

HON'BLE THE ACTING CHIEF JUSTICE DILIP B.BHOSALE

AND

HON'BLE SRI JUSTICE S.V.BHATT

W.P. No.12388 OF 2003

ORDER: *(Per Hon'ble Sri Justice S.V.Bhatt)*

Heard Mr.Surya Satish, learned counsel for the petitioner and Mrs.Jagarlamudi Koteshwari Devi for 1st respondent.

The petitioner challenges the judgment dated 24.06.2013 in ESC No.11 of 2002 before the Special Court under Indian Electricity (A.P. Amendment) Act 2000. The 1st respondent herein filed complaint against the writ petitioner under Sections 39 and 44 of the Indian Electricity Act, 1910 (for short 'the Act'). The allegations against the writ petitioner in the complaint are that on 10.03.2002, the premises of writ petitioner at Owk Village was inspected and inspecting staff, on close examination of premises, detected that the writ petitioner was found to be committing theft of electrical energy by providing bypass and clandestine lines from incoming chamber to the main lines of the writ petitioner factory. The 1st respondent after considering relevant circumstances and the probable amount of theft of electrical energy determined the value of energy pilferaged at Rs.11,53,850/-. The theft of energy has two consequences viz. recovery of compensation amount towards theft of energy and penal consequences of imprisonment etc. to the occupier of the premises. Hence, ESC No.11 of 2012 was tried and the impugned judgment in the writ petition was passed by the Special Court.

Before proceeding to consider the submissions made by the learned counsel appearing for parties, we would like to record that the plea of writ petitioner that through Ex.P.13, Xerox copy of sale deed dated 09.07.1999, the premises was sold in favour of 3rd respondent in the writ petition and imposition of sentence or recovery of

compensation from the writ petitioner is unsustainable and cannot and could not be brought home by the writ petitioner. With the assistance of learned counsel appearing for the parties, we have perused the chronology of dates and events and the implications on the findings recorded by the Special Court and we are *prima facie* satisfied that the findings recorded by the Special Court on pilferage of energy and recovery of compensation are reasonable and no exception can be taken to the findings. Learned counsel for the writ petitioner has persuaded this Court to consider setting aside the sentence of imprisonment of one year and a fine of Rs.5,000/-, for, from the oral evidence available on record particularly the evidence of PWs 1,2 and 3 would go to show that the writ petitioner did not have direct or indirect control on the day-to-day affairs of the factory run in the premises and the omission happened on account of acts of commission and omission of 3rd respondent and therefore the petitioner may not be directed to undergo imprisonment subject to paying the amount determined by the Special Court.

It is brought to our notice by the learned counsel appearing for both parties that during pendency of the writ petition, the Superintending Engineer, Assessments/APCPDCL, on the representation of the writ petitioner dated 30.12.2003, examined/considered the aspect of pilferage of electricity energy by the writ petitioner and reduced the compensation payable by the writ petitioner at Rs.4,71,379/-(Rupees Four Lakhs Seventy One Thousand Three Hundred and Seventy Nine only) vide Order No.SEA/HYD/F.No.KNL-191/SAll No.9562/D.No.58 dated 09.01.2004 and the same is placed on record.

Learned standing counsel having regard to the material available on record and also to put an end to litigation, submits that the writ petitioner can be directed to pay the amount positively within three months from the date of receipt of copy of this order and if the amount

is paid, this Court can consider setting aside the sentence of rigorous imprisonment for one year. We are satisfied, having regard to the above submissions, the writ petition can be disposed of by this order.

i. The petitioner is directed to pay Rs.4,71,379/-(Rupees Four Lakhs Seventy One Thousand Three Hundred and Seventy Nine only), after giving credit to the amount already deposited, and fine of Rs.5,000/-(Rupees Five Thousand only) to 1st respondent within four months from today and upon such payment, the sentence of one year imprisonment shall not be given effect to and the offence is purged with the payment of compensation and fine. In default of payment as indicated, the writ petitioner shall have to undergo rigorous imprisonment imposed by the Special Court.

ii. It is made clear that the order passed herein shall not be treated as precedent or expression of any view by this Court on the application of Section 39 of the Act in cases of pilferage of electrical energy from supply sources. The instant order is passed keeping in mind a few singular circumstances and also by accepting the submissions of the learned counsel.

Consequently, miscellaneous petitions, if any pending, also stand disposed of.

DILIP B.BHOSALE, ACJ

S.V.BHATT,J

Date:11.02.2016
Stp