

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

(1)

WP NO.7184/2014

49 WRIT PETITION NO. 7184 OF 2014

M/S STEEL CRAFT THROUGH PROPRIETOR KESHAVRAO
MAHAJAN, JALGAON

VERSUS

CROMPTON GREAVES LIMITED AND OTHERS

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Advocate for Petitioner : Mr. Sant Kishor C.

AGP for Respondents: Mrs. V.A. Shinde

Advocate for Respondent No.1 : Mr. A.S. Agrawal with S.S. Dande

Advocate for Respondent no.2 : Mr. D.S. Manorkar h/f Mr. M.V. Kini

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CORAM : R. M. BORDE & P.R. BORA, JJ.

Dated: January 27, 2015

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PER COURT :-

1. The petitioner is praying for issuance of writ of Mandamus, directing respondent nos. 1 and 2 to forthwith restore supply of electricity to the petitioner's unit situate at Plot No.G-35, M.I.D.C., Jalgaon. The petitioner is also praying for quashment of the bill issued for electricity supply for an amount of Rs.11,17,014/-.

2. The petitioner contends that no prima facie case coming within the purview of Section 135 of Indian Electricity Act, 2003 (hereinafter referred as "Act of 2003") is made out and that the action taken is harsh and is violative of fundamental rights of the petitioner to carry on business, trade or profession.

AGP/

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3. It is pointed out that a demand is made by the electricity supplier for deposit of amount towards the alleged theft of electricity by resorting to provisions of Section 135 of the Act of 2003. It is also pointed out that complaint is lodged to the Special Court constituted under the Act of 2003 by electricity supplier and cognizance of offense has also been taken by the Special Court in Criminal Case No.2757/2013, registered against the petitioner. The petitioner tendered an application to the Special Court, praying for restoration of electricity supply, however, the application has been dismissed by the Special Court by order dated 8.1.2014. Our attention is invited to Section 154 sub-sections (5) and (6) which reads thus:

"154. Procedure and power of Special Court.- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence punishable under sections 135 to 140 and section 150 shall be triable only by the Special Court within whose jurisdiction such offence has been committed.

(2) ...

(3) ...

(4) ...

(5) The Special Court shall determine the civil liability against a consumer or a person in terms of money for theft of energy which shall not be less than an amount equivalent to two times of the tariff rate applicable for a period of twelve months preceding the date of detection of theft of energy or the exact period of theft if determined whichever is less and

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the amount of civil liability so determined shall be recovered as if it were a decree of civil court.

(6) In case the civil liability so determined finally by the Special Court is less than the amount deposited by the consumer or the person, the excess amount so deposited by the consumer or the person, to the Board or licensee or the concerned person, as the case may be, shall be refunded by the Board or licensee or the concerned person, as the case may be, within a fortnight from the date of communication of the order of the Special Court together with interest at the prevailing Reserve Bank of India prime lending rate for the period from the date of such deposit till the date of payment."

In view of the provisions quoted above, since Special Court is seized of the matter, and is empowered to determine civil liability against a consumer, we refrain from causing any interference in the instant petition as, in the facts of the case, it would not be appropriate for us to examine the contentions raised by the petitioner as to whether act of petitioner gives rise to criminal liability.

4. So far as the contention of the petitioner in respect of violation of his fundamental right of conducting trade and business is concerned, it has to be noted that the right is subject to limitations. In the instant matter, the petitioner is facing prosecution for committing theft of electricity and due course of law provided under the Act of 2003 is adopted by the complainant - electricity supplier. The right and entitlement of the petitioner is always subject to restrictions, and determination of his liabilities;

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either civil or criminal, which is governed by the procedure established under the law. It is noticed that the procedure prescribed under the law is being followed and, as such, the petitioner cannot be permitted to contend that his fundamental right of carrying on trade is breached.

The petition is devoid of substance and hence stands rejected.

(P.R. BORA, J.)

(R. M. BORDE, J.)

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