

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12741 of 2015

1. The South Bihar Power Distribution Company Ltd. and Ors null Vidyut Bhawan, Bailey Road, Patna- 800001
2. Chief Engineer (Com), South Bihar Power Distribution Company Ltd. Vidyut Bhawan, Bailey Road, Patna- 800001
3. The Electrical Superintending Engineer, Patna Electric Supply under taking East, Shivalaya Market,
4. Electrical Executive Engineer, Electric Supply Division, Kankarbagh, PESU East, Patna

... ... Petitioner/s

Versus

1. The State Of Bihar New Secretariat, P.S.- Sachivalaya, District/Town- Patna
2. M/s Aastha Lok Hospital, 10/4, Doctor's Colony, Kankarbagh, P.S.- Patrakar Nagar, Patna- 800020 represented through its Managing Director namely Dr. Mahesh Prasad, S/O Jagdish Prasad resident of C/104, Vrindawan Apartment, Malahipakri Kankarbagh, Patna- 20
3. Bihar Electricity Regulatory Commission through Secretary, Vidyut Bhawan- II, Bailey Road, Patna

... ... Respondent/s

Appearance :

For the Petitioner/s : Mr. Prakash Kumar, Advocate
For the State : Mr. Ashok Kumar Pathak, Advocate
For the Respondent No.2: Mr. Suraj Samdarshi, Advocate
For the Respondent No.3: M/s Rajani Kant Mishra,
L.L.Pandey, Advocate

CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY
ORAL JUDGMENT
Date : 05-05-2025

1. The Writ petition has been filed for quashing the order dated 08.05.2014 (Annexure-1) passed by the Consumer Grievance Redressal Forum, Patna in Registered Case No. 01 of 2014 (M/s Aastha Lok Hospital Vs. The South Bihar Power Distribution Co. Ltd. & Ors) whereby and whereunder the Consumer Grievance Redressal



Forum has exercised its jurisdiction not vested in law and vide impugned order has directed the petitioners to revise the punitive energy bill which has been legally prepared in terms of Section 126(3) of the Electricity Act, 2003 read with Annexure-7 of the Bihar Electricity Supply Code 2007, and further for a declaration that the final assessment order (Annexure-8 to the present writ petition) has been passed in terms of statutory provisions as provided under Section 126(3) of the Electricity Act, 2003 and to grant any other relief / reliefs for which the petitioners are found entitled in law.

2. The brief facts culled out from the petition are that the petitioners are Power Distribution Company engaged in selling electricity as a licensee. Respondent No. 2 is a consumer of the petitioner with sanctioned load of 6 KW under NDS-II tariff. The respondent No. 2 applied on 29.10.2012 for enhancement of load from 6 KW (NDS-II tariff) to 100 KVA (HTS-I tariff). It is submitted by the petitioners that on 16.01.2013



vide Letter No. 107a, provisional sanction of load of 100 KVA with extension from existing 6 KW load in the name of petitioner representative Dr. Mahesh Prasad was allowed with stipulated terms and condition mention therein. It is submitted that one of the terms and condition of the provisional sanctioned letter was that the respondent No. 2 was required to take written permission from Electrical Inspector, Government of Bihar, Department of Energy, Patna for energisation of the transformer to avail the sanctioned load. It is further submitted by the petitioner that the load was required to be connected only after the system is inspected and is found leakage proof and the respondent was required to complete all the formalities, as mentioned in the terms and condition of provisional enhancement of load within 30 days of the issue of the said letter. It is further submitted that on 29.04.2013, it was informed by the respondent No. 2 that the installed meter was burnt upon which on 30.04.2013 power was restored through by-passing the meter by the



authorities of the licensee under Clause 8.19(1)(ii) of the Bihar Electricity Supply Code, 2007.

3. It is contended by the petitioner that respondent No. 2 initially deposited a security of Rs. 2,70,000/- for enhanced load of 100 KVA vide letter No. 107 dated 16.01.2013 but other terms and conditions of the said letter dated 16.01.2013 were not complied with particularly the condition No. 7 read with Clause No. 7.11 (4)(b) of the supply code, 2007. It is further submitted that, however, on agreement dated 16.05.2013 under HT Agreement Form was executed by the respondent and the appellant for which the date of commencement of supply was agreed to be effective from 28.06.2013 in anticipation that respondent would comply the terms and condition of letter dated 16.01.2013 (Annexure-3).

4. It is further contended by the petitioner that on 15.06.2013 a raid in a routine manner was conducted by the STF team at the premises of the respondent and found that the sanctioned load of the consumer was 6 KW



whereas during the course of raid the total connected load was found as 234 KW and it was reported in inspection report that the meter box seal No. 1027593-1027587 and one time locking system of the meter were found broken and the power was availed through, by-passing the meter, as meter was burnt and upon information to the licensee, power was restored through by-passing of meter and as such meter was found completely isolated from the circuit. It is further submitted that the Assistant Electrical Engineer, Kankarbagh stated to the raiding team that on 29.04.2013 the meter was burnt and line stood disconnected and therefore, line was restored through by-passing the meter on 30.04.2013. It is further contended that as per column No. 7 of the inspection report, the total connected load was found 234 KW, as such the premises was having excess load of 228 KW.

5. It is submitted by the petitioner that the power was being availed through by-passing of the meter, it was informed by the Assistant Electrical Engineer, Kankarbagh that the



respondent No. 2 already communicated regarding burning of energy meter on 29.04.2013 and the power was restored by means of by-passing the energy from installed burnt meter on 30.04.2013 itself, and that being the reason no case of power theft was registered against the respondent. However, the connected load being more than the sanctioned load, it was a case of unauthorized use of electricity to warrant assessment in the case under Section 126 of the Electricity Act, 2003. It is further submitted by the petitioner that in view of the aforesaid, a provisional assessment was made vide Letter No. 912 dated 20.06.2013 (Annexure-6) inviting objections from the respondent within 7 days of its receipt and that a tentative punitive bill for sum of Rs. 22,12,094/- and another bill for additional security deposit for sum of Rs.3,42,000/- was issued to the respondent No. 2. The respondent No. 2 made objections to the provisional assessment order on 27.03.2013 which was received in the office of the petitioner on the same day, as such the Assessing Officer vide letter



No. 964 dated 01.07.2013 informed to the respondent about the date of hearing on 04.07.2013 on the provisional assessment order so that final order could be passed and the letter was received by one Nishant, at site on behalf of respondent No. 2 on 01.07.2013 itself.

6. It is contended by the petitioner that in spite of the receipt of the notice to participate in the final hearing, respondent No. 2 failed to appear as such the final assessment order was passed on the basis of available documents.

7. It is further contended that respondent No. 2 challenged the final assessment order dated 08.07.2013 by filing CWJC NO. 15820 of 2013 which was disposed of vide order dated 24.09.2013 with a direction to hear the respondent on the objection and a reasoned and speaking order as per Section 126(3) of the Electricity Act and that the respondent was given direction to pay current energy charge. Upon that, the respondent No. 2 filed objection on 22.11.2013 before the Assessing Officer and the matter was



heard and the final assessment order dated 19.12.2013 was passed by the Assessing Officer - cum - Electrical Executive Engineer.

8. The Learned counsel for the petitioner submitted that the respondent No. 2 instead of challenging the final assessment order dated 19.12.2013 before the Appellate Authority under Section 127 of the Electricity Act, challenged the same before the Consumer Grievance Redressal Forum, Patna. It is further submitted by the Learned counsel for the petitioner that ignoring the remedies available under the provisions of law, the Consumer Grievance Redressal Forum vide impugned order dated 08.05.2014 exercised its jurisdiction not vested to it under the law and directed the petitioner to revise the punitive energy bill which was legally prepared in terms of Section 126(3) of the Electricity Act, 2003.

9. A counter affidavit was filed by respondent No. 2. Respondent No. 2 has averred in the counter affidavit that the issue raised by the



petitioner is as to whether the CGRF has jurisdiction to entertain an application if the licensee has applied Section 126 of the Electricity Act, i.e. levy of charges against unauthorized use of electricity. Secondly, whether Clause 7.8(v) of the Bihar Electricity Supply Code, 2007 gives a consumer the authority to use enhanced load under changed category, without permission of the licensee and in absence of grant of such permission, whether the use can be termed as unauthorized use of electricity.

10. The Learned counsel for respondent No. 2 submitted that the aforesaid facts are not in dispute and the issue raised by the petitioner is no more *res integra*, as this Hon'ble Court in the case of **Krishna Govind Agrawal Vs. Bihar State Electricity Board, since reported in 2014(1) PLJR 284**, (Annexure-R2/A) without even referring to Clause 7.8(v) of the Supply Code, has held that once a consumer discloses that it intends to enhance the load then inspecting the premise and raising penal charges cannot be



justified.

11. The Learned counsel for the petitioner further brought on record a judgment of this Hon'ble Court passed in similar set of situation in the case of **Kamla Rani Arora Vs. Bihar State Power (Holding) Company Limited and others in C.W.J.C. No. 14537 of 2015** vide order dated 18.12.2023 quashed the action of the licensee which was initiated under Section 126 of the Act, relying upon Clause 7.8(v) of the Supply Code.

12. It is further submitted that the purpose of inspection pursuant to an application for enhancement of load or change of category, is to ascertain as to whether any alteration or modification is required or the change is permissible or not. Such inspection after an application for change of category or enhancement of load must not lead to an allegation of unauthorized use of electricity under Section 126 of the Act, and for such reason protection has been granted under the Supply Code and hence for the reasons stated above, the writ application is devoid



of any merit and fit to be dismissed.

13. A counter affidavit has also been filed on behalf of respondent No. 3, i.e., the Bihar Electricity Regulatory Commission. It is contended by respondent No. 3 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. 3.

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

15. It is an admitted fact that the respondent No. 2 had applied for change of category from 6KW (NDS-II tariff) to 100 KVA (HTS-I tariff) and the petitioner No. 3, The Electrical Superintending Engineer, Patna Electrical Supply Undertaking (East), Patna has provisionally



sanctioned the load of 100 KVA on 16.01.2013 for which the respondent No. 2 deposited a sum of Rs. 2,70,000/- as security on 02.05.2013 with petitioners and in lieu thereof an agreement was executed between the parties on 16th May, 2013. It shows from the aforesaid facts that change of category is legally permissible and allowed by the petitioners themselves.

16. Further, the Learned counsel for the respondent Nos. 2 has relied on decision of this Court reported in **(2014) 1 PLJR 284** (Annexure-R2/A) in which it was held that, without even referring to Clause 7.8(v) of the Supply Code, once a consumer discloses that it intends to enhance the load then inspecting the premise and raising penal charges cannot be justified. Further, the Learned counsel for respondent No. 2, in support of the case, referred to a judgment passed by a co-ordinate Bench of this Court in **CWJC No. 14537 of 2015 (Kamla Rani Arora Vs. Bihar State Power (Holding) Company Limited)** (Annexure-R2/B) in which this Court has quashed



the action of the licensee which was initiated under Section 126 of the Act, relying uponj Clause 7.8(v) of the Supply Code.

17. Based on the facts and circumstances stated above, this Court is of the considered view that there is no merit in the case of the petitioners. The Court does not find any error in the order dated 08.05.2014 (Annexure-1) passed by the Consumer Grievance Redressal Forum, Patna. Therefore, the order of the Consumer Grievance Redressal Forum, dated 08.05.2014, is hereby confirmed.

18. Accordingly, the Writ petition is dismissed as devoid of merits.

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

(G. Anupama Chakravarthy, J)

Spd/-

| | |
|-------------------|------------|
| AFR/NAFR | NAFR |
| CAV DATE | NA |
| Uploading Date | 07.05.2025 |
| Transmission Date | |

