

(2015) 11 PAT CK 0041

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1546 of 2014

Sri Ram Industries

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 04-11-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Electricity Act, 2003 — Section 126, 126(1), 127

Citation : AIR 2016 Patna 2

Hon'ble Judges : Jyoti Saran, J.

Bench : Single Bench

Advocate : Suraj Samdarshi, Advocate, for the Appellant; Ratan Prasad Sinha, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Jyoti Saran, J.—The petitioner by invoking the extra ordinary jurisdiction of this Court under Article 226 of the Constitution of India has prayed for issuance of a writ in the nature of certiorari for quashing the order dated 31.10.2013 in Electricity Case No. 26 of 2013-/10 of 2013 of the Additional Collector-cum-Appellate Authority, Vaishali bearing Memo No. 1 dated 31.10.2013, a copy of which is placed at Annexure-5 to the writ petition.

2. The petitioner is a partnership firm and is a consumer of the respondent Power Holding/Distribution Company under the Low Tension Industrial category ("LTI" for the sake of brevity) for sanctioned load of 15 H.P. An inspection was carried out by the team of officials of the respondent on 7.1.2013, a copy of which is placed at Annexure 1 to the writ petition. The connected load was found to be 14.89 H.P. which was well within the sanctioned load. However, the electronic meter installed in the premises recorded a maximum demand of 36.88 H.P. Although no irregularity was found within the premises of the petitioner to support such load by the inspecting team, but a provisional assessment order was issued on the basis of the reading made by the electronic meter at 37 H.P.

and a demand under Section 126 of the Electricity Act, 2003 (hereinafter referred to as "the Act") was raised to the tune of Rs. 1,66,832/-. A copy of the order of provisional assessment dated 16.1.2013 is enclosed at Annexure-2. The petitioner filed his objection against the provisional assessment which did not find favour with the Assessing Authority who confirmed the demand vide the final assessment order dated 30.3.2013 present at Annexure-4. The petitioner preferred a statutory appeal under Section 127 of "the Act" and which has been dismissed by impugned order passed on 31.10.2013. The petitioner being aggrieved is before this Court.

3. Mr. Suraj Samdarshi, learned counsel has appeared for the petitioner while the respondents are represented by Mr. Ratan Prasad Sinha.

4. The argument of Mr. Samdarshi has centered around the provisions underlying section 126 of "the Act" to submit that the legislature has consciously provided that it is only in circumstances where the equipments, gadgets, machines and devices found connected in the premises of a consumer reveals of unauthorized use of electricity by the consumer concerned that he can be subjected to any proceeding under section 126 of "the Act" and not in any other circumstance. He submits that since it is an admitted position that the connected load of the equipments, machines etc. installed at the premises of the petitioner was found within the sanctioned load, there was no occasion for the respondents to initiate penal proceeding against the petitioner simply on the basis of an erratic reading reflected in the electronic meter which was not in tune with the factual position. Learned counsel with reference to Clause 9.12 of the Electricity Supply Code submits that a duty has been cast upon the authorities to take monthly reading of the meter and which would also include taking recording of the maximum load in the month. It is contended that the failure on the part of the respondent authorities to download the meter reading instrument each month has resulted in a situation where the petitioner is saddled with a financial liability for past 12 months as per Sub-section (5) of Section 126 .

5. Learned counsel with reference to an order passed in the case of M/s. Sanjay Plywood Industry submits that in the case of the said consumer the Meter Reading Instrument reflected a maximum demand which was within the sanctioned load but since the connected load at the premises of the said consumer was found to be higher than the sanctioned load hence in his case the respondent authorities including the inspecting team decided to accept the connected load found at the premises and ignored the reading of the maximum demand present in the meter which showed the maximum demand to be within the sanctioned load. In short Mr. Samdarshi submits that the respondents cannot have different yardstick in different circumstances.

6. The argument of Mr. Samdarshi is contested by Mr. Ratan Prasad Sinha to submit that the electronic meter so installed in the premises of the petitioner is not capable of any erratic reading and does reflect the actual load consumed. It is his argument that notwithstanding the connected load found in the premises at

the time of inspection, the Meter Reading Instrument discloses the actual load consumed by the petitioner without the knowledge to the respondents. It is submitted that the meter was supplied by the petitioner himself and at the time of installation it was checked to reflect a load of 2 K.V.A. He thus submits that the meter installed has a memory of 12 months and thus can save data only for the last 12 months. Meaning thereby that the petitioner has consumed the load within 12 months of the inspection held on 7.1.2013. He thus submits that no infirmity can be found either in the final assessment order or the appellate order. It is further the argument of Mr. Sinha that the possibility of the petitioner consuming the load in question can well be confirmed from the fact that whereas the petitioner was at the time of installation under a contract demand of 15 HP and which contract continued until the date of inspection when the load was recorded at 36.88 HP and immediately thereafter the petitioner got his load enhanced from 37 HP to 55 HP on 17.4.2013. The petitioner also deposited the security amount for enhancement of load from 15 HP to 37 HP to 55 HP. It is stated that within one year thereafter on 6.8.2014 the petitioner again got his load enhanced from 55 HP to 85 HP to remain in the LTI category for the moment the load touches 100 H.P., the category changes from LTI to HTI. He thus submits that in the backdrop of the circumstances discussed above, there is absolutely no infirmity in the action of the respondents in drawing proceedings against the petitioner under Section 126 of "the Act" nor the orders impugned require any interference.

7. I have heard learned counsel for the parties and I have perused the records.

8. Although extensive arguments have been advanced by both sides, but the issue at hand lies within a very narrow campus. Whereas on the date of inspection i.e. 7.1.2013, the connected load upon physical verification reflected 14.89 HP which was within the sanctioned load of 15 HP but since the Meter Reading Instrument showed a maximum demand of 36.88 HP hence the petitioner was charged with unauthorized use of electricity and was recommended action under Section 126 of "the Act" for the excess load of 21.88 HP. As I have already discussed, the objection was rejected, the final assessment order was passed and even the appeal has been dismissed.

9. On the other hand, in the case of M/s. Sanjay Plywood Industries as against the sanctioned load of 55 HP although the maximum demand recorded in the meter reflected 43.40 H.P. which was within the sanctioned load but since the connected load existing in the premises of the said consumer reflected 103.5 HP hence the inspecting team ignored the maximum demand recorded in the meter and decided to go with the actual load calculated on the basis of equipments and gadgets present in the premises, the details of which finds noted in Annexure-3.

10. The legal position can not be disputed and where a consumer is found to be drawing a higher load than the sanctioned load, this would amount to unauthorized use of electricity and he would subject himself to a proceedings under Section 126 of "the Act". The judgment of the Supreme Court rendered in

the case of The Executive Engineer and Another Vs. Sri Seetaram Rice Mill, has been relied upon by both Mr. Samdarshi and Mr. Ratan Prasad Sinha to support their respective contentions and is conclusive on this aspect. Thus even if the writ petitioner has remained within the LTI category but if found guilty of drawing a higher load, he cannot escape the liability of facing a proceeding under Section 126 of "the Act" simply on grounds that there was no change in category.

11. The crucial issue which arises for consideration in present contest is whether it would be the maximum demand recorded by the meter which would be the guiding factor for determination of the issue of maximum demand or it would be the conclusion drawn on physical verification of the gadgets, machineries and equipments found connected within the premises of the consumer, which should be conclusive on the issue. What transpires from the record is that whereas in the case of the petitioner despite the fact that the connected load showed that the consumer was within the sanctioned load, yet the respondents relied upon the Meter Reading Instrument to determine the maximum demand but in the case of the M/s. Sanjay Plywood they ignored the recording in the meter to go with the physical verification of the connected load which showed a higher load.

12. As I have observed, this distinctive exercise has neither been explained in the counter affidavit nor Mr. Sinha despite his endeavour has been able to justify the differential approach. It is but obvious that where an inspection team carries out a physical verification of the gadgets, equipments, devices etc, found connected and being used by a consumer which upon calculation reflects a higher load than sanctioned, the consumer would be covered under the provisions of section 126 of "the Act" for unauthorized usage and in such circumstances, the maximum demand recorded in the meter would obviously have to be ignored since it would not be reflecting a correct situation and this is exactly the procedure which was followed by the respondents in the case of M/s. Sanjay Plywood only to ignore in the case of the petitioner. In my opinion the very instance of M/s. Sanjay Plywood is sufficient to confirm that an electronic meter is capable of giving erratic results. In fact, even Section 126(1) of "the Act" confirms to this legal position and does not leave it to the discretion of the licensee to interpret the stipulations present, as per their convenience and suitability. Section 126(1) of "the Act" reads thus:

"126(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 judgment the electricity charges payable by such person or by any other person benefited by such use???."

(Emphasis is mine)

13. A plain reading of the provisions leaves no room for any discussion that unless the connected load in the premises of the petitioner or the records

maintained by him confirms that he is indulging in unauthorized use of electricity, it can not be left to the discretion of the respondents or the Inspecting Team to draw any such conclusion simply on the basis of the details recorded in the electronic meter unless the information recorded in the meter confirms to the factual position existing on ground and matches the connected load present in the premises of the consumer concerned. Subjecting a consumer to penal proceeding under Section 126 of "the Act" simply on the basis of the recordings in the electronic meter is capable of giving contrasting results as stands confirmed from the discussions above.

14. A proceeding under Section 126 of "the Act" is penal in nature and cannot be resorted to mechanically and more particularly where there is no conclusive evidence to support such opinion. That the reading recorded in the electric meter alone cannot be held conclusive, has been accepted by the respondent themselves since they have chosen to ignore it in case of M/s. Sanjay Plywood and preferred to side with physical verification results. In consideration of the statutory provisions underlying section 126(1) of "the Act", I am of the considered opinion that the procedure so followed by the respondents, was the correct procedure and their deviation there from in the case of the petitioner is without any rationale and in teeth of the statutory provisions especially in absence of any other supportive evidence. Again the act of the petitioner to enhance his load thereafter cannot be construed as a piece of evidence confirming to the unauthorized usage at earlier stages.

15. For the reasons so discussed I deem it proper to hold that the entire proceedings initiated against the petitioner under Section 126 of "the Act" including the orders passed thereunder impugned at Annexures-2, 4 and 5 are unsustainable and are accordingly set aside.

16. The writ petition is allowed but without any order as to costs.