

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1878 of 2015

M/s Balmukund Concast Limited having its Registered Office at 108, Kalyani Complex, Exhibition Road, Patna-800001 Through its Managing Director Ajay Kumar Jhunjhunwala, S/O Late Lok Nath Jhunjhunwala

... .. Petitioner/s

Versus

1. The Bihar State Power holding Company Limited, Vidhyut Bhawan, Bailey Road, Patna, Through the Chairman-cum-Managing Director
2. The South Bihar Power Distribution Company Ltd. Vidhyut Bhawan, Bailey Road, Patna, Through the Managing Director
3. The Managing Director South Bihar Power Distribution Company Ltd. Vidhyut Bhawan, Bailey Road, Patna,
4. The Chief Engineer Commercial, South Bihar Power Distribution Company Ltd. Vidhyut Bhawan, Bailey Road, Patna
5. The Electrical Executive Engineer, HT Cell, South Bihar Power Distribution Company Ltd, Vidhyut Bhawan, Bailey Road, Patna
6. Financial Controller Revenue Bihar State Power Distribution Company Ltd. Vidhyut Bhawan, Bailey Road, Patna
7. The State of Bihar through the Principal Secretary, Department of Industries, New Secretariat, Bihar, Patna
8. The Principal Secretary, Department of Industries, New Secretariat, Bihar, Patna.
9. The Commissioner cum Secretary, Energy Department, Govt. of Bihar, Patna
10. The Accountant General, Audit Bihar, Patna
11. Assistant Audit Officer, RAO (E.S), Office of The Accountant General, Audit Bihar, Patna

... .. Respondent/s

Appearance :

For the Petitioner/s	:	M/s Y.V.Giri, Sr. Advocate Raju Giri, Advocate
For the Electricity Board	:	M/s Vinay Kirti Singh, Sr. Advocate Venkatesh Kirti Advocate Akhileshwar Singh, Advocate
For the State	:	Mr. Prabhat Kumar, AC to GA 11

CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY
ORAL JUDGMENT
Date : 10-09-2024

This Writ petition has been filed by the petitioner M/s



Balmukund Concast Limited (a registered company), through its Managing Director, for the following relief:

“ i) . To issue an appropriate Writ / order / direction in the nature of certiorari for quashing the order dated 24.09.2014 passed by the Chief Engineer (com.). South Bihar Power Distribution Company Limited as contained in letter no. 1822 dated 25.09.2014 by which while withdrawing the benefit of Industrial Policy 2006 granted and availed by the petitioner has been pleased to issue a supplementary provisional bill of Rs. 92,30,806/ of the period 17.01.2008 to 01.07.2008 pursuant to the objection raised by CAG Audit (as contained in Annexure-7).

ii. To issue an appropriate Writ/order/direction in the nature of certiorari for quashing the energy bill dated 25.09.2014 of Rs. 92,30.806/-issued by the South Bihar Power Distribution Company Limited (hereinafter referred to as "the Company") to the petitioner company after withdrawing the benefit granted to the petitioner company under Industrial Policy, 2006 as far as AMG/MMG/MMC charge is concerned (as contained in Annexure-8)

iii. To issue an appropriate Writ/order/direction in the nature of certiorari for quashing the notice issued u/s 56 of the Electricity Act, 2003 (hereinafter referred to as the Act) by the Electrical Executive, H.T. Cell/SBPDCL vide letter



no. 78 dated 02.01.2015 (as contained in Annexure-12).

iv. Any other relief or reliefs for which the Petitioners are found to be entitled in the facts and circumstances of the case.

2. During course of pendency of this Writ petition, by way of filing Interlocutory Applications, the petitioner has sought amendment in the relief portions i.e. paragraph No. 1 of the main Writ application, which are as follows:

I.A. No. 1521 of 2015

“1.(v) To issue an appropriate Writ/order/direction in the nature of Certiorari for quashing the Notice issued under Section 56 of the Electricity Act, 2003 by the Electrical Executive Engineer, HT Cell/SBPDCL vide Letter No. 210 dated 02.02.2015 (Annexure-14).

I.A. No. 3053 of 2015

“1.(vi) To issue an appropriate Writ/order/direction in the nature of Certiorari for quashing the Notice issued under Section 56 of the Electricity Act, 2003 by the Electrical Executive Engineer, HT Cell/SBPDCL vide Letter No. 517 dated 02.04.2015 (Annexure-15).



I.A. No. 4356 of 2015

“1.(vii) To issue an appropriate Writ/order/direction in the nature of Certiorari for quashing the Notice issued under Section 56 of the Electricity Act, 2003 by the Electrical Executive Engineer, HT Cell/SBPDCL vide Letter No. 658 dated 04.05.2015.

I.A. No. 4665 of 2015

“1.(v) To issue an appropriate Writ/order/direction in the nature of Certiorari for quashing the Letter No. 436 dated 05.06.2015 by which it has been directed to make payment of the previous unpaid amount i.e. the disputed amount of energy bills in the month of June 2015 failing which the electricity connection of the Petitioner’s Factory would be disconnected. (Annexure-17)

3. The brief facts culled out of the petition are that the petitioner is a Company incorporated under the Companies Act engaged in the business of manufacture and sale of iron rods and having factories at Mahadevpur, Phulwari and Bihta in the district of Patna. The petitioner had taken electrical connection from the Bihar Electricity Board under HTSS-II category of



consumer having connection No. BT/3540.

4. It is submitted by the petitioner that the State of Bihar in the year 2006 came out with an incentive policy to accelerate the industrial growth of the State and the petitioner's Industrial Unit, as it qualifies for the benefit under the Industrial Incentive Policy, Bihar 2006, sought benefit of AMG/MMG (Minimum Monthly Charges) w.e.f. 01.04.2006 for five years i.e. till 31.03.2011. Accordingly, the petitioner had filed representations before the authority concerned for the benefit under aforesaid Incentive Policy but all the efforts of the petitioner to get the benefit became futile. The petitioner has approached this Hon'ble Court by filing CWJC No. 12678 of 2010. The said Writ petition was disposed of vide order dated 09.12.2010 directing the Secretary, Industries to constitute a Committee forthwith upon presentation of a copy of the order before him and after due opportunity to the petitioner to represent their case, to pass a reasoned and speaking order on the mode, method, manner and intent of the incentive to be granted to the petitioner preferably within a maximum period of four months from the date of receipt/production of a copy of the order. It is further submitted that pursuant to the aforesaid order of this Court, the petitioner filed an application before the



Principal Secretary, Department of Industries, Bihar, thereafter the Directorate of Industry, Bihar vide Memo No. 506 dated 11.02.2011 constituted a High Powered Committee headed by Principal Secretary, Industries Department, Bihar, Patna including high officials of the respondent Company.

5. Learned Senior counsel for the petitioner submitted that after hearing the parties, the High Powered Committee vide Memo No. 1837 dated 31.05.2011 (Annexure-5) allowed the application of the petitioner granting benefit under the Incentive Policy by giving exemption of MMC since 01.04.2006. Accordingly, the petitioner filed an application on 02.06.2011 before the Financial Controller I of the Bihar State Electricity Board for refund of excess minimum monthly charges collected against KVA demand at the earliest. Thereafter, refund of Rs. 92,30,806/- was allowed by the then Bihar State Electricity Board, now Bihar State Power Holding Company in the year 2011.

6. It is contended that after lapse of about 4 years vide order dated 24.09.2014 passed by the Chief Engineer (Com.) as contained in letter No. 1822 dated 25.09.2014 (Annexure-7), while disallowing the benefit of Incentive Policy 2006 issued the supplementary provisional electricity bill dated



25.09.2014 of Rs, 92,30,806/ of the period 17.01.2008 to 01.07.2008 (Annexure-8) was served on the Petitioner. The said supplementary provisional bill was issued on the basis of the Audit report issued vide letter dated 30.05.2014 by the Assistant Audit Officer, RAO (ES) (Annexure-9) of the office of the Accountant General (Audit), Bihar, Patna. The said audit objection was on the basis of an opinion, that in the case of tampering/theft which is an unlawful activities no incentive can be given to an unit, in terms of the Industrial Incentive Policy, 2006. The incentive should not be given for the period for which the bill under Clause 11.4 of the Code is raised. The opinion is quoted in the letter No. 2058 dated 20.08.2008 (Annexure-10) issued by the Financial Controller (Revenue) of the then Bihar State Electricity Board, Patna. It is further contended that after receiving of supplementary provisional electricity bill, the petitioner filed representation dated 21.10.2014 before the Chief Engineer (Commercial) of the Respondent Company and protested the disallowance of the benefit already granted under the Industrial Incentive Policy, 2006 and also issuance of aforesaid supplementary provisional electricity bill dated 25.09.2014. The petitioner in his representation dated 21.10.2014 referred Sections 65, 108 and 208 of the Electricity



Act. It is contended that Section 65 of the Electricity Act refers to the provision of subsidy by the State Government and sub Section (1) of Section 108 refers in the discharge of its function, the State Commission shall be guided by such direction in the matter of policy involving public interest as the State Government may give to it in Writing and further sub Section (2) of Section 108 refers if any question arises as to whether any such direction relates to a matter of policy involving public interest, the decision of the State Government thereon shall be final. Petitioner has contended that in the present case on the subsidy granted by the State Government the benefit of exemption of MMC under Industrial Incentive Policy, 2006 was granted to the petitioner, hence before withdrawing the said exemption there ought to have been an order or direction in that regard of the State Government and in the present case there is no such direction and hence after the lapse of 4 years disallowing the incentive which was provided on the subsidy of the State Government is bad and illegal.

7. Learned Senior counsel for the petitioner submits that the petitioner as per his own submission, in June, 2008 in response to an advertisement made by the erstwhile, Bihar State Electricity Board to avoid any future complication and to



minimize litigation submitted declaration under clause 11.4 of the Code and it is made clear that the Petitioner had not tampered the meter. It is further contended that moreover even it was not the case of the Board that there was any tempering / theft and giving declaration under clause 11.4 of the Code does not mean that the meter is tampered and there is unauthorized use of electricity in terms of section 126 of the Act, hence, to construe that giving declaration under clause 11.4 of the Code amounts to unauthorized use of the electricity as stipulated under section 126 of the Act is wrong. It is the contention of the petitioner that on the basis of voluntary declaration there was no occasion for the respondent company after lapse of 4 years to disallow the incentive granted to the petitioner company and to raise supplementary provisional electricity bill.

8. For proper appraisal of the matter Clause 11.4 of the Code is quoted herein as follows:

“11.4 Voluntary Declaration of Tampered

Meters

In case a consumer comes forward and voluntarily declares tampering of meter and / or seals:

(a) The tampered meter shall be replaced



with a new meter by the Licensee/consumer, as the case may be, immediately and the Licensee shall raise the assessment bill at normal tariff for the period of last 3 months for domestic and agriculture, and 6 months for all other consumers reckoned from date of declaration.

(b) The energy bill, for the period the meter is not replaced, shall be sent as per the procedure for defective meters.

(c) No case shall be lodged in case a consumer voluntarily declares the tampered meter and pays the requisite charges in time.

(d) In case of default in payment, the procedure for booking the case of consumer shall be followed."

Learned Senior counsel for the petitioner submits that a bare perusal of the aforesaid Clause establishes that voluntary declaration under 11.4 does not amount to tampering of meter/ theft and hence unauthorized use of electricity in terms of section 126 of the Act, does not arise.

9. Learned Senior counsel for the petitioner submits that without appreciating the representation and submission of



the petitioner, the respondent company have issued a disconnection notice under section 56 of the Act to the petitioner company vide letter no 78 dated 02.01.2015 (Annexure-12). In the notice they have asked the petitioner to make payment of Rs. 95,09,808/- and also have slapped DPS of Rs. 1,42,647/-. They have included the said amount in the current energy bill of the month which is again violation of the clause 9.11 of the Code. It is also pertinent to state here that the letter was dispatched on 07.01.2015 and the petitioner company received the said letter of disconnection on 08.01.2015.

10. Learned Senior counsel submits that on the basis of an opinion and on the audit objection without any direction of the State Government the respondents could not have withdrawn the incentive, hence the issuance of supplementary provisional electricity bill of Rs. 92 lacs and odd is also bad and illegal and the respondent company has completely misconstrued clause 11.4 of the code with tampering and unauthorized use of electricity as envisaged under section 126 of the Act. The incentive already given should not have been withdrawn and no supplementary provisional electricity bill should have been issued to the petitioner company.

11. A counter affidavit has been filed on behalf of the



respondent Nos. 7 and 8, the Principal Secretary, Department of Industries, Government of Bihar, Patna, who was the Head of High Powered Committee. With regard to paragraph nos. 7 to 10 of the Writ petition, it is specifically averred in paragraph no. 5 of his counter affidavit that pursuant to the order dated 09.12.2010 of this Court passed in CWJC No. 12678 of 2010, the answering respondent passed an order vide Annexure-5 whereby and whereunder exemption from AMG/MMG under Policy 2006 was also provided to such unit covered under High Tension Specified Service (HTSS). It is further averred that the statements made in other paragraphs of the Writ petition relates to Bihar State Power Holding Company.

12. A counter affidavit has also been filed on behalf of the Respondent No. 9, the Principal Secretary, Department of Energy, Govt. of Bihar. It is averred in the counter affidavit that the supplementary provisional bill for Rs. 92,30,806/- was raised in pursuant to the CAG Audit objection dated 30.5.2014 and in light of instruction issued vide letter NO. 2058 dated 20.08.2008 of F.C. (Rev) Erstwhile BSEB, the benefit, which was by mistake granted to the petitioner under Industrial Incentive Policy, 2006, by the Committee headed by the Principal Secretary, Industries Department, and was withdrawn



after audit objection. It is further averred that as per letter from Apex Board, the benefit to the consumers involving in theft of electricity was not to be provided, but by mistake or omission, the benefit for the intervening period was provided to the consumer. After the audit objection & detection of the mistake, the benefit was withdrawn for the period in which the petitioner has himself declared under section 11.4 of BESC 2007 for unauthorized use of electricity. The basis for withdrawal of the benefit is the instruction issued by the Apex Board dated 20.08.2008. The audit has just pointed out the omission in the part of the respondent. It is further averred that the voluntarily declaration under Clause 11.4 of the Code does not mean the unlawful activities of the consumer may be appreciated legally and Section 11.4 of the Supply Code 2007 only provides a means to the consumers involving in unauthorized use of electricity to protect themselves from being booked under Section 135 and to protect themselves from criminal proceedings that is why erstwhile BSEB has issued guidelines vide FC (Rev Letter No. 2056 dated 20.08.2008 read as “In case of tampering / theft which is an unlawful activities no incentive can be given to a unit in terms of the industrial incentive policy, 2006” and accordingly the incentive already



granted on detection of declaration under Clause 11.4 was withdrawn”.

13. It is further averred that benefit under Industrial Incentive Policy is only applicable for bonafide consumers and not for malafide consumer. It is admitted in counter affidavit that petitioner was availing the benefit under the aforesaid Policy. In order to allowing such exemptions the instructions issued vide letter No. 205 dated 20.08.2008 by the FC (Rev) BSEB, Patna was overlooked and by mistake/omission the exemptions were also allowed to such consumers also who had declared their premises tampered under Clause 11.4 of the Code and as such on detection of the same and pointed out by the Audit, the exemptions were withdrawn from the consumers who had voluntarily declared tampered.

14. A supplementary counter affidavit has been filed on behalf of the respondent Nos. 7 & 8. Answering respondents more or less are reiterating the stand taken in the counter affidavit filed on behalf of the respondent Energy Department. It is averred in supplementary counter affidavit that the Bihar Electrical Regulatory Commission, Patna vide notification No. 16.08.2010 made certain amendments in Bihar Electric Supply Code, 2007 more particularly in Clause 11.4 Chapter 11 of the



Electricity Supply Code, 2007 which speaks about voluntary declaration of tempering in meter. For better appreciation, the relevant amended provisions Clause 11.4 is quoted hereinunder:

“11.4 Voluntary Declaration of Tampered Meters

The licensee may launch area specific/whole of the area of jurisdiction of licensee, an Amnesty Scheme of Voluntary Declaration of Tampered Meter for a limited period not exceeding 15 days with the prior approval of the Commission.

(a) The period of voluntary declaration shall be circulated and widely published along with a format of application of voluntary declaration

(b) During the specified period there will be no raid/inspection of the premises. However, consumers whose premises/meters have been checked by Vigilance Cell/concerned officer of the licensee and where meters have already been found to be tampered shall not be eligible under this scheme.

(c) The tampered meter/metering unit shall be replaced with a new meter by the licensee/consumer, as the case may be, within 15 days.

(d) The cost of the meter/metering unit will be borne by the consumer.

(e) The licensee shall raise half of the energy bill assessed in accordance with the provisions of section 126 of the Electricity Act, 2003 as per formula and procedure specified in Annexure 7 of the Supply Code. The consumer shall be provided by the licensee the sheet of calculation for



the amount required to be deposited.

(f) The consumer shall pay the assessed amount in time. In case of default in payment action shall be initiated under provision 135 of the Electricity Act, 2003.

(g) The energy bill for the period from the date of voluntary declaration till replacement of meter shall be assessed as per procedure specified for defective meter on normal tariff rate.

(h) No case shall be lodged in case a consumer voluntarily declares the tampering of meter and pays the bill raised under (e) above.

(I) Such facility to a consumer shall be available for one time only.”

15. A counter affidavit has also been filed on behalf of the respondent Nos. 2 to 5 and Answering respondents are more or less reiterating the stand taken in the counter affidavit filed on behalf of the respondent Energy Department and the supplementary counter affidavit filed on behalf of the respondent Industry Department.

16. A counter affidavit has also been filed on behalf of Respondent Nos. 10 and 11. It is averred that audit observation highlighted the irregular grant of rebate under Industrial Policy, 2006 on the part the Company to the consumer indulged in tampering or theft of electricity for the period of tampering/theft. It is further averred that the erstwhile Board in



view of the opinion of a Senior Lawyer, Patna High Court, “that in case of tampering/theft which is an unlawful activity, no incentive can be given under Industrial Policy, 2006”, issued a letter dated 20.08.2008 to take action against such consumer. Except the aforesaid fact, the answering respondents reiterated the versions of counter affidavits filed by other respondents.

17. Rejoinders to the counter affidavits filed on behalf of respondent Nos. 7 and 8 and respondent No. 9 have been filed by the petitioner. It is submitted by Learned counsel for the petitioner that after hearing the parties, the Committee vide order dated 27.05.2011 allowed the application of the petitioner granting benefit under Incentive Policy by giving exemption of Minimum Monthly Charges since 01.04.2006, thereafter, refund of Rs. 92,30,806/- was allowed by the Board. It is stated that after lapse of about four years, the aforesaid benefit was withdrawn on the basis of the Audit Report.

18. It was the contention of the petitioner that there was no occasion for the respondent Power Holding Company to raise supplementary provisional bill of Rs. 92,30,806/- pursuant to an Audit Objection dated 30.05.2014. The said Audit objection was also on the basis of letter dated 20.08.2008 issued by the Financial Controller (Revenue) of the then Bihar State



Electricity Board and in the Committee, the Financial Controller (Revenue) was also one of the members. It was the Committee which after thorough deliberation granted exemption, hence in this background, Audit objection on the basis of an opinion cannot be a ground / basis for taking away the benefit from the petitioner. It is submitted that the meter of the Petitioner was not tampered. Declaration under Clause 11.4 of the Code in no ways establishes that the Petitioner was indulging in theft of electricity and voluntary declaration does not amount to theft of electricity. It was a scheme provided under the Code. Moreover, in the year 2008, defective meters were supplied by the then Supplier M/s Secure Meters Private Limited and the Board without appreciating had initiated a drive to register cases of theft. It is the case of the Petitioner, that the Petitioner's meter was not tampered but to save itself from the harassment, decided to utilize and avail the voluntary declaration scheme Altogether 49 consumers alongwith the Petitioner had given declaration under Clause 11.4 of the Code. It is also relevant to state here that the Respondents alongwith the Representative of the M/s Secure Meters Limited had carried an extensive inspection of meter and had changed the software of the meter on 21.05.2008 and applied seals. M.R.I. of the meter was done



by the SML Representative.

19. It is further submitted that it is well settled principle that the voluntarily declarations are aimed at minimizing the litigation and increasing the collection of revenue at earliest point of time. The same cannot be reopened for proceeding under any law for time being in force.

20. It is contended on behalf of the petitioner that voluntary declaration does not amounts to theft of electricity and moreover, there was no detection of theft of energy in the case of the Petitioner and no disconnection of supply of electricity. Moreover, even it was not the case of the Board that there was any tampering / theft. Giving declaration under Clause 11.4 of the Code does not mean that the meter is tampered. Hence, to construct that giving declaration under Clause 11.4 of the Code amounts to unauthorized use of the Electricity is wrong. On the basis of voluntary declaration there was no occasion for the Respondent Company after lapse of 4 years to disallow the incentive granted to the Petitioner Company and to raise supplementary provisional electricity bill.

21. It is contended that the Respondents have referred to Letter dated 12.08.2012 (Annexure-B to the counter affidavit) to support their contention that wrongly benefit of exemption



has been granted for the period 17.01.2008 to 01.07.2008. In the said Letter in para-2 it has been stated that for the period of disconnection of electric line due to theft of electricity, the benefit of exemption under Industrial Policy will not be granted. In the present case there was voluntary declaration under Clause 11.4 of the Bihar Electricity Supply Code, 2007 and by the admission of Respondents itself, no theft is made out as no case is lodged against the Petitioner. Moreover the electricity connection of the Petitioner's factory was never disconnected and hence there is no relevance of the said Letter. The petitioner has also bring on record the Memo No.2931 dated 23.08.2011 issued by the Industries Department, Government of Bihar with respect to a Unit namely M/s Balaji Ingot Private Limited in which it was held that due to non supply of electricity to the said Unit (there was disconnection due to theft) during the disconnected period, the Unit could not consume electricity and hence the Unit was entitled for exemption under MMG under the Industrial Incentive Policy, 2006. Writ petition too was filed by the said Unit bearing C.W.J.C. No. 4914 of 2009, in which alongwith other prayers one of the prayer was, *"For a direction to the respondent authorities that even if the electric supply is discontinued, the respondent Board cannot raise bills on the*



basis of minimum. guarantee during the subsisting period of the Policy." The said Writ petition was disposed of with the following direction:-

"6. In the aforesaid circumstances and also in view of the memo and letter of the State Government and the Electricity Department mentioned above, this Writ petition is disposed of with a direction to the respondents-authorities not to charge any amount as minimum guarantee charges or any surcharge on the said amount for the said period of February, 2009 and March, 2009 from the petitioner and if any amount has already been realized from the petitioner, the Board shall adjust the same from the future bills without unnecessary delay."

22. It is further submitted by Learned Senior Counsel appearing for the petitioner that on the basis of an opinion and on the Audit Objection the incentive could not have been withdrawn. The Respondents have completely misconstrued Clause 11.4 of the Code with tampering and unauthorized use of electricity. Even it has been held by the Hon'ble Apex Court that if one opts for voluntary declaration then he obtains immediate immunity under any proceeding under any and all laws in force. Voluntary declaration does not amounts to theft.



23. Heard the rival contentions of the Learned counsel for the petitioner as well as the Learned counsel for the Respondents.

24. In support of its contention, Learned Senior counsel placed reliance on the decisions of this Hon'ble Court. (1).CWJC No. 2941 of 2010 (Shanta Mani Hand Made Paper Industries Vs. The State of Bihar & Ors), (2). Binay Kumar Singh Vs. State of Bihar reported in 2011(1) PLJR 1064 paragraphs 59, 60 and 61, (3). Hira Lal Hari Lal Bhagwati V/s C.B.I., reported in [(2003)5 SCC 257, paragraphs 27 and 45, (4). Sushila Rani (Smt) Versus Commissioner of Income Tax and Ors. reported in 2002 (2) SCC 697, paragraph nos. 5, 8 and 11.

25. In **Shanta Mani Hand Made Paper Industries (supra)** the petitioner questions the audit report and the energy bill raised for an amount of Rs. 11,83,357/-. This Hon'ble Court have been pleased to hold as follows:-

“Despite the legal position as regarding the status of audit report, remaining well settled by judgments of this Court as well as the Supreme Court and more appropriately dealt in a case reported in A.I.R. 1979 SC 1780 (Indian and Eastern Newspapers Vs. The Commissioner of Income Tax), but yet the Board



instead of examining the audit report at its own level in the backdrop of the legal provisions and the facts situation, mechanically proceeded to raise the impugned bill. The application of mind by the authorities of the Board leaves much to be desired. Raising a punitive bill is a stigma on the consumer and cannot be carried out in such mechanical manner on the basis of an audit objection which is no more than an opinion as expressed by an Auditor. The opinion so formed by the Auditor requires its confirmation against the statutory provisions and the facts situation available in a particular case. There being complete absence of application of mind either at the level of the Accountant General in forming the opinion or at the level of the Board while raising bill, as well as there being complete absence of a finding either in inspection report or any document that the load applied for by the petitioner and found within his premises at the time of inspection on 9.3.2007 was either connected or was being used, the exercise of power by the Board in raising the impugned bill as contained in Annexure-9 is completely in excess of jurisdiction and cannot be sustained.

In the result, this application is allowed. The audit objection as contained in Annexure-5 as well as punitive bill as contained in Annexure-9 are quashed and set aside. Any amount deposited by the petitioner towards the



punitive bill would be adjusted against his current/future bills.”

26. The Division Bench of this Court in the case of **Binay Kumar Singh (supra)** has held as follows:-

*“ 59. It is well settled principle that the voluntary declarations are aimed at minimizing the litigation and for increasing the collection of the revenue at earliest point of time. Such schemes are very popular under Income Tax Act and one of such cases is of **Sushila Rani (Smt) Versus Commissioner of Income Tax and Ors.** reported in **2002 (2) SCC 697** wherein the Apex Court in paragraph no. 5 highlighted the benefits of such voluntary disclosures schemes under Kar Vivad Samadhan Scheme 1998 in following words.*

“Litigation has been the bane of both direct and indirect taxes. A lot of energy of the Revenue Department is being frittered in pursuing large number of litigations pending at different levels for long period of time. Considerable revenue also gets locked up in such disputes. Declogging the system will not only incentivise honest tax payers, it would enable the Government to realise its reasonable dues much earlier but coupled with administrative measures would also make the system more user friendly”



60. Hence the Apex court held that under Section 91 of KVSS, making a declaration is conclusive as to the matter stated therein and cannot be reopened for proceeding under any law for time being in force, except on the ground of false declaration by the declarant. The said principle has also been reiterated in case of Hiralal Harilal Bhagwati Versus CBI, New Delhi, 2003 (5) SCC 257.

61. Thus, in the present case, once the consumer has exercised the option of voluntary declaration under Clause 11.4 of the Supply Code it cannot be reopened by filing FIR by the Vigilance, in view of statutory bar under Clause 11.4 (C) of the Supply Code.”

27. In support of its contention, Learned Senior counsel placed further reliance on the decision of the Hon'ble Supreme Court in the case of **Hira Lal Hari Lal Bhagwati V/s C.B.I., (supra)** related to Customs Duty Exemption in which Hon'ble Supreme Court have been pleased to hold as follows:-

"27 On a reading of the judgement in the case of Sushila Rani', it is clear to us that if an assessee takes the option under this Scheme, he obtains immediate immunity under any proceeding under any and all laws in force. As such the present proceedings initiated under Section 120-B read with Section 420 of



the Indian Penal Code are bad and ought to have been quashed with immediate effect."

28. This Court is of the considered view that the above ratio of the Hon'ble Apex Court as well as this Court passed in **Shanta Mani Hand Made Paper Industries (supra)** apply to the present case in hand.

29. Admittedly, the petitioner's Industries had made an application for availing the benefit of Industrial Intensive Policy 2006 and for the benefit of AMG/MMG for the period of five years till 31.03.2011. As the benefit was not extended to the petitioner, the petitioner Industry was constrained to file CWJC No. 12678 of 2010 and as per the order of this Court dated 09.12.2010 a Committee was constituted and a reasonable speaking order has been passed granting benefit of Intensive Policy by giving exemption of MMC since 01.04.2006. Thereafter, the petitioner was refunded with an amount of Rs. 92,30,806/-. The record reveals that after the lapse of 4 years by order dated 24.09.2014, the Chief Engineer has withdrawn the benefit of Intensive Policy and issued supplementary provisional electricity bill dated 25.09.2014 for the same amount i.e. Rs. 92,30806/- for the period 17.01.2008 to 01.07.2008. The said supplementary provisional bill was raised



basing on the audit objection and on the opinion of the Senior counsel of Patna High Court. On perusal of the precedents of the Hon'ble Apex Court as well as of this Court, it is evident that the bills cannot be based on the audit objection. Furthermore, the Intensive Policy, which was being extended to the petitioner cannot be withdrawn based on the audit report. Admittedly, it is not the case of the respondents that the petitioner has committed theft of electricity or has used the electricity for unauthorized purpose. Once the State Government has extended the benefit under the particular scheme, the same cannot be withdrawn by the Electricity Department basing on the audit report. Admittedly, the benefit was extended to the petitioner basing on the High Powered Committee report, which was constituted by Memo No. 506 dated 11.02.2011 including the members of Energy Department. In absence of any evidence of theft being committed by the petitioner, the benefit of Intensive Policy cannot be withdrawn.

30. In the result this application is allowed. The order dated 24.09.2014 (Annexure-7), energy bill dated 25.09.2014 (Annexure-8), Notice dated 02.01.2015 (Annexure-12), Notice dated 02.02.2015 (Annexure-14), Notice dated 02.04.2015 (Annexure-15) and Notice dated 04.05.2015 (Annexure-16)



are, hereby quashed.

31. Interlocutory application(s), if any, shall stand disposed of.

(G. Anupama Chakravarthy, J)

Spd/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.09.2024
Transmission Date	NA

