

**SUPREME COURT OF INDIA**

Messrs Sahu Gupta Industries

Vs.

Bihar State Electricity Board

S.L.P. (C) No. 16417-16418 of 2003

(Shivaraj V. Patil and D. M. Dharmadhikari JJ.)

23.01.2004

**JUDGMENT**

1. Leave granted.

2. Having heard learned counsel on either side, we are satisfied that the impugned order cannot be sustained on a short ground that the Division Bench, as can be seen from the impugned order, stated that the highly disputed question of fact could not be decided in writ proceedings. In saying so, the Division Bench has overlooked the fact that the learned Single Judge having gone into the questions of fact in the light of the rival contentions, recorded a finding. It would have been a different situation if the learned Single Judge had said that the disputed questions of fact were involved and declined to interfere. The learned Single Judge having considered on the merits of the contentions, had passed a considered order. It was for the Division Bench to examine the correctness and validity of the order of the learned Single Judge when it was assailed before it. The question - whether there was a service of notice by the appellant on the respondents was the principal question that arose for consideration. The Division Bench ought to have considered on merits whether the order passed by the learned Single Judge was correct or not.

3. In the view we are taking, we do not express one way or the other on the merits of the contentions that are advanced before us. In this view, the impugned judgment is set aside and the Letters Patent Appeal is remitted to the High Court for fresh disposal on merits of the contentions that are raised in the appeals. All the contentions of the parties are left open to be urged before the Division Bench. The appeals are allowed accordingly. No costs.

4. The interim order made by this Court on 19.12.2003 shall continue to operate for four more weeks. It is open to the appellants to apply for appropriate interim order before the Division Bench.