

(2022) 07 PAT CK 0095

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 11384 Of 2021

Shiv Mandir Nirman Samiti

APPELLANT

Vs

State Of Bihar ?

RESPONDENT

Date of Decision : 19-07-2022

Acts Referred:

Electricity Act, 2003 — Section 43(1), 50, 56(1)

Bihar Right To Public Grievance Redressal Act, 2015 — Section 2(a), 4, 7

Citation : (2022) 07 PAT CK 0095

Hon'ble Judges : Ashwani Kumar Singh, J;Dr. Anshuman, J

Bench : Division Bench

Advocate : Naresh Chandra Verma, Shiv Kumar, Vinay Kirti Singh, Vijay Kumar Verma, Akhileshwar Singh

Final Decision : Allowed

Judgement

1. The instant writ petition has been filed by the petitioner seeking quashing of the order dated 04.01.2020 passed by the respondent no.2, the District Magistrate, Patna cum Second Appellate Authority under the Bihar Right to Public Grievance Redressal Act, 2015 (for short "the Act of 2015") by which he has directed the respondent no.5 to disconnect the power supply to the petitioner.

2. The contention of the petitioner is that a temple was established prior to 1980 over plot No.1594 which was a Gair Majarua Aam Land and was renovated and managed by the petitioner Samiti. In order to facilitate the people of the locality to offer prayer in the temple, electricity connection was obtained after following all the due procedures of law. After obtaining the electricity connection, electrical bulbs and fans were installed in the temple so that there may not be any discomfort to the people who used to visit the temple for "Darshan and Worship" and also for the purposes of security of devotees. The said temple was not been constructed upon any road. It does not create any hindrance in smooth running of the public traffic. One Prabhash Priyadarshi who is no longer alive was constantly creating disturbance in the management of the temple. He filed an

application before the Public Grievance Redressal Officer with a prayer to disconnect the electricity connection of the temple in question but the same was rejected, thereafter, he moved before the First Appellate Authority. The First Appellate Authority also rejected the appeal, thereafter, he filed appeal before the Second Appellate Authority who passed the impugned order dated 04.01.2020 without hearing any member of the petitioner-Samiti and directed the respondent no.5 to disconnect the power supply to the petitioner.

3. Learned counsel for the petitioner submitted that the Act of 2015 was brought to provide the right of public grievance redressal to the people of the State within the stipulated time limits. Under the aforesaid act the State Government is required to notify department wise schemes, programmes and services on which complaint can be filed and also the public authority and department on which level the complaint will be redressed. According to him the schemes, programmes and services for the energy department has been notified by the State Government and under those schemes the Public Grievance Redressal Officer or the Appellate Authority has not been authorized to entertain complaint regarding disconnection of power supply to any consumer. He submitted that under the circumstances the impugned order passed by the respondent no.2 in the present case is completely without jurisdiction.

4. A counter affidavit has been filed on behalf of the respondent nos.5 & 6 in the present matter wherein it has been stated that under Section 50 of the Electricity Act, the Bihar Electricity Regulatory Commission came with Electricity Supply Code in the year 2007 in which Chapter IV deals with new service connection. In the said Code Clauses 4 & 11 deal with new connection of Electricity supply and by the Second Amendment of Supply Code a new Clause-4.13(b) was added w.e.f. 29.03.2012 which prescribes that the person residing/occupying in the premises such as road side, panwala shops, jhuggi jhopri, slum shelter etc. on encroached Govt./ Semi Government/ Public Land and have taken a shape of settlement desires of taking a new electric connection and are unable to furnish proof of ownership of premises shall be allowed to take electric connection on submission of the application in prescribed format and other proof of occupancy etc. The Clause 4.14(b) of the Supply Code provides that no application for the new connection for an electrified area shall be refused under any circumstance if it complies with the statutory requirements and is in conformity with the Act.

5. Learned counsel appearing for the respondent nos.5 & 6 submitted that the part of the impugned order dated 04.01.2020 passed by the second Appellate Authority is against the provisions of Section 56 (1) of the Electricity Act, 2003 which provides that where any person neglects to pay any charge for electricity or any sum other than a charge for electricity dues from him to a licensee or the generating company in respect of supply, transmission or distribution or willing of electricity to him, the licensee or the generating company may, after giving not less than 15 days notice in writing, to such person and without prejudice to his right to recover such charge or other sum by suit, cut off the supply of electricity

and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which the electricity may have been supplied, transmitted, distributed or will and may discontinue the supply until such charge or other sum together with any expenses incurred by him in cutting off and reconnecting the supply, are paid. He contended that in the present case there was no occasion for disconnecting the power supply because the petitioner had not defaulted in payment of electricity charges. He further contended that the electricity connection was provided to the petitioner under Section 43(1) of the Electricity Act, 2003 read with Clause 4.13(b) of the Supply Code after verifying his application on 22.12.2018.

6. On the other hand learned counsel appearing for the State submitted that Schedule-1 of the Act of 2015 contains the schemes, programmes and services notified by the State Government on which complaint can be filed for redressal of public grievance. Schedule-1 confers power upon the Public Grievance Redressal Officer and the Appellate Authority to deal with a complaint relating to connection of electric supply that would include complaint regarding disconnection of electric supply also. He submitted that there is no illegality in the impugned order passed by the respondent no.2 as the temple was constructed on a Gair Majarua land and the same is not registered with the Bihar State Religious Trust Board.

7. We have heard learned counsel for the parties and carefully perused the record.

8. At the outset, we would like to record that this Court is not dealing with the issue relating to legality or illegality of construction of temple in question. In case any dispute regarding legality or illegality of construction of temple would arise the same would be decided on its own merit.

9. This Court is presently concerned with the only question as to whether the impugned order passed by the respondent no.2 whereby a direction has been issued to the respondent no.5 to disconnect the power supply to the petitioner is legal and valid or not.

10. From the pleadings made in the counter affidavit filed on behalf of the respondent nos.5 & 6, it would be evident that the respondent no.5 had granted the electricity connection to the petitioner on 22.12.2018 after being satisfied in all respect from the application filed by the Secretary of Shiv Mandir Nirwan Samiti, Gola Road, Patna. One Prabhash Priyadarshi who is no more alive, had filed a complaint before the Public Grievance Redressal Officer with a prayer to disconnect the electricity connection granted to the petitioner. The said prayer was rejected by the Public Grievance Redressal Officer and the Appellate Authority. The second Appellate Authority allowed the said application on the ground that the temple was constructed on Gair Majarua land and the same was not registered with the Bihar State Religious Trust Board. The impugned order was passed purportedly in exercise of the powers conferred upon the Second

Appellate Authority under Section 7 of the Act of 2015.

11. Sub-Section (a) of Section 2 of the Act of 2015 defines the word "complaint" which reads as under :-

2 (a) "complaint" means any application made by a citizen or a group of citizens to a Public Grievance Redressal Officer for seeking any benefit or relief relating to any schemes, programme or services run in the State by the State Government or in respect of failure or delay in providing such benefit or relief, or regarding any matter arising out of failure in the functioning of, or violation of any law, policy, service, programme or scheme in force in the State by a public authority but does not include grievance relating to the service matters of a public servant, whether serving or retired, or relating to any matter in which any Court or Tribunal has jurisdiction or relating to any matter under Right to Information Act, 2005(Central Act No. 22 of 2005) or services notified under the Bihar Right to Public Services Act, 2011.

12. Section 4 of the Act of 2015 provides that the State Government may notify from time to time department wise schemes, programmes and services on which complaint can be filed and also the public authority and department on which level the complaint will be redressed. Schedule-1 of the Act of 2015 contains the notification of the State Government whereby department wise schemes, programmes and services on which complaint can be filed has been notified. Schedule-1 also specifies the schemes, programmes and services on which complaint cannot be entertained under the Act of 2015 by the Public Grievance Redressal Officer or the Appellate Authorities. In respect of energy department, 10 schemes/ programmes/ services have been notified by the State Government on which complaint can be filed which are as under :

13. Serial no.7 of the aforesaid list is relevant for the consideration of the present application. The aforesaid serial no.7 provides that a complaint can be made under the Act of 2015 in relation to connection of electricity supply. The aforesaid schedule clearly states that no negative complaint can be entertained in respect of the aforesaid schemes of the energy department.

14. Thus, apparently, a complaint seeking disconnection of power supply could not have been entertained by the Public Grievance Redressal Officer or the Appellate Authorities under the Act of 2015.

15. Since a complaint relating to disconnection of duly granted electricity connection is forbidden under the Act of 2015, the order impugned passed by the respondent no.2 cannot be sustained. It has rightly been submitted by the learned counsel for the petitioner that the impugned order is completely without jurisdiction.

16. In that view of the matter, the impugned order dated 04.01.2020 passed by respondent no.2, as contained in Annexure No.2 to the present application is set aside.

17. The writ application stands allowed.