

**HON'BLE THE ACTING CHIEF JUSTICE DILIP B.BHOSALE
AND
HON'BLE SRI JUSTICE P.NAVEEN RAO**

WRIT APPEAL No. 287 OF 2016

Date: 26.04.2016

Between:

Ganisetti Shanmukheswara Rao
S/o Venkata Satya prabhakar Rao
R/o H NO. 5-156, Kalla village,
Kalla mandal, West Godavari district

.....Appellant

And

A.P. Eastern Power Distribution Company Ltd
Rep by its CMD, Seethammadhara, Visakapatnam and others

.....Respondents

The Court made the following:

**HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE
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PC: (Per the Hon'ble Sri Justice P.Naveen Rao)

Writ petitioner is appellant. Petitioner challenges the order dated 15-

10-2015 of the Assistant Divisional Engineer, Operation, A.P.Eastern Power Distribution Company Limited, West Godavari (second respondent), whereunder, it was alleged that petitioner indulged in pilferage of electricity by unauthorisedly installing two numbers of fuse-carriers in the service wire before the energy meter. Pending determination of the civil liability, provisional assessment of liability was made as Rs.13,99,256.88 ps. The learned single Judge upheld the said demand and further directed to take proceedings under Section 154 of the Electricity Act, 2003 (for short the Act).

2. Learned senior counsel Sri M.R.K.Chowdary for appellant, contends that the learned single Judge erred in holding the impugned order as one falling under Section 135 of the Act. In the order challenged in the writ petition, second respondent mentions that amount demanded is provisional liability on the part of the petitioner. The assessment of the liability is governed by Section 126 of the Act. In terms of section 126 of the Act, provisional assessment of liability should be made and after considering the explanation, within one month, final order should be passed. In support of the said contention, learned senior counsel, placed reliance on the decision of the Supreme Court in EXECUTIVE ENGINEER, SOUTHERN ELECTRICITY SUPPLY COMPANY OF ORISSA LIMITED (SOUTHCO) AND ANOTHER Vs.SRI SEETARAM RICE MILL ^[1].

3. Learned single Judge considered the contentions of the petitioner with reference to mandate of Section 126 (1) of the Act and the decision of the Supreme Court in SRI SEETARAM RICE MILL, held that what is alleged against the petitioner amounts to committing 'theft of electricity' and , therefore, section 135 of the Act is attracted. Learned single Judge, therefore upheld demand made.

4. Learned senior counsel fairly submits that crime was registered against the petitioner and petitioner has compounded the offence alleged against him and paid an amount of Rs. 72,000/-.

5. Confronted with the fact that the petitioner compounded the offence alleged against him on criminal complaint filed under Section 135 of the Act, learned senior counsel earnestly appeals that petitioner is willing to pay 50 %

of the amount mentioned in the order impugned and on payment of the said amount, his domestic service connection should be restored.

6. Learned senior counsel would submit that petitioner is no more interested in operating the water purification plant whereas on the allegation that he has committed pilferage in the service connection provided to the said water purification plant, domestic service connection was also disconnected and on account of the same, petitioner is subjected to grave hardship and suffering. He would therefore submit, on payment of 50 % of the amount quantified in the impugned letter, the domestic service connection be restored and balance amount would be paid by the petitioner if the competent Civil Court holds him liable in the proceedings under Section 154 of the Act.

7. Learned standing counsel for respondent company, fairly submits that if the petitioner pays 50 % of the amount quantified in the impugned notice and makes an application for restoration of the domestic service connection, same would be restored to the petitioner, subject to the result of the issue of civil liability under section 154 of the Act.

8. Having regard to the submissions made, the writ appeal is disposed of as under:

a) Petitioner is directed to pay 50% of the amount quantified in letter dated 15.10.2015 impugned in the writ petition along with other charges mentioned within a period of four weeks from the date of receipt of copy of this order and on such payment, within a period of one week, domestic service connection of the petitioner should be restored.

b) In view of the above orders, the directions issued by the learned single judge in W.P. 36491 of 2015 dated 4.2.2016 stood modified to the extent of restoration of electricity supply for domestic consumption purposes.

c) The petitioner shall submit an application along with proof of payment of 50 % of the quantified amount and other charges payable as mentioned in the

impugned letter dated 15.10.2015 mentioning the domestic service connection number. The petitioner shall also give an undertaking that he will not utilize the domestic power connection for the purposes of running the water purification plant.

- d) We make it clear that we have not expressed any opinion on merits. The respective contentions of the parties are preserved and it is open to the competent Court under Section 154 of the Act to deal with the matter in accordance with law.

No costs. Miscellaneous petitions, if any stand dismissed.

DILIP B. BHOSALE, ACJ

P.NAVEEN RAO, J

Date: 26.4.2016
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[\[1\]](#) (2012) 2 SCC 108