and that application fees needs to be paid along with the application. The authority concerned should have put the petitioner on notice and directed him to pay the necessary fee and submit an application in the proper format but for reasons best known to the authority concerned they did not do so. It is pertinent to extract the Clause 7.11(5) of the Bihar Electricity Supply Code, amended on 29.03.2012 which reads as follows:-

“In case consumers of DS and NDS category applied for enhancement of load and declared that necessary modification in wiring has been made, and if no action is taken by the licensee within the stipulated period, the applied load shall be deemed to have been sanctioned after thirty days of receipt of application. The requisite charges if not paid earlier shall be payable on the receipt



of the demand from the licensee.”

10. Further, the inspection team also did not find that there was any tampering made by the petitioner nor they have made any recommendation for taking any penal action against the petitioner for any unauthorized used. As a matter of fact, the inspection team did not find any unauthorized use by the petitioner. Further as seen from the report of inspection team, the load factor was only 25 K.W. and the connected load was 64 K.W. merely because the connected load is 64 K.W., the same cannot be the basis for treating the connection of the petitioner as having 64 K.W. More particularly when the inspection team has found that the actual load was only 25 K.W. The authorities cannot take advantage of this own in action to consider the application of the petitioner for enhancement and failure to pass any orders on the said application and penalize the consumer. Further, Clause 7.8(v) of the Bihar Electricity Supply Code, 2007 reads as under:-

“ No case of unauthorized use of energy shall be booked by the Licensee if detected after the consumer had applied for change of category and change is legally permissible.”

gives protection to the consumer from any prosecution.



11. Having regard to the above made facts and circumstances, the present writ petition is allowed and the impugned notices are set aside and the authorities are directed to consider the application made by the petitioner for enhancement of the load and thereafter, issue a fresh demand notice to the petitioner as per the actual consumption of units. The amounts paid by the petitioner pursuant to the order of this Court will be accordingly adjusted towards revised bills.

12. With the above directions, the present writ petition is allowed to the extent indicated above.

(A. Abhishek Reddy , J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	22.01.2024
Transmission Date	N.A.

