

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24528 of 2013

=====

Sripal Khajanchi Son Of Late Uday Khajanchi Resident Of Jain Mandir Lal
Kothi, Bhagwan Mahabir, Path, District Bhagalpur Bihar

... .. Petitioner/s

Versus

1. The South Bihar Power Distribution Company Ltd.
2. The Electrical Executive Engineer, Electric Supply Division Urban ,
Mojahidpur, Bhagalpur
3. The Assistant Electrical Engineer, Nathnagar Area District - Bhagalpur

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Rajendra Kumar Jain, Advocate
For the Respondent/s	:	Mr. Vinay Kirti Singh, Sr. Advocate
		Mr. Anand Kumar Ojha, Advocate

=====

**CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA
CHAKRAVARTHY
ORAL JUDGMENT
Date : 24-04-2024**

The petitioner has filed the writ application for the
following reliefs:

(a) A writ in the nature of mandamus, an
order/ direction to the respondents for payment of
compensation to the petitioner as per the rules for non-
providing electric connection for more than 12 years as
the electric connection was applied and fees deposited
on 3.4.2001 but the connection has been provided on
22.5.13 only after the order of the C.G.R.F., Electricity
Board, and Electricity Ombudsman, Bihar Electricity
Regulatory Commission, Patna.

(b) A direction for payment of compensation
of Rs. 10 lakhs for the business loss sustained by the



petitioner for about 12 years due to non supply of electricity to the telephone Booth applied as Commercial connection on 3.4.01

(c) An amount of Rs. 50,000/- may be awarded for the cost of litigation.

(d) Any other relief the petitioner is entitled under the facts of the case.”

2. The brief facts of the case is that the petitioner had applied for electric connection to run his telephone Booth and shop by completing all formalities as required by the respondent Bihar State Electricity Board on 16.6.2001 and deposited the security amount and other fees as required for a new commercial connection. It is stated that without providing electric connection to the petitioner, the Electricity Board, Bhagalpur had issued imaginary bills to the petitioner, for which the petitioner represented the General Manager, BSEB, Bhagalpur on 24.1.2002 and 22.2.2002 against the illegal electric bill. As there was no positive response the petitioner sent a legal notice on 24.11.2003 to the Chief Engineer, Electricity, Division, Bhagalpur stating the facts in detail for necessary action. It is further stated that after receiving of the legal notice, the premises of the petitioner was inspected by the Electricity officials who found " no meter" which is evident



from the Ledger provided to the petitioner by the respondents, under the Right to Information Act, 2005. The petitioner had regularly agitated the matter before the respondents-authorities of BSEB, Bhagalpur and seeing no positive action, was constrained to file a complaint case bearing no. 117 of 2005 before the District Consumer Forum Bhagalpur and an appeal before the Hon'ble State Consumer Disputes Redressal Commission, Patna vide Appeal no. 68 of 2008 which was allowed on 29.10.09.

3. In spite of it the petitioner failed to get electric connection to his premises and surprisingly, imaginary bills were issued to the petitioner against which he was constrained to approach the Hon'ble State Information Commission, Patna in case no. 38215/10-11 in which notices were issued to the respondents. After several dates of hearing, the required information supplied to him which proves the case of the petitioner.

4. It is stated that having no option, the petitioner filed a case bearing no.98/2011 before the Consumer Grievance Redressal Forum, Electricity Board, Patna and the said case was allowed vide order dated 23.7.12, quashing the imaginary bills raised on the name of the petitioner and further directed the



respondent to issue a fresh new service connection to the petitioner, after observing all the formalities. Further direction was made that the amount already paid by the petitioner be refunded/ adjusted for the amount to be paid by the petitioner, for a new service connection. The finding of C.G.R.F., Patna was that the meter was never installed in the premises of the petitioner and therefore, quashed the electric bill raised in the name of the petitioner in A/C No. 36A/CS/34503/2A/214 78 holding it as imaginary and arbitrary.

5. Pursuant to the order dated 23.7.12 passed by the C.G.R.F., Patna, the respondents have not provided the Electric connection, and the petitioner had filed misc. case no. 3/13 before the Ombudsman, Bihar Electricity Regulatory Commission, Patna for compliance of the order dated 23.7.12 passed by the C.G.R.F., Patna and ultimately on 22.5.13, a new Electric connection has been provided to the petitioner and the said case was disposed off on 25.09.2013.

6. The contention of the petitioner is that he suffered serious mental agony, harassment and having financial loss of more than 10 lakhs, in business due to non-supply of Electricity to his premises/ shop for a long period (more than 12 years) for the arbitrary acts of respondents and that the petitioner spent



about 5.50,000/- in litigation with the respondents for the past 12 years with respect to the electric connection, therefore, the respondents are liable to compensate the petitioner for the heavy business loss of R. 10 lakhs.

7. Respondents have filed a detailed counter affidavit. and raised a preliminary objection over the maintainability of the writ application contending that the petitioner cannot raise the issue of compensation, after the orders of the Learned CGRF and Learned Ombudsman, after having accepted the both orders which do not mention about compensation. Further contended that the petitioner not having raised the issue of compensation before the above said forums, and, therefore, he cannot pray for compensation at a subsequent stage.

8. It is averred in the counter affidavit that the petitioner cannot take benefit of one order and reject the other part of the order and the principle of constructive res-judicata as held in the case of **Forward Construction Co. Vs Prabhat Mandal (Regd.)** reported in **(1986) 1 SCC 100** is that an issue decided constructively decides all issues legitimately connected. Further, the doctrine of approbate and reprobate as held in the case of **Union of India Vs N. Murugesan**, (2022) 2 SCC 25 @ Para- 26 would be relevant because the Petitioner has chosen



not to challenge the order of CGRF which is deemed to have decided all the issues including compensation whether raised or not. It is further averred in the counter affidavit that similarly, the Ombudsman order does not mention about compensation whether raised or not but that issue at both counts would be deemed to be constructively decided.

9. For better appreciation of the fact the respondents have quoted @ Para-26 of the decision of the Hon'ble Supreme Court in the case of Murugesan (Supra) is reproduced as below:-

"26. These phrases are borrowed from the Scots law. They would only mean that no party can be allowed to accept and reject the same thing, and thus one cannot blow hot and cold. The principle behind the doctrine of election is inbuilt in the concept of approbate and reprobate. Once again, it is a principle of equity coming under the contours of common law. Therefore, he who knows that if he objects to an instrument, he will not get the benefit he wants cannot be allowed to do so while enjoying the fruits. One cannot take advantage of one part while rejecting the rest. A person cannot be allowed have the benefit of an instrument while questioning the samee. Such a party either has to affirm or disaffirm the transaction. This principle has to be applied with more vigour as a common law principle, if such a party actually enjoys the one part fully and on near completion of the said enjoyment, thereafter questions the other part. An element of fair play is inbuilt in this principle. It is also a species of estoppel dealing with the conduct of a party. We have already dealt with the provisions of the Contract Act concerning the conduct of a party, and his presumption of knowledge while confirming an offer through his



acceptance unconditionally."

10. Further reproduced para 20 of the Forward Construction Co. Vs Prabhat Mandal (Regd.) reported in (1986) 1 SCC 100, which reads as follows:

"20. So far as the first reason is concerned, the High Court in our opinion was not right in holding that the earlier judgment would not operate as res judicata as one of the grounds taken in the present petition was conspicuous by its absence in the earlier petition. Explanation IV to Section 11 CPC provides that any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit. An adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had it decided as incidental to or essentially connected with the subject-matter of the litigation and every matter coming within the legitimate purview of the original action both in respect of the matters of claim or defence. The principle underlying Explanation IV is that where the parties have had an opportunity of controverting a matter that should be taken to be the same thing as if the matter had been actually controverted and decided. It is true that where a matter has been constructively in issue it cannot be said to have been actually heard and decided. It could only be deemed to have been heard and decided. The first reason, therefore, has absolutely no force."

11. It is further averred in the counter affidavit that the Writ Application is not maintainable, without challenging



the orders of the Learned CGRF and Ombudsman. The petitioner has option to challenge the CGRF order but that was not done. Similarly, the order of Learned Ombudsman was also open for challenge but petitioner failed to choose. Further the issue of compensation is an inbuilt privilege of the party provided it is ascribed in the statute. The compensation issue is, in the factual matrix as involve in the present Writ Application, is not even sustainable before the Civil Court also for the above reasons and is liable to be dismissed at the threshold.

12. It is specifically stated in the counter affidavit that the relief prayed by the Petitioner is for payment of compensation, for not granting electric connection. In that situation it is important to refer to the order of the Learned CGRF which directed for grant of fresh new service connection to the Petitioner. The Petitioner took advantage of the order of the CGRF by which the bill was quashed and direction was issued. After getting the benefit under the order of CGRF the Petitioner chose to pray for compensation which is connected to the allegation of denial of connection upon which the CGRF could have observed but it had not. The Petitioner submitted the facts and allegation of imaginary bills raised by the authorities and the representation made by him and also the legal notice



served by him. The Petitioner has also mentioned about the complaint before the District Consumer Forum and under RTI before the different authorities. All these are matters of record to the extent dealt by the Learned CGRF in its order dated 27.07.2013. The Petitioner had made a bald statement of so called loss of Rs. 10 lakhs in business.

13. It is further contended in the counter that the Petitioner has not explained as to how the shop was continuing without any electricity from 2001 to 2007 and from 2007 to the date of fresh connection. The aspect of honesty in the pleading is very important in writ jurisdiction. It is unthinkable that the Petitioner was not availing electricity connection. The record of disconnection on 08.12.2007 was admitted and the consumption of electricity from 20.09.2001 to 08.12.2007 was also admitted but the Petitioner is still seeking compensation.

14. It is averred that the entire writ petition suffers from misrepresentation and also lacks legal foundation in support of the relief prayed for and the manner of pleading which is, at best, cryptic and devoid of foundational pleading to support a serious issue like compensation before a Writ of equitable jurisdiction.

15. Heard learned counsel for the petitioner as well as



learned counsel for the respondents. Perused the records of the case.

16. For better appreciation of the facts Section 13 of the Electricity (Rights of Consumers) Rules, 2020. is quoted herein below:

“13. Compensation mechanism .- (1) Consumer shall be automatically compensated for those parameters which can be monitored remotely when it can be successfully established that there is a default in performance of the distribution licensee.

(2) The Commission shall notify regulations for establishment of mechanism, by the distribution licensee, for automatic payment of compensation amount determined under the provisions of sub-section (2) of section 57 of the Act within six months from the notification of these rules.

(3) The Commission shall oversee that the distribution licensee designs and maintains its distribution system in such a way that there is a gradual increase in the list of parameters, which can be monitored remotely and for which automatic compensation can be made to the consumer.

(4) The standards of performance for which the compensation is required to be paid by the distribution licensee include, but are not limited to, the following, namely:-

(i) no supply to a consumer beyond a particular duration, to be specified by the Commission;

(ii) number of interruptions in supply beyond the limits as specified by the Commission;



(iii) time taken for connection, disconnection, reconnection, shifting;

(iv) time taken for change in consumer category, load;

(v) time taken for change in consumer details;

(vi) time taken for replacement of defective meters;

(vii) time period within which bills are to be served;

(viii) time period of resolving voltage related complaints; and

(ix) bill related complaints.

(5) The distribution licensee, within six months from the date of notification of the regulations by the Commission under sub-rule (2), shall create an online facility on which consumers may register and claim the compensation amount. The information in this regard shall be widely circulated among

consumers through appropriate means including mass media, bills, SMS, e-mails or by uploading on licensee's website.

(6) In all cases of compensation, the payment of compensation shall be made by adjustment against current or future bills for supply of electricity, within stipulated time from the determination of claim as specified by the Commission."

17. Admittedly, the petitioner has availed his remedy before the CGRF as well as Ombudsman, but not prayed for compensation before the said forums. After a lapse of longtime,



the petitioner filed writ petition for compensation.

18. From the facts and circumstances stated above it appears that the petitioner has exhausted all the remedies earlier and he files this writ application for making a claim for compensation.

19. Therefore, the Court finds no merit in this writ application accordingly petition is dismissed as it is devoid of merits.

20. Interlocutory Application(s), if any, shall stand disposed of.

(G. Anupama Chakravarthy, J)

Spd/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03.05.2024
Transmission Date	

