
(2009) 03 PAT CK 0089
In the Patna High Court
Case No : CWJC No. 16396 of 2008

S.K. Food Product

APPELLANT

Vs

The Bihar State Electricity Board and Others

RESPONDENT

Date of Decision : 03-03-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 379, 415, 420, 467, 472

Citation : (2011) 1 PLJR 949

Hon'ble Judges : Ramesh Kr. Datta, J

Bench : Single Bench

Judgement

Ramesh Kr. Datta, J.

I.A. No. 6688 of 2008

1. The interlocutory application has been filed for amendment in the relief claimed in the writ application by addition of the prayer so as to challenge the letter dated 31.10.2008 and the punitive bill dated 29.10.2008 forwarded with the said letter which have been annexed as Annexures-4 and 4/A respectively.
2. The said actions of the Respondent-Board being in continuance of the action challenged in the writ petition, the prayer for amendment is allowed.
3. I.A. No. 6688 of 2008 is, accordingly, disposed of.
4. Heard learned Counsel for the Petitioner and learned Counsel for the Bihar State Electricity Board.
5. The writ, petition has been filed for a direction to the Respondent-Board to install a new meter in the business premises of the Petitioner and also to restore the electrical connection and further quash the letter dated 31.10.2008 as also the enclosed punitive bill dated 29.10.2008 alongwith the said letter (Annexures-4 and 4/A).
6. The Petitioner has a H.T.I.S. electrical connection with a contract demand of

80 K.V.A. from the Respondent-Bihar State Electricity Board. An electronic meter was installed in the year 2007 in the business premises of the Petitioner and the Petitioner claims to have been regularly paying its bill for energy consumption. On 29.1.2008, after midnight the electricity went-off and after some time around 1 A.M. in the night it was realized that there was some smell of burning and thereafter on further investigation the staff saw fumes in the Meter Room and the meter was burning. Since the Meter was burning, the fire was extinguished by using fire extinguishing equipment and Mangal Talab Power Sub-Station was informed regarding the same. The Petitioner claims to have informed the authorities of the Board in writing on 22.9.2008 itself in the morning. However, according to the officials of the Board, the 11 K.V. Feeder had tripped at 00.30 hours on 22.9.2008 showing earth fault at Mangal Talab Power Station and during the patrolling it was said by staff of the Petitioner that a sound of blast was observed in metering unit during the trial of 11 KVA line; in the said circumstances, the supply of line of the Petitioner was disconnected and the general line of the Feeder was restored at 2 A.M in the early hours of the day. It is stated that no information was sent about the fire by the staff of the Petitioner at night or even to the Board personnel who were on patrolling duty. Thereafter, the admitted position is that an inspection was made on 22.9.2008 itself and a report was prepared. In the said report the details found during the inspection are mentioned but no conclusion has been drawn regarding any tampering with the meter although the report is merely on the factual aspect of the matter without drawing any conclusions. Subsequently on 26.9.2008 another inspection was made and after the said inspection, an F.I.R. was lodged against the Petitioner under Sections 135 and 138(d) of the Electricity Act and under Sections 379, 415, 420, 467 and 472 of the Indian Penal Code.

7. Thereafter by letter dated 31.10.2008, a provisional punitive bill for Rs. 75,37,455.27 was sent to the Petitioner. It is pointed out by learned Counsel for the Petitioner that in the F.I.R. it was stated that a loss of approximately Rupees Thirty One Lacs was caused to the Board by the said theft of electricity.

8. Learned Counsel for the Petitioner submits that the action of the authorities of the Board is contrary to the provisions of paragraphs 8.19 and 8.20 of the Bihar Electricity Supply Code, 2007, which lays down the detailed procedure in case of burning of meter as also for testing of such a meter before any conclusion can be drawn regarding tampering or any other deliberate act by the consumer to interfere with the meter. It is contended that only after such a finding is recorded after testing of the meter that the consumption can be assessed u/s 126 of the Electricity Act and punished under the penal provisions and other action as permissible under law can be taken against the consumer for pilferage and tampering of the meter.

9. It is urged that when the meter was sealed and carried away, it was not tested and only on the basis of hypothesis and presumption, the criminal case has been lodged and the electrical connection of the consumer was disconnected as also

the provisional penal bill was raised.

10. It is also urged by learned Counsel for the Petitioner that no provisional assessment order has been passed as required by Section 126 read with paragraph 11.1 of the Electricity Supply Code and thus the provisional penal bill is fit to be quashed.

11. Learned Counsel for the Electricity Board, on the other hand, submits that the action of the Petitioner clearly shows intentional damage and burning of meter and thereby the same comes under the definition of theft of electricity as per Section 135(1)(c) of the Act, which lays down that whoever dishonestly 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, so as to abstract or consume or use electricity shall be punishable as laid down therein.

12. So far as the question as to whether any theft of electricity had taken place or not is concerned, since the F.I.R. has already been lodged, this Court would not like to record any finding regarding the same in its writ jurisdiction.

13. However, since the actions regarding removal of meter and raising of provisional punitive bill have been taken by the Board, this Court has no hesitation in saying that those actions are not in accordance with the procedure laid down in the Electricity Supply Code in paragraphs 8.19 and 8.20 thereof. It was incumbent upon the authorities of the Board to have sent the burnt meter for testing and only on the basis of the result of testing of such meter recorded, the Petitioner could have been assessed u/s 126 of the Act. Even with respect to such assessment, the procedure laid down in paragraph 11.1 of the Electricity Supply Code has to be followed by passing a proper order of provisional assessment by the Assessing Officer to enable the Petitioner to raise its objections against the same and thereafter only the final assessment could have been made as laid down by the Code. It is not the case of the Board that the meter was totally burnt to ashes and thus it could not be sent for testing and as a matter of fact instead of complying with their statutory duties, they have asked the police authorities to lodge an F.I.R. and get the said meter tested in an independent laboratory.

14. In the above circumstances, the writ application is allowed and the impugned letter dated 31.10.2008 (Annexure-4) and its enclosed punitive bill dated 29.10.2008 are both quashed. In terms of the interim order passed by this Court a new meter has already been installed and the electrical connection of the Petitioner has been restored and thus no further orders are required to be passed in this regard. The authorities of the Board shall be at liberty to proceed in the matter afresh in accordance with law.