

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.334 of 2023

Lakho Devi Wife of Mangal Chand Prasad alias Mangal Chand Resident of Village-Pachahati, P.S.-Bodh Gaya, District-Gaya.

... .. Petitioner/s

Versus

1. The Bihar State Power (Holding) Company through its Chairman-Cum-Managing Director, Vidyut Bhawan, Bailey Road, Patna (Erstwhile Bihar State Electricity Board, Patna through its Chairman)
2. The Chairman-Cum-Managing Director, Bihar State Power (Holding) Company Ltd., Vidyut Bhawan, Bailey Road, Patna.
3. General Manager-Cum-Chief Engineer, Central Electric Supply Area-8, Serpentine Road, Patna, District-Patna.
4. Chief Engineer (Commercial), Bihar State Power (Holding) Company Ltd., having its Office at Vidyut Bhawan, Bailey Road, Patna.
5. Assistant Electrical Engineer, Electric Supply Division, Gaya (R).
6. Junior Electrical Engineer, Electric Supply Division, Gaya.
7. Junior Electrical Engineer, Electric Supply Division, Belganj,
8. Executive Electrical Engineer, Electric Supply Sub-Division, Gaya (R), Bodh-Gaya.
9. Assistant Electrical Engineer, Electric Supply Sub-Division, Bodh-Gaya.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 13116 of 2024

The South Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna represented through its Managing Director, South Bihar Power Distribution Company Ltd. Vidyut Bhawan Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through The District Magistrate, Gaya.
2. The Additional District Magistrate-cum-Appellate Authority, Gaya.
3. Lakho Devi wife of Mangal Chand Prasad Resident of village- Pachahati, P.S. Bodh Gaya, District- Gaya.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 334 of 2023)

For the Petitioner/s : Mr.Ashok Kumar

For the Respondent/s : Mr.Vinay Kirti Singh

(In Civil Writ Jurisdiction Case No. 13116 of 2024)

For the Petitioner/s : Mr.Dr. Anand Kumar

For the Respondent/s : Mr.Government Pleader (2)

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

Date : 10-04-2025

Heard the learned counsel for the parties.



The CWJC No. 334 of 2023 has been filed for the following relief(s):-

“1. For issuance of writ in the nature of mandamus for giving a direction to make compliance of order dated 06/12/2019 passed by Additional collector cum Appellate Tribunal, Bihar in appeal case no. 01/2014-15 State Power Holding Company Ltd. / Bihar State Electricity Transmission Division Gaya. II. For giving a direction not to issue any further energy bill till compliance of the order and direction passed by the appellate authority dated 06.12.2019 in appeal no. 01/2014-15.

III. For giving a direction to revise all the previous bill issued. by the respondent authority which has been issued without making compliance of order and direction passed by the appellate authority in appeal case no. 01/2014-15.

IV. Any other relief/ reliefs which this Hon'ble Court may deemed fit and proper.”

The CWJC No. 13116 of 2024 has been filed for the following relief(s):-

“i) For issuance of a Writ order or direction in the nature of Certiorari for quashing of the Order dated 06.12.2019 passed by the Additional District Magistrate- Cum- Appellate Authority, Gaya, disposing the Appeal No. 01/2014-15 of the petitioner filed against the Final Assessment Order by directing the authorities of the Bihar State Power (Holding) Company Limited to re inspect the premises of the petitioner under her or any representative and any action to recover outstanding electricity bills are to be done after re assessment of the petitioner premises.

ii) To hold and adjudicate that the order dated 06.12.2029 has been passed in contravention to the provisions of the Electricity Act, 2003 and the Bihar Electricity Supply Code, 2007.

iii) And for any other relief or reliefs to which the petitioners may be found entitled in the facts and circumstances of the case.”



3. Both the writ petitions are disposed of by common judgment as they pertain to the same set of facts.

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4. The present writ petition has been filed by the petitioner herein seeking compliance of the order dated 06.12.2019 passed by the Additional collector cum Appellate Tribunal in appeal case No. 01 of 2014-15.

5. It is the case of the petitioner that pursuant to the inspection which has taken place by the authority, a provisional assessment dated 31.12.2012 was passed against the petitioner. The petitioner was assessed provisionally for an amount of Rs. 3,26,082/-. Though the petitioner has filed the CWJC challenging the same, the same was disposed of directing the petitioner to pay the 50% of the provisional assessment and directed the authorities to pass final assessment order. Though a direction was given to pass the final assessment orders within two months, the same was not done. Thereafter, the petitioner has filed another appeal, which was disposed of on 16.12.2019 directing the authorities to re-inspect the premises and make fresh assessment in presence of the petitioner. However, till date the same has not been done. In the counter-affidavit filed by the respondents except stating that the order of the appellate authority is not in consonance with the



provisions of the Act no other ground has been taken. Admittedly the order dated 06.12.2019 passed by the statutory appellate authority has become final. The CWJC No. 13116 of 2024 came to be filed by the Respondent/ Power Distribution Company in the Month of August, 2024 only when it was pointed out by the Court that the order of the appellate authority has become final and, therefore, the respondent authority has to necessarily implement the same and cannot take the ground that the order is illegal.

6. In order to appreciate and resolve the issue in the present writ petition, it is necessary to extract the relevant portions of the Electricity Act, 2003 more particularly, Sections 126 & 127 which reads as under;

“Section 126: (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.”

7. Admittedly in this particular case, the provisional assessment order was passed on 31.12.2012 levying the provisional amount of Rs. 3,26,082/- on the petitioner. That as per the provisions of the Act, the authorities have to pass the final assessment order, after the objections are filed by the consumer. In this particular case, the petitioner has filed her objections but the



final assessment order was not passed initially. The final assessment order dated 25.03.2013 was produced before the Court in the MJC filed by the petitioner and this Court while disposing the MJC had granted liberty to the petitioner to file the statutory appeal. In the appeal filed by the petitioner, the appellate authority in its wisdom has set aside both the final assessment order and provisional assessment order and directed the authorities to re-inspect and make a fresh assessment in the presence of the petitioner. Though this order was passed on 06.12.2019, the authorities for reasons best known to them have not kept quite and not inspected the premises. The only argument i.e. made across the bar by the learned counsel appearing on behalf of the respondent herein is that due to lapse of time, no useful purpose would be served if any re-assessment is done as no evidence would be there at the site.

8. Learned counsel has stated that the original tampering/ theft took place in the Month of December, 2012 and the order of the appellate authority was passed in the year 2019 and in the interregnum the appliances which were originally there on site could have been changed or replaced by the petitioner and, therefore, there cannot be any proper assessment. Irrespective of the fact whether any evidence is there or not, the authorities were



obligated to inspect the premises as per the orders of the appellate authority dated 06.12.2019, the efflux of time cannot be a ground for not implementing the said order. Further, it is to be noted that the authorities did not challenge the order passed by the appellate authority till recently when they have woken up from their slumber and filed CWJC No. 13116 of 2024 in the Month of August, 2024. This Court is of the opinion that the authorities cannot take advantage of their own wrong doing and harass the petitioner. Once the order of final assessment and provisional assessment are set aside, they cannot demand the petitioner to pay the originally assessed amount.

9. Having regard to the above mentioned facts and circumstances, the present writ petition stands allowed. The authorities are directed to take necessary steps for either inspecting the premises of the petitioner and pass fresh assessment order as per the directions of the appellate authority dated 06.12.2019 in the presence of the petitioner or drop the entire proceedings. In case the authorities drop the entire proceedings, they are obligated to either return the 50% amount deposited by the petitioner or adjust the same in future bills.

10. With the above direction, the present writ petition stands allowed to the extent indicated.



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11. That insofar as the present writ petition is concerned, it is to be noted that the appellate authority has passed the order on 06.12.2019 and though the respondents were aware of the same, they have for reasons best known to them kept quite for a period of more than five years before filing the present writ petition.

12. A perusal of the grounds in the CWJC does not reveal that the authorities have explained the delay in filing the present writ petition. The authorities only to get over the queries raised by this Court in CWJC No. 334 of 2023 have filed the present writ petition after the delay of more than five years. There is absolutely no explanation forthcoming from the authorities as to why they have taken so much time for filing the present writ petition against the order passed on 06.12.2019.

13. A Full Bench of the High Court of Andhra Pradesh in the case of *P.V. Narayan v. APSRTC, Hyderabad*, has held as under:

“71. On the basis of the decisions of the Supreme Court referred to above, the relevant considerations that may be taken into account in determining the issue of delay and laches may be summarized thus:

“(1) Though no period of limitation is prescribed for the writ Courts to exercise their powers under Article 226 of the Constitution of India or to file



a writ petition, a person aggrieved should approach the Court without loss of time. In appropriate cases, where there is delay and the same has properly been explained with cogent reasons, Court may condone the delay as an exception to meet the ends of justice. But, it would be a sound and wise exercise of discretion for the courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters. (2) Courts have evolved rules of selfimposed restraints or fetters where the High Court may not enquire into belated or stale claim and deny relief to a party if he is found guilty of laches. One who is tardy, not vigilant and does not seek intervention of the Court within a reasonable time from the date of accrual of cause of action or alleged violation of the constitutional, legal or other right, is not entitled to relief under Article 226.

(3)

(4)

(5)

(6) The principle on which the Court refuses relief on the ground of laches or delay is that the rights accrued to others by the delay in filing the petition should not be disturbed, unless there is a reasonable explanation for the delay, because Court should not harm innocent parties if their rights had emerged by the delay on the part of the petitioners.

(7) Where there is remiss or negligence on the part of a party approaching the Court for relief after an inordinate and unexplained delay, in such cases, it would not be proper to enforce the fundamental right. As a general rule if there has been unreasonable delay the Court ought not ordinarily to lend its aid to a party in exercise of the extraordinary power of mandamus.

(8) There is no waiver of fundamental right. But while exercising discretionary jurisdiction Court can take into account delay and laches on the part of the applicant in approaching a writ Court.

(9)

(10)



(11) If a person entitled to a relief chooses to remain silent for long, he thereby gives rise to a reasonable belief in the mind of others that he is not interested in claiming that relief. Courts have applied the rule of delay with greater rigor in service matters.

(12) The benefit of a judgment cannot be extended to a case automatically. The Court is entitled to take into consideration the fact as to whether the petitioner had chosen to sit over the matter and wake up after the decision of the Court. If it is found that the petitioner approached the Court with unreasonable delay, the same may disentitle him to obtain a discretionary relief. Long Delay disentitles a party to the discretionary relief under Articles 32 and 226 and persons who had slept over their rights for long and elected to wake up then they had the impetus from the judgment of similarly placed persons.

(13) Where during the intervening period rights of third parties have crystallized, it would be inequitable to disturb those rights at the instance of a person who has approached the court after long lapse of time and where there is no cogent explanation for the delay.

(14).....”

14. Having regard to the same, the present writ petition stands dismissed on the grounds of laches and delay.

(A. Abhishek Reddy, J)

Ayush/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.05.2025.
Transmission Date	NA

