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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 4895/2016

GOVT.OF NCT OF DELHI & ANR

..... Petitioners

Through: Mr Satyakam, ASC, GNCTD with Mr
Mohit Sharma, Dealing Asstt.,
Dept. of Power.

versus

TITU

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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30.11.2017

1. The petitioner has filed the present petition, *inter alia*, praying as under:-

“It is, therefore, most respectfully prayed that this Hon'ble Court may kindly be pleased to issue a Writ of Certiorari, Prohibition or any other appropriate Writ, Order or Direction thereby quashing/setting the impugned order the order dated 31.3.2016 (Limited to Para 43-45), order dated 28.4.2016, Show Cause Notice dated 28.4.2016 and order dated 14.5.2016 passed by the Learned Special Court (Electricity), Rohini, Delhi in Sessions Case No. 131/15.”

2. Essentially, the petitioner is aggrieved by the directions issued by the Special Court to the Secretary (Power), Government of NCT of Delhi to prepare a plan and modalities to create legal recharging station for recharging e-rickshaws in order to stop the theft of electricity in the State of Delhi. The petitioner is also aggrieved by the show cause notice and orders issued by the said Court to implement the aforesaid directions.

3. Mr Satyakam, learned counsel appearing for the petitioner contended

that the directions issued by the Special Court are wholly without jurisdiction. He submitted that the Electricity Court has been constituted to try only certain offences as specified under the Electricity Act, 2003 (hereafter 'the Act').

4. Briefly stated, the facts are that a joint raid was conducted by a joint inspection team at the premises behind Jhuggi No. J-146/14, T-Huts, Block A, JJ Cluster, Jahangir Puri adjacent to A-Block, Government Senior Secondary School, Delhi. The raiding team found that the respondent was committing direct theft of electricity through NDPL, LV Mains. Respondent was found charging batteries of 23 e-rickshaws. Accordingly, an FIR regarding theft of electricity was registered against the respondent on 17.02.2015. Since the said offence was under Section 135 of the Act, the trial of the same was referred to the Special Court constituted under Section 153 of the Act.

5. By a judgment dated 31.03.2016, the learned Special Court found that the respondent was guilty of the offence of theft of electricity and, accordingly, convicted him for an offence under Section 135 of the Act. However, the learned Court also made the following observations:-

“43. Before I part with this case I want to place on record my concern that there are innumerable number of cases pending before this court as well as few cases of similar nature under investigation wherein it has been found that illegal charging of E-Rickshaw batteries is going on in Delhi unhindered at places which are unauthorized for the said purpose. It is interesting to note that in Delhi there are no authorized recharging stations for recharging E-Rickshaws as are petrol filling

stations for other vehicles.

To my mind, since E-Rickshaw is being used for commercial purpose, the tariff for electricity consumed for recharging the E-Rickshaw will fall in "commercial category". However, in Delhi theft of electricity is being committed at various places for recharging the batteries of E-Rickshaw by tapping LV Mains, causing heavy loss to the State Revenue. Such cases of theft of electricity by unscrupulous persons result in passing on the burden of enhanced tariff on the honest electricity consumers of Delhi. Needless to say, in State of Delhi there are majority of honest consumers of electricity who have legal electricity meters, but they have to feel the pinch of enhanced tariff due to cases of theft of electricity which result in causing loss to the State Revenue.

44) It will be in interest of justice that the concerned stake holders in the government of Delhi seriously consider this issue at the earliest. Therefore, I deem it appropriate to direct the Secretary (Power), Delhi to prepare plan and modalities to create legal recharging station for recharging E-Rickshaws to stop theft of electricity in the State of Delhi.

45) Let copy of this order be sent to Secretary (Power), Delhi with the direction to file compliance report as to what steps have been taken in this regard in the State of Delhi within 15 days.”

6. The aforesaid directions were also followed by the learned Special Court by issuing an order dated 28.04.2016, whereby the notice was issued to the Secretary (Power), Government of Delhi. Thereafter, a show cause notice dated 03.05.2016 was also issued directing the Secretary (Power), Government of NCT of Delhi to appear before the learned Special Court in person on 05.05.2016 regarding non-filing of the compliance report. It is

stated that pursuant to the aforesaid, a status report was filed by the Secretary (Power), Government of NCT of Delhi on 04.05.2016.

7. Thereafter, the learned Special Court once again considered the issue regarding providing legal charging points for e-rickshaws and by an order dated 14.05.2016 (which is also impugned in the present petition) issued the following directions:-

“17. I, therefore, direct the Chief Secretary, Delhi to look into entire problem as discussed in the judgment dated 31.3.2016 and file detailed report which I hope will provide the solution instead of providing another problem.

18. Copy of this order as well as the judgment dated 31.3.2016 be sent to the Chief Secretary, Delhi and a copy of the same be also sent to the Secretary (Power), Delhi, CEOs of BSES and TRDDL. Copy of this order be also sent to Ministry of Transport and Ministry of Urban Development with the direction to file status report within 10 days.

19. It is also directed that CEO's of BSES (Yamuna Power), BSES (Rajdhani) and TPDDL will also remain present and file their suggestions and inputs without seeking any further adjournment. The matter will be personally supervised and looked into by all CEO's and Secretaries concerned.”

8. Special Courts have been constituted under Section 153 of the Act which is set out below:

“153. Constitution of Special Courts.- (1) The State Government may, for the purposes of providing speedy trial of offences referred to in

sections 135 to 140 and section 150, by notification in the Official Gazette, constitute as many Special Courts as may be necessary for such area or areas, as may be specified in the notification.

(2) A Special Court shall consist of a single Judge who shall be appointed by the State Government with the concurrence of the High Court.

(3) A person shall not be qualified for appointment as a judge of a Special Court unless he was, immediately before such appointment, an Additional District and Sessions Judge.

(4) Where the office of the judge of a Special Court is vacant, or such Judge is absent from the ordinary place of sitting of such Special Court, or he is incapacitated by illness or otherwise for the performance of his duties, any urgent business in the Special Court shall be disposed of-

(a) by a Judge, if any, exercising jurisdiction in the Special Court;

(b) where there is no such other Judge available, in accordance with the direction of District and Sessions Judge having jurisdiction over the ordinary place of sitting of Special Court, as notified under sub-section (1).”

9. Section 154 of the Act provides for the procedure and powers of a Special Court. Further, Section 155 of the said Act also provides that Special Court will also have powers of court of sessions, Sections 154 and 155 of the said Act are set out below:-

“Section 154. (Procedure and power of Special Court): ---

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence punishable under

[2sections 135 to 140 and section 150] shall be triable only by the Special Court within whose jurisdiction such offence has been committed. (2) Where it appears to any court in the course of any inquiry or trial that an offence punishable under sections 135 to 139 in respect of any offence that the case is one which is triable by a Special Court constituted under this Act for the area in which such case has arisen, it shall transfer such case to such Special Court, and thereupon such case shall be tried and disposed of by such Special Court in accordance with the provisions of this Act :

Provided that it shall be lawful for such Special Court to act on the evidence, if any, recorded by any court in the case of presence of the accused before the transfer of the case to any Special Court : Provided further that if such Special Court is of opinion that further examination, cross-examination and re-examination of any of the witnesses whose evidence has already been recorded, is required in the interest of justice, it may re-summon any such witness and after such further examination, cross examination or re-examination, if any, as it may permit, the witness shall be discharged. (3) The Special Court may, notwithstanding anything contained in subsection (1) of section 260 or section 262 of the Code of Criminal Procedure, 1973, try the offence referred to in sections 135 to 139 in a summary way in accordance with the procedure prescribed in the said Code and the provisions of sections 263 to 265 of the said Code shall, so far as may be, apply to such trial : Provided that where in the course of a summary trial under this subsection, it appears to the Special Court that the nature of the case is such that it is undesirable to try such case in summary way, the Special Court shall recall any witness who may have been examined and proceed to re-hear the case in the manner provided by the provisions of the said Code for the trial of such offence: Provided further that in the case of any conviction in a summary trial under this section, it shall be lawful for a Special Court to pass a sentence of imprisonment for a term not exceeding five years. (4) A Special Court may, with a view to obtaining the evidence of any person supposed to have been directly or

indirectly concerned in or privy to, any offence tender pardon to such person on condition of his making a full and true disclosure of the circumstances within his knowledge relating to the offence and to every other person concerned whether as principal or abettor in the commission thereof, and any pardon so tendered shall, for the purposes of section 308 of the Code of Criminal Procedure, 1973, be deemed to have been tendered under section 307 thereof. (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

155. Special Court to have powers of Court of Session: Save as otherwise provided in this Act, the Code of Criminal Procedure, 1973, insofar as they are not inconsistent with the provisions of this Act, shall apply to the proceedings before the Special Court and for the purpose of the provisions of the said enactments, the Special Court shall be deemed to be a Court of Session and shall have all powers of a Court of Session and the person conducting a prosecution before the Special Court shall be deemed to be a Public Prosecutor.”

10. Special Courts have been constituted for providing a speedy trial for certain offences. It is also clear that a Special Court exercises limited jurisdiction with regard to trial of offences under Section 135 to Section 140 and Section 150 of the Act. It is apparent from the above that the jurisdiction exercised by a Special Court does not extend to matters other than those specified under Section 153 of the Act. Plainly, the directions issued by the learned Special Court in paragraphs 43 to 45 of the impugned judgment dated 31.03.2016 are outside the scope of its jurisdiction as the same do not relate to the trial of offences specified under any of the sections mentioned

in section 153/154 of the Act. The respondent had been tried for the offence under Section 135 of the Act and was convicted. The directions issued in paragraphs 43 to 45 of the judgment dated 31.03.2016 were extraneous to the issues required to be adjudicated.

11. In view of the above, the impugned judgment dated 31.03.2016 to the extent of the directions and observations contained in paragraph 43 to 45 is set aside. Consequently, further proceedings in pursuance of the said observations including the order dated 28.04.2016 and the order dated 14.05.2016 are also set aside.

12. Mr Satyakam, learned counsel for the petitioner informed this Court that the respondent has also been sentenced. In this view, no further proceedings are required to be conducted by the special Court in relation to the Sessions case No. 130/2015.

13. The petition is disposed of with the aforesaid directions.

VIBHU BAKHRU, J

NOVEMBER 30, 2017/RK