IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14322 of 2013

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1. North Bihar Power Distribution Company Ltd. through its Managing Director, Formerly Known as Bihar State Electricity Board through its Chairman
2. The Electrical Superintendent Engineer, Electric Circle, Samastipur
3. The Accounts Officer, Electric Circle, Samastipur
4. The Assistant Electrical Engineer, Electric Supply Sub-Division, Barauni
5. The Financial Controller Rev Bihar State Electricity Board, Patna

... ... Petitioner/s

Versus

1. M/s Jaimangla Steel Pvt. Ltd. N.H. 28, Phulwaria, Police Station- Begusarai Town And District- Begusarai appearing Through its Director Ajay Kumar, Son of Sri B.P. Singh, Resident of Sri Krishnanagar, Police Station- Begusarai, Town And District- Begusarai
2. The Bihar State Regulatory Commission Through Its Chairman, Vidyut Bhawan-II, Bailey Road, Patna

... ... Respondent/s

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Appearance :

For the Petitioner/s :	M/s Vinay Kirti Singh, Sr. Advocate
	Akhileshwar Singh, Advocate
For the Respondent No.1:	Mr. Indrajesh Kumar, Advocate
For the Respondent No. 2:	M/s Rajani Kant Mishra
	L.L.Pandey, Advocate

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CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY

ORAL JUDGMENT

Date : 10-01-2025

1. The writ petition has been filed for quashing the order dated 12.07.2012 passed by the Consumer Grievance Redressal Forum, Patna (hereinafter referred to as 'the 'CGRF') in Registered Case No. 10 of 2011 (M/s Jaimangla Steels Pvt. Ltd. Vs. The BSEB through its Chairman & Ors) by which the Consumer Grievance

Redressal Forum allowed the complaint in favour of the respondent No. 1 for quashing the sum of Rs. 1,11,794.38 levied as a delayed payment surcharge from Bill No. 555 dated 14.10.2010 as being illegal and unjustified.

2. The brief facts culled out of the petition is that the petitioner No. 1 is a Power Distribution Company, erstwhile known as Bihar State Electricity Board, engaged in selling power as a licensee. The respondent No. 1 is a consumer of Petitioner Company under HTSS Category tariff for steel manufacturing Unit at Phulwaria in the District of Begusarai. The respondent No. 2 is a statutory body responsible for the regulation of the electricity sector in the State of Bihar including generation, transmission, distribution and use of electricity.

3. It is contended by the petitioners that the order contained in Annexure-1 passed by the Consumer Grievance Redressal Forum, Patna dated 12.07.2012 is against the provision of 2008 Tariff, which was effective from 01.09.2008 and

remained in force till the next Tariff order of the Commission and as the matter relates to the levy of a delayed payment surcharge against the bills for the month of July 2010, and August 2010 as the respondent No. 1 made partial payment of bill raised for the month of July 2010 and did not payment the bill for the month of August, 2010. It is further contended that the 2008 Tariff become effective from 01.09.2008, and the next Tariff order was for the financial Year 2010-11 but became effective only from 01.12.2010, thus the present case falls under the 2008 Tariff.

4. It is submitted by the petitioners that respondent No. 1 on 16.07.2010 requested a grant for remission in the monthly minimum guarantee charge and for a direction to issue a fresh Bill under Industrial Incentive Policy, 2006 as granted in terms of the order of the Consumer Grievance Redressal Forum, Patna in Complaint Case No. 68 of 2009 dated 14-8-2009 and complaint case No. 78 of 2009 to M/S Gangotri Iron and Steel. It is further submitted that upon receipt

of the representation filed the respondent No. 1, the Electrical Superintending Engineer, Electric Supply Circle Samastipur Sent letter No. 2348 dated 16-8-2010 to the Chief Engineer (commercial) for directions. It is contended that in the meantime the energy bill charged to the consumer for the month of July 2010 vide Bill No. 349 dated 5-8-2010 was partly paid by the consumer in violation of Clause 2 of the Terms and Condition of HT Tariff. Furthermore, even though the consumer attempted to make a partial payment of bill for the month of August 2010, was stopped by the consumer.

5. It is submitted by the petitioners that on receipt of the directions for the grant of remission in AMG charges under the Industrial Incentive policy 2006 by OSD (Rev.), Bihar State Electricity Board, Patna, vide letter No. 1677 dated 14-10-2010, the Electrical Superintending Engineer, Samastipur revised the energy bill granting remission in AMG charges with adjustments of Minimum monthly guarantee

charges which had been charged as per the provision of HTSS Tariff. Accordingly, a revised bill was issued vide Bill No. 555 dated 14- 10-2010 for the month of September 2010. Due to non payment of energy bill for the month of August 2010 and partial payment of energy bill for July 2010, the bill issued on 14.10.2010 for the month of September 2010 included a delayed payment Surcharges of Rs. 1,11,794.38, which, according to the petitioner, was in exact accordance with the prevailing Rules and regulation under the Tariff effective from 01-09-2008.

6. It is contended on behalf of the petitioners that the Consumer Grievance Redressal Forum, in the Registered Case No. 10 of 2011 filed by the respondent No. 1, by order dated 12.07.2012 directed the ESE/Samastipur to cancel the DPS charge of Rs. 1,11,794.38 from the bill No. 555 dated 14.10.2010 holding it illegal and unjustified, and ordered that any excess payment, if made be refunded/adjusted in the next energy bill of the consumer. Therefore, the Writ

petitioners pray for quashing of the impugned order dated 12.07.2012 (Annexure-1).

7. A detailed counter affidavit was filed by the 1st respondent. It is averred in counter affidavit that he had made a request for exemption of monthly minimum guaranteed charges in the light of Industrial Incentive Policy, 2006, to Electrical Executive Engineer, Samastipur, which was forwarded to the Finance Controller (Revenue), Bihar State Electricity Board, vide letter No. 2423 dated 04.09.2010 and Finance Controller (Revenue), vide letter No. 1677 dated 14.10.2010 (Annexure R/1 of the supplementary affidavit).

8. It is contended on behalf of respondent No. 1 that the letter of the Finance Controller states that the bill was to be revised from April, 2006, and the excess amount was to be adjusted in the monthly Energy bills, therefore, the bills were to be revised retrospectively. It is further contended that the monthly bill for August, 2010 was again issued without granting

the exemption in monthly minimum basic charges. It is also submitted by respondent No. 1 that the petitioners did not allow the exemption in minimum monthly guaranteed charges in the monthly bills, and respondent No. 1 continued to make payment of the full amount of monthly bills. In this regard the requests were made by respondent No. 1 through Letter No. JMSPL/Electric/2010-11 dated 27.09.2010 and again through JMSPL/Electric/2010-11 dated 25.10.2010 for the said exemption (Annexure-A).

9. Further, respondent No. 1 submits that although the bills were not revised, respondent No. 1 themselves calculated the bill and tried to pay the bill for the month of August, 2010. An amount of Rs. 55,98,719 was sent by cheque, which was refused by the petitioners.

10. The Learned counsel for respondent No. 1 submits that Clause 10.14 of the Bihar Electricity Supply Code, 2007, permits the consumer to pay the calculated electricity charges in case of disputed energy bills. For better

appreciation of the facts, the same is being reproduced here:

"10.14 Disputed/Erroneous Bills

(a) In the event of any objection in respect of the billed amount, the consumer may lodge a complaint before the designated officer as mentioned in the energy bill. The supply of electricity shall not be cut off if such person deposits, under protest,

(i) an amount equal to the sum claimed from him, or

(ii) the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months, whichever is less, pending disposal of any dispute between him and the licensee.

11. The Learned counsel for respondent No. 1 placed reliance on the case of **Gaya Roller Flour Mills Private Ltd. Vs Bihar State Electricity Board** reported in **1995 (2) PLJR 715** in which it has been held that: "*(I, however, find that the Superintending Engineer has also included*

the delayed payment surcharge as part of the dues payable by the petitioner. It is to be noted that the Superintending Engineer found that the bill earlier given to the petitioner was raised, on the basis of a defective meter and, therefore, did not reflect the correct demand. He himself set aside that bill and made a fresh calculation of the charges payable by the petitioner. The earlier bill not having been prepared lawfully, I am unable to see how any delayed payment surcharge can be levied for non-payment of that bill. I am, therefore, of the view that the computation made by the Superintending Engineer is not correct in so far as it includes the delayed payment surcharge and to that extent it requires correction. It is accordingly held that the petitioner is not liable to pay any delayed payment surcharge as shown in the computation made in the impugned order contained in Annexure 10.)".

12. It is further submitted by the the Learned counsel for respondent No. 1 that the above contention was also affirmed in the case of

M/s Iceberg Industries Ltd vs. BSEB (2010) 4 PLJR 574. The Hon'ble Court held: "*As this Court has found that the amounts as claimed were incorrectly claimed, then the bills being revised would not contain delayed payment charges for balance due in view of Division Bench judgement of this Court in the case of Gaya Roller Flour Mills Private Ltd. v. Bihar State Electricity Board since reported in 1995 (2) PLJR 715*."

13. It is further submitted by the the Learned counsel for the respondent No. 1 that the above mentioned judgement was also affirmed in **LPA 521 of 2011**, reported in **AIR 2013 Pat 78**.

14. The Learned counsel for respondent No. 1 further relied on the judgment of Hon'ble Supreme Court in **Civil Appeal No. 2846 of 2006**, wherein their Lordships have held: "*That under Section 42 (5) of the Electricity Act, 2003, all the individual grievances of the consumer have to be raised before, "C.G.R.F" only*"

15. Further, the Learned counsel for respondent No. 1 relied on a judgment passed by

this Court in **CWJC No. 18528 of 2008** in which it has been held: "*Once a Specific Forum for resolution of a Consumer dispute is statutorily created, the petitioner is obliged to first approach the said forum, which shall be under obligation to determine and address itself to the grievance as raised and adjudicate upon it within the guidelines as may be specified by the State Regulatory Commission.*"

16. The Learned counsel for respondent No. 1 further submits that in the present case, the erroneous bills were revised by the Board itself from April 2006 vide Letter No.1677 dated 14.10.10, and the energy bills were corrected only to the extent of June, 2010. However, the bills were not corrected for the month of July and August, 2010 and the delayed payment surcharge based on the erroneous bills were charged to respondent No.1 to the tune of Rs. 1,11,794.38/- . The Consumer Grievance Redressal Forum in its order dated 12.07.2012 also held that in light of several judgement passed by the this High Court and

orders of the Forum. "*It is evident that Board is not legally entitled to charge DPS over wrong or erroneous bill. In the instant case we also find that the petitioner was entitled for exemption in MMG/MMC charged under the provisions of Industrial Incentive Policy, 2006 and it is also admitted by the Board in his letter No. 1677 dated 14.10.2010 and allowed the remission to the instant consumer for April 2006 and accordingly adjustment in the energy bill has been given to the consumer, all the energy bills from April 2006 became erroneous being excess therefore the petitioner is not liable to make payment of DPS on non-payment of energy bill of July, 2010 and August, 2010 being erroneous. Thus charging of DPS amounting to Rs.1,11,794.38, included in the bill dated 14.10.2010 being the energy bill for Sept 2010 is unjustified and illegal and required to be withdrawn.*"

17. The Learned counsel for respondent No. 1 further submits that Clause 2.2 of the Bihar Electricity Supply Code, 2007 states that "*In case*

of any inconsistency between the code and Tariff order in force, the provisions and meanings contained in the Electricity Supply Code shall prevail."

18. The Learned counsel for respondent No. 1 lastly submits that the present Writ has no l*ocus standi* as the Board itself has accepted, vide Letter No. 1677 dated 14.10.10, that the remission was to be granted from April. 2006 and that the bills were to be revised accordingly. Therefore, any DPS charged based on the previous erroneous bills is not allowed, as held in multiple cases. Hence, the Writ petition is liable to be dismissed on this ground alone, affirming the order of the Consumer Grievance Redressal Forum dated 12.07.2012.

19. A counter affidavit has also been filed on behalf of respondent No. 2, i.e., the Bihar Electricity Regulatory Commission.

20. It is contended by respondent No. 2 in the counter affidavit that the Commission only makes regulations, including the terms and

conditions of Consumer Grievance Redressal Forum and the Commission is not an appellate authority over Consumer Grievance Redressal Forum and does not intervenes in its day-to-day functioning. Therefore, the present writ petition is not maintainable against respondent No. 2.

21. Heard learned counsel for the petitioners as well as the respondents and perused the record.

22. On perusal of the entire record, it appears that upon the representation made by respondent No. 1 for exemption of monthly minimum guaranteed charges in the light of Industrial Incentive Policy, 2006, to Electrical Executive Engineer, Samastipur which was forwarded to the Finance Controller (Revenue), Bihar State Electricity Board vide Letter No. 2423 dated 04.09.2010, the Finance Controller (Revenue) vide Letter No. 1677 dated 14.10.2010, informed the Electrical Superintending Engineer, Electric Supply Circle, Samastipur that "*it has been decided to implement the order of the*

Hon'ble Consumer Grievance Redressal Forum dated 18.08.2009 in Registered Case No. 68/2009 date 17.06.2009 and order dated 14.08.2009 in registered Case No. 70/2009 dated 09.10.2009 in the subject mentioned above. It has been decided in this Case also that if the computed amount of both i.e. actual energy consumption charge and the actual maximum demand charge comes lesser than the fixed monthly minimum charge of Rs. 1220.- KVA/Month, then this difference as excess charge is to exempted under IIP, 2006. The remission is permissible from April, 2006 which may be calculated and adjusted in the monthly energy bills of this consumer. Month wise statement of adjustment as given also by submitted to the undersigned."

23. However, after the aforesaid order, the bills were not revised by the petitioners, though a sum of Rs. 1,11,794.38 was levied as delayed payment surcharge and imposed on respondent No. 1 by the petitioner. Respondent No. 1, moved before the Consumer Grievance

Redressal Forum for quashing the said amount. The Consumer Grievance Redressal Forum in its order dated 12.07.2012, held that in light of several judgements passed by the this Court and orders of the Forum. "*It is evident that Board is not legally entitled to charge DPS over wrong or erroneous bill. In the instant case we also find that the petitioner was entitled for exemption in MMG/MMC charged under the provisions of Industrial Incentive Policy, 2006 and it is also admitted by the Board in his letter No. 1677 dated 14.10.2010 and allowed the remission to the instant consumer for April 2006 and accordingly adjustment in the energy bill has been given to the consumer, all the energy bills from April 2006 became erroneous being excess therefore the petitioner is not liable to make payment of DPS on non-payment of energy bill of July, 2010 and August, 2010 being erroneous. Thus charging of DPS amounting to Rs.1,11,794.38, included in the bill dated 14.10.2010 being the energy bill for Sept 2010 is unjustified and illegal and required to be* *withdrawn. Thus in the light of the above observaton the respondent ESE/Samastipur is directed to cancel the DPS charge Rs. 1,11,794.38 from the bill No. 555 dated 14.10.2010 as being held illegal and unjustified and excess payment, if any, be refunded/adjusted in the next energy bill of the consumer.*

24. From the facts and circumstances stated above and after perusal of the decision communicated by the Financial Controller (Revenue) vide Annexure R/1 to the supplementary counter affidavit as well as the order passed by the Consumer Grievance Redressal Forum, this Court is of the considered view that there are no merits in the case of the petitioners. This Court does not find any error in the order dated 12.07.2012 passed by the Consumer Grievance Redressal Forum. Therefore, the order of Consumer Grievance Redressal Forum dated 12.07.2012 is hereby confirmed.

25. Accordingly, the writ petition is dismissed as devoid of merits.

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

(G. Anupama Chakravarthy, J)

Spd/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.02.2025
Transmission Date	