(2015) 02 PAT CK 0122

In the Patna High Court

Case No : CWJC No. 219 of 2014

Gangotri Electrocastings Ltd. APPELLANT

Vs

The Bihar State Electricity Board and Others RESPONDENT

Date of Decision : 26-02-2015

Acts Referred:
Electricity Act, 2003 — Section 126, 126(3)

Citation : (2015) 4 PLJR 9

Hon'ble Judges : Jyoti Saran, J.

Bench : Single Bench

Advocate : S.D. Sanjay and Gautam Kumar Kejriwal, for the Appellant; Vinay Kirti Singh, for the Respondent

Final Decision : Allowed

Judgement

Jyoti Saran, J.—Heard Mr. S.D. Sanjay, learned senior counsel appearing on behalf of the petitioner and Mr. Anand Kumar Ojha for the respondents. The petitioner has prayed for refund of an amount of Rs. 64,59,720/- which was realised pursuant to a provisional bill dated 12.6.2008 and since according to the petitioner the final assessment order passed by the authorities on 14.9.2011 was quashed by this Court in CWJC No. 1646 of 2012 and no order has been passed by the authority thereafter hence they are entitled to a refund.

2. In the nature of the order which this Court proposes to pass, it would not be necessary to go into the details of the matter. Briefly stated the matter in issue is that the petitioner had earlier come before this Court in CWJC No. 12563 of 2008 being aggrieved by a provisional bill issued by the respondent authorities on 14.5.2008 and which writ petition was disposed of on 11.1.2011. A bench of this Court taking note of the provisions underlying Section 126 of the Electricity Act, 2003 gave liberty to the petitioner to file his objection against the provisional assessment and which was to be disposed of in accordance with law. A copy of such order is placed at Annexure-17 to the writ petition. Pursuant to the liberty so granted a comprehensive statutory objection was filed by the petitioner and a

copy of which is placed at Annexure-19 to the writ petition. The objection was disposed of by the assessing authority on 14.9.2011 resulting in an order of final assessment and a copy of which is placed at Annexure-20. The petitioner being aggrieved again came before this Court in CWJC No. 1646 of 2012 and which again was disposed of by order dated 23.7.2012 when this Court noted that the final assessment order had been passed without taking note of the submissions made by the petitioner in his objection, a copy of which is placed at Annexure-19. The assessing authority was required to pass a fresh order within two months and which order not being passed within the period prescribed, that the present writ petition was filed on 12.12.2013 and during its pendency that a final assessment order was passed on 13.2.2014 by the assessing authority-cum-Electrical Executive Engineer which is even more brief than the earlier order of final assessment passed on 14.9.2011 which was quashed by this Court in CWJC No. 1646 of 2012.

3. In utter disgust I would observe that even when this Court in the earlier round of proceedings had clearly held that the final order of assessment passed on 14.9.2011 which was put to challenge in the writ proceedings was non-descriptive and had not taken into consideration the submissions made by the petitioner in his objection the assessing authority while passing the order on remand has again committed the same mistake in as much as the order of final assessment runs into less than a ''ten'' lines and nowhere discusses either the issues raised by the petitioner in his written objections or the reasons for rejecting the same. The order is perfunctory and has been passed only to complete the formalities. It is passed without cognizance to the direction of this Court and also ignores the statutory obligation so cast on the assessing authority-cum-the Electrical Executive Engineer. It is surprising to note that the Assessing Authority is neither conversant with the legal provision and the duty attached nor does he realise the implication of his order which borders on contempt. He is warned for his act and is advised to be more alert towards his statutory duty.

4. The final assessment order which has been passed with complete non-application of mind as well as in complete ignorance of the directions of this Court passed in CWJC No. 1646 of 2012 and in complete violation of the provision of Section 126(3) of the Act which mandates a passing of the final assessment order after giving reasonable opportunity of hearing to the aggrieved obviously cannot be upheld.

5. In result, the final assessment order dated 13.2.2014 placed at Annexure-C/1 series to the supplementary counter affidavit is quashed and set aside. The matter is remitted back to the assessing authority-cum-Electrical Executive Engineer, Electric Supply Division, Danapur for passing a fresh order in accordance with law and after giving an opportunity of hearing again to the petitioner and who shall be at liberty to raise all issues which has been raised in his written submissions.

6. It goes without saying that the petitioner would be at liberty to bring to the

notice of the assessing authority the judgments settled on the issue by this Court and the Supreme Court. The petitioner would appear before the assessing authority along with a copy of this order on or before 9.3.2015 and when he shall proceed to dispose of the matter within four weeks thereafter in the manner stipulated above. The writ petition is allowed.

