

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7554 of 2015

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The North Bihar Power Distribution Company Ltd. through the, Law Officer, Bishnudeo Prasad Gupta, son of Sri Kant Lal Sah, Resident of Bihar State Electricity Board Colony, Shastri Nagar, P.S.- Shastri Nagar, Patna, District-Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar through Additional District Magistrate, Samastipur having office at Collectorate at Samastipur.
2. The Additional District Magistrate cum Appellate Authority having office at Collectorate at Samastipur.
- 3.1. Proprietor of M/s Hotel Swarg Sri Alok Kumar Seth, S/o Sri Pradeep Kumar Seth, Mohalla - Magardahi Ghat, Gola Road, Police Station - Samastipur Sadar, District - Samastipur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	M/s Anand Kumar Ojha
	:	Ashok Kumar Verma
	:	Akshansh Shanker, Advocates
For Respondent No.-3	:	Mr. Brajesh Kumar Singh, Advocate
For the Respondent/s	:	Mr. Vikash Jha, AC to GA-09

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CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY
ORAL JUDGMENT

Date : 15-07-2024

1. The North Bihar Power Distribution Company Limited is the petitioner who has challenged the order of the appellate authority dated 30.05.2014 with the specific contention that it is passed without following the provisions of the Electricity Act, 2003, Bihar State Electricity Supply Code, 2007 and therefore, the same is liable to be set aside.

2. The grounds raised by the petitioner are that the appellate authority has entertained the time barred appeal without



any application for condonation of delay or without any discretion on the aspect of the delay, though the same was raised by the Board i.e. the petitioner.

3. It is the specific contention of the Learned counsel for the petitioner that as per the provisions under section 126 (1) of the Electricity Act, 2003, provisional assessment has been made by the Assessing Officer and a punitive appeal of Rs 5,28,795/- was served to the respondent No. 3 vide letter no. 300 dated 02.02.2013 through registered post and he was asked to file objection, if any, under section 126(3) of the Electricity Act. Accordingly, respondent No. 3 has filed his objections dated 08.02.2013. After following the due process of law the MRI has been done under the DGM (Metering) as indicated in the report that the load survey graph reflex shorting of one phase current showing zero besides in alternative month, the maximum demand recovered is zero, but meter showing received consumption which clearly indicates the case of meter bypassing. Later, Final assessment order was passed after duly considering the objections filed by the respondent No. 3 and the same was communicated vide Memo No. 545 dated 02.03.2013 to the respondent No. 3.

4. It is urged by the Learned counsel for the petitioner that as per Section 127 of the Electricity Act, 2003 any person



aggrieved by the Final order made under section 126 may within 30 days of the said order, prefer an appeal in such form, verified in such manner and be accompanied by such fee as may be specified by the State Commission, to an appellate authority as may be prescribed.

5. Section 127 (2) denotes that no appeal against the order of assessment under sub-section (1) shall be entertained unless an amount equal to (half of the assessment amount) is deposited in cash or by way of bank draft with the licensee and documentary evidence of such deposit has been enclosed along with the appeal.

6. It is also contended by the Learned counsel for the petitioner that respondent No. 3 has not preferred an appeal within the stipulated period of 30 days, before the appellate authority and further contended that an appeal was filed beyond 180 days on 17.09.2013 which was entertained by the appellate authority and the appellate authority have passed the orders. Being aggrieved by the same, present writ petition was filed.

7. On the other hand, the Learned counsel for the respondent no. 3 contended that he has paid all the dues subsequent to the orders of appellate authority. Admittedly, the petitioner is challenging the orders of the appellate authority with



specific contention that appeal before the appellate authority is not maintainable as it is filed beyond 180 days and that delay condonation petition was also not filed before the appellate authority for condoning the delay. Further contended that the Statute does not permit to file an appeal after the period of limitation.

8. Admittedly, the appeal was filed beyond 180 days and not within the stipulated period of 30 days. The Statute i.e. the Electricity Act, 2003 under the provisions of Section 127 (2) clearly disclose that no appeal shall be entertained against the order of assessment if half of the amount is not deposited at the time of filing of appeal. Further, section 127(1) clearly disclose that appeal should be filed within 30 days. Further, section 127 (6) denotes that when a person defaults in making the payment of the assessed amount, he in addition to the assessed amount shall be liable to pay, at the expiry of 30 days from the order of assessment, an amount of interest at the rate of 16% per annum compounded every six months.

9. Learned counsel for the petitioner also relied on judgment of Hon'ble Apex Court reported in **2010 (5) SCC 23 (Chhattisgarh State Electricity Board Vs. Central Electricity**



Regulatory Commission And Ors.). For better appreciation paragraphs 25, 26 and 27 are herein quoted:

“25-Section 125 lays down that any person aggrieved by any decision or order of the Tribunal can file an appeal to this Court within 60 days from the date of communication of the decision or order of the Tribunal. Proviso to Section 125 empowers this Court to entertain an appeal filed within a further period of 60 days if it is satisfied that there was sufficient cause for not filing appeal within the initial period of 60 days. This shows that the period of limitation prescribed for filing appeals under Sections 111(2) and 125 is substantially different from the period prescribed under the Limitation Act for filing suits, etc. The use of the expression “within a further period of not exceeding 60 days” in the proviso to Section 125 makes it clear that the outer limit for filing an appeal is 120 days. There is no provision in the Act under which this Court can entertain an appeal filed against the decision or order of the Tribunal after more than 120 days.

26-The object underlying establishment of a special adjudicatory forum i.e. the Tribunal to deal with the grievance of any person who may be aggrieved by an order of an adjudicating officer or by an appropriate Commission with a provision for further appeal to this Court and prescription of special limitation for filing appeals under Sections 111 and 125 is to ensure that disputes emanating from the operation and implementation of different



provisions of the Electricity Act are expeditiously decided by an expert body and no court, except this Court, may entertain challenge to the decision or order of the Tribunal. The exclusion of the jurisdiction of the civil courts (Section 145) qua an order made by an adjudicating officer is also a pointer in that direction.

27-It is thus evident that the Electricity Act is a special legislation within the meaning of Section 29(2) of the Limitation Act, which lays down that where any special or local law prescribes for any suit, appeal or application a period of limitation different from the one prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and provisions contained in Sections 4 to 24 (inclusive) shall apply for the purpose of determining any period of limitation prescribed for any suit, appeal or application unless they are not expressly excluded by the special or local law.”

10. It is the specific contention of the Learned counsel for the petitioner that the judgment of the Hon’ble Apex Court squarely covers Section 127 of the Electricity Act, as the Statute specified the time limit for filing an appeal is 30 days and therefore, the Appellate Authority cannot entertain any appeal beyond 30 days.



11. Heard the Learned counsel for the petitioner and the respondents. Perused the entire record.

12. The Statute is very clear that any person aggrieved by the final order of assessment under Section 126 may file appeal within 30 days of the order. Admittedly, in this case the appeal was filed beyond 180 days and the Tribunal has entertained the appeal without following the due provisions of Electricity Act. In the absence of any provision, beyond the stipulated time appeal is not maintainable. Accordingly, the order of Appellate Authority dated 30.05.2014 is hereby set aside.

13. The petitioner is at liberty to take recourse as per the law.

14. Accordingly, this writ application is allowed.

(G. Anupama Chakravarthy, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
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