

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12829 of 2024

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1. The South Bihar Power Distribution Company Limited Vidyut Bhawan, Nehru Path (Bailey Road), Patna-800001. represented through Assistant Electrical Engineer, Electric Supply Sub-Division, Bankipur PESU (West), Patna.
 2. The Assessing Officer cum Assistant Electrical Engineer, Electric Supply Sub-Division-Bankipur, PESU (West), Patna. represented through Assistant Electrical Engineer, Electric Supply Sub-Division, Bankipur PESU (West), Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary, Energy Department, Govt. of Bihar at Patna.
2. Additional District Collector cum Appellate Authority, Hindi Bhawan, Chhajubagh, Patna-800001.
3. Suraj Kumar, Son of Late D. Prasad, Proprietor of Hotel Regency, Mohalla-Samadar Path, Park Road, Kadamkuan, Patna-800003.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Prakash Kumar, Adv.

For the Respondent/s : Mr. Government Advocate (9)

CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL JUDGMENT

Date : 30-01-2025

Heard the learned counsel for the parties.

The present writ petition has been filed for the following

relief(s):-

“I. For issuance of writ in the nature of the writ of certiorari for quashing the order dated 27.06.2024 passed by the Additional Collector-cum-Appellate Authority (Respondent No. 2) in Electricity Appeal case no. 02/2024-25 and sent through the letter no. 4069 dated 29.06.2024 to the Assessing Officer-petitioner no. 2 whereby and whereunder the Learned respondent no. 2 has set aside the final assessment order dated 29.12.2021 passed by the petitioner no. 2-Assessing Officer-cum-Assistant Electrical Engineer in a case of power theft committed by the respondent no. 3 on wrong premise that there is violation of rules in determination of final assessment order.



II. For direction to the respondent no. 3 to deposit the balance amount of Rs. 1,80,083/- as a balance outstanding punitive charge arising out of power theft committed by the respondent no. 3 under Section 135 of the Electricity Act, 2003 which is pending in the Special Court of PESU, Civil Court Patna Sadar, Patna.

III. For any other relief/reliefs for which the petitioner is legally entitled.”

3. The present writ petition is filed by the Department assailing the order passed by the Appellate Authority in Electric Appeal No. 02 of 2024 dated 27.06.2024.

4. Learned counsel appearing on behalf of the petitioners has stated that the Appellate Authority without giving any reasons has passed the impugned order in a mechanical manner. It is further stated that the respondent No. 03 was provided an electric connection bearing No. 5B-5773329 with the load of 10 KW. That on inspection of the premises, it was found that the respondent No. 3 was using a busbar to bypass the electricity meter. The authorities having found that there is theft of electricity by the respondent No. 3 have initiated necessary proceedings and saddled the respondent No. 3 with provisional assessment of Rs. 5,93,780/-. That after the provisional assessment was made, the respondent No. 03 has filed his objections and duly taking into consideration the objections filed by the respondent No. 03, the authority had issued the final assessment order by reducing the original amount from Rs. 5,93,780/- to Rs. 3,60,166/-. That in case



the respondent No. 03 had any grievance he ought to have approached the Special Court under Sections 153 and 154(5) of the Act but instead of doing so, the respondent No. 03 had approached the Collector-cum-Appellate Authority under Section 127. That the Appellate Authority without giving any reasons has allowed the appeal filed by the respondent No. 03 contrary to the provisions of the Act. Learned counsel has therefore, prayed this Hon'ble Court to set aside the impugned order and allow the present writ petition.

5. *Per contra*, the wife of the respondent No. 03 has appeared in person and vehemently opposed the prayer sought in the present writ petition. The party in person has argued that without there being any evidence, the authorities with a view to harass the respondent No. 03 have inspected the subject premises and concocted the story of theft of electricity. That the Appellate Authority having found that the petitioners did not have any material to support the charges of theft as alleged has rightly allowed the appeal filed by the respondent No. 03. Though the party in person has argued at length with regard to the harassment meted out by the Department and how one of her brother-in-laws had died due to harassment meted by the Department and how her husband sustained huge financial losses and is unable to run the hotel in a proper manner, this Court is not inclined to go into all



those issues as they are not germane for deciding the present C.W.J.C. The only question before this Court is as to whether the order passed by the Collector-cum-Appellate Authority is legally sustainable or not. In order to appreciate the issue involved in the present writ petition, it is necessary to extract the provisions of the Electricity Act, 2003 more particularly, Sections 126, 127, 135, 153.

“Section126: (Assessment): --- (1)

If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorized use of electricity, he shall provisionally assess to the best of his judgement the electricity charges payable by such person or by any other person benefited by such use.

(2) The order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such manner as may be prescribed.

(3) The person, on whom an order has been served under sub- section (2) shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who shall, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment within thirty days from the date of service of such order of provisional assessment of the electricity charges payable by such person.]

(4) Any person served with the order of provisional assessment, may, accept such assessment and deposit the assessed amount with the licensee within seven days of



service of such provisional assessment order upon him: 2[***] 3[

(5) If the assessing officer reaches to the conclusion that unauthorised use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorized use of electricity has taken place and if, however, the period during which such unauthorised use of electricity has taken place cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection.]

(6) The assessment under this section shall be made at a rate equal to 1[twice] the tariff rates applicable for the relevant category of services specified in sub-section (5).

Explanation.- For the purposes of this section,-

(a) “assessing officer” means an officer of a State Government or Board or licensee, as the case may be, designated as such by the State Government;

(b) “unauthorised use of electricity” means the usage of electricity –

(i) by any artificial means; or

(ii) by a means not authorised by the concerned person or authority or licensee; or

(iii) through a tampered meter; or 2[(iv) for the purpose other than for which the usage of electricity was authorised; or

(v) for the premises or areas other than those for which the supply of electricity was authorized.”]

Section 127. (*Appeal to Appellate Authority*): --- (1) Any person aggrieved by the final order made under section 126 may, within thirty 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.

(2) No appeal against an order of assessment under sub-section (1) shall be



entertained unless an amount equal to 3[half of the assessed 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.

(3) The appellate authority referred to in sub-section (1) shall dispose of the appeal after hearing the parties and pass appropriate order and send copy of the order to the assessing officer and the appellant.

(4) The order of the appellate authority referred to in sub-section (1) passed under sub-section (3) shall be final.

(5) No appeal shall lie to the appellate authority referred to in sub-section (1) against the final order made with the consent of the parties.

(6) When a person defaults in making payment of assessed amount, he, in addition to the assessed amount shall be liable to pay, on the expiry of thirty days from the date of order of assessment, an amount of interest at the rate of sixteen per cent, per annum compounded every six months.

Section 135. (Theft of Electricity):

--- 1[(1) Whoever, dishonestly, --

(a) taps, makes or causes to be made any connection with overhead, underground or under water lines or cables, or service wires, or service facilities of a licensee or supplier as the case may be; or

(b) tampers a meter, installs or uses a tampered meter, current reversing transformer, loop connection or any other device or method which interferes with accurate or proper registration, calibration or metering of electric current or otherwise results in a manner whereby electricity is stolen or wasted; or

(c) damages or destroys an electric meter, apparatus, equipment, or wire or causes or allows any of them to be so damaged or destroyed as to interfere with the proper or accurate metering of electricity,



(d) uses electricity through a tampered meter; or

(e) uses electricity for the purpose other than for which the usage of electricity was authorised, so as to abstract or consume or use electricity shall be punishable with imprisonment for a term which may extend to three years or with fine or with both:

Provided that in a case where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use -

(i) does not exceed 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction the fine imposed shall not be less than six times the financial gain on account of such theft of electricity;

(ii) exceeds 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction, the sentence shall be imprisonment for a term not less than six months, but which may extend to five years and with fine not less than six times the financial gain on account of such theft of electricity:

Provided further that in the event of second and subsequent conviction of a person where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use exceeds 10 kilowatt, such person shall also be debarred from getting any supply of electricity for a period which shall not be less than three months but may extend to two years and shall also be debarred from getting supply of electricity for that period from any other source or generating station:

Provided also that if it is proved that any artificial means or means not authorized by the Board or licensee or supplier;



as the case may be, exist for the abstraction, consumption or use of electricity by the consumer, it shall be presumed, until the contrary is proved, that any abstraction, consumption or use of electricity has been dishonestly caused by such consumer.

(1-A) Without prejudice to the provisions of this Act, the licensee or supplier, as the case may be, may, upon detection of such theft of electricity, immediately disconnect the supply of electricity:

Provided that only such officer of the licensee or supplier, as authorized for the purpose by the Appropriate Commission or any other officer of the licensee or supplier, as the case may be, of the rank higher than the rank so authorised shall disconnect the supply line of electricity:

Provided further that such officer of the licensee or supplier, as the case may be, shall lodge a complaint in writing relating to the commission of such offence in police station having jurisdiction within twenty four hours from the time of such disconnection:

Provided also that the licensee or supplier, as the case may be, on deposit or payment of the assessed amount or electricity charges in accordance with the provisions of this Act, shall, without prejudice to the obligation to lodge the complaint as referred to in the second proviso to this clause, restore the supply line of electricity within forty-eight hours of such deposit or payment.]

(2) [Any officer of the licensee or supplier as the case may be,] authorized in this behalf by the State Government may -

(a) enter, inspect, break open and search any place or premises in which he has reason to believe that electricity 2[has been or is being,] used unauthorisedly;

(b) search, seize and remove all such devices, instruments, wires and any other facilitator or article which has been, or is being, used for unauthorized use of electricity;



(c) examine or seize any books of account or documents which in his opinion shall be useful for or relevant to, any proceedings in respect of the offence under sub-section (1) and allow the person from whose custody such books of account or documents are seized to make copies thereof or take extracts therefrom in his presence.

(3) The occupant of the place of search or any person on his behalf shall remain present during the search and a list of all things seized in the course of such search shall be prepared and delivered to such occupant or person who shall sign the list:

Provided that no inspection, search and seizure of any domestic places or domestic premises shall be carried out between sunset and sunrise except in the presence of an adult male member occupying such premises.

(4) The provisions of the Code of Criminal Procedure, 1973, relating to search and seizure shall apply, as far as may be, to searches and seizure under this Act.

Section 153. (Constitution of Special Courts): --- *(1) The State Government may, for the purposes of providing speedy trial of offences referred to in 1[sections 135 to 140 and section 150], by notification in the Official Gazette, constitute as many Special Courts as may be necessary for such area or areas, as may be specified in the notification.*

(2) A Special Court shall consist of a single Judge who shall be appointed by the State Government with the concurrence of the High Court.

(3) A person shall not be qualified for appointment as a Judge of a Special Court unless he was, immediately before such appointment, an Additional District and Sessions Judge.

(4) Where the office of the Judge of a Special Court is vacant, or such Judge is absent from the ordinary place of sitting of such Special Court, or he is incapacitated by illness or otherwise for the performance of his



duties, any urgent business in the Special Court shall be disposed of –

(a) by a Judge, if any, exercising jurisdiction in the Special Court;

(b) where there is no such other Judge available, in accordance with the direction of District and Sessions Judge having jurisdiction over the ordinary place of sitting of Special Court, as notified under sub- section (1). ”

6. A bare perusal of the above provisions reveal that under Section 126 of the Act, the authorities are bound to first issue a provisional notice assessing the loss sustained by the Department. On such issuance of the provisional assessment order, the consumer/ complainant can file his objections against the provisional assessment and after due verification of the complaint, the authorities are bound to issue a final assessment order. Thereafter, if the consumer/ complainant is aggrieved by the final assessment order, he is entitled to file an appeal before the Competent Authority.

7. In this particular case, the respondent No. 03 has preferred an appeal before the District Magistrate under Section 127, who vide order dated 27.06.2024 has allowed the appeal.

8. A perusal of the order passed by the authority reveals that the authority while passing the order has given a finding that the final assessment order passed by the authority was in violation of the rules and the same was set aside and directed the authorities to restore the power connection. However, it is to be noted that by



the time the appellate authority order dated 27.06.2024 has passed, the authorities had already restored the power supply pursuant to the orders passed by this Court in CWJC No. 17098 of 2022 dated 10.10.2023. This Court in the above CWJC had directed the respondent No. 3 to deposit 50% of the final assessment order i.e. Rs. 1,80,083/-. The party in person has vehemently argued that the authorities may be directed to refund the amount of Rs. 1,80,083/- paid by the respondent No. 3 pursuant to the order of this Court in CWJC No. 17098 of 2022. A perusal of the order passed by the Appellate Authority reveals that the same suffers from lack of any reasoning, the authority has simply stated that there is no evidence of any power theft and has not given any other reason for allowing the said appeal. Under normal circumstances, this Court could had set aside the order impugned and remanded the matter back to the authority for fresh consideration. However, it is to be noted that the alleged theft pertains to the year 2021 and there will not be any substantial evidence available at the site as on date in respect of the said violation, and no useful purpose would be achieved by remanding the matter back to the authority concerned for passing orders afresh. Therefore, this Court is of the opinion that the ends of justice would be met if a quiten is given to the entire litigation, the order passed by the Appellate Authority is modified to the



extent that the amount paid by the petitioners to the tune of Rs. 1,80,083/- be adjusted towards the future bills, if not already adjusted. As it is stated that the electricity connection to the petitioners has already been restored by way of smart meters, the same shall continue. That insofar as the argument of the petitioner that the respondent No. 3 ought to have filed the appeal under Section 153 of the Act and not under Section 127 of the Act is concerned, it is to be noted that the respondent No. 3 was served with the provisional assessment order and final assessment order under Section 126 of the Act. That insofar as the prayer sought for by the respondent No. 3 to compensate him for the loss sustained due the harassment meted out by the petitioner-authorities is concerned, the same cannot be adjudicated by this Court and is rejected however, granting liberty to the respondent No. 3 to approach the Civil Court, if they are so advised.

9. With the above direction, the present writ petition stands disposed of.

(A. Abhishek Reddy, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.05.2025.
Transmission Date	NA

