

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 25822 OF 2007

ORDER :

This Writ Petition is filed seeking a *mandamus* to declare the action of the respondents in demanding and collecting 50% of the provisional assessment amount from the petitioner, pursuant to the Notice in letter No. ADE/OP/LXPT/F.No./D.No.626/06, dated 07.10.2006 of the 3rd respondent Assistant Divisional Engineer (Operation), as illegal, arbitrary and contrary to the order dated 26.10.2006 of this Court in Writ Petition No. 21623 of 2006.

Petitioner is a partnership firm, which established a small rice mill in 1999 at Theegalapahad Village, Mancherial Mandal, Adilabad District, for which purpose, obtained L.T. Category-III Service Connection bearing No. 1810. While so, the petitioner was issued the provisional assessment notice dated 07.10.2006 alleging that it involved in tampering of CT chamber seal of the meter and thus, the respondent DISCOM had suffered loss to a tune of Rs.5,41,832/- and that if the petitioner desires to have the continuous power supply, it should pay 50% of the demand which would be subject to the determination by the appropriate Court as provided under Section 154(6) of the Electricity Act, 2003. Challenging the said assessment, the petitioner filed Writ Petition No. 21623 of 2006, which was disposed of by this Court *vide* order dated 26.10.2006, as under:

- “ i) The respondents are directed to restore the power supply to the petitioner immediately without insisting on payment of half of the provisionally assessed value of the alleged pilfered energy;
- ii) It shall be open to the petitioner to compound the allegation / contravention, if so advised;

iii) In case the petitioner fails to compound the contravention, the respondents shall immediately send the case to the Special Court constituted under Section 153 of the Act, in which case, it shall be open to the petitioner to raise all its grounds before the Special Court.”

The case of the petitioner is that though this Court directed the respondent authorities not to insist on payment for restoration of power supply, under threat of arrest and coercion, the petitioner was forced to pay a sum of Rs.2,70,841/- which resulted in issuance of the legal notice on 10.11.2017 to Respondents 3 and 4 with a request to refund Rs.2,71,041/- collected from the petitioner in contravention of the order of this Court dated 06.10.2006, as otherwise, contempt proceedings would be initiated and further, they would be made responsible for the consequences thereof. As the respondents had not responded to the said legal notice, the present Writ Petition is filed.

A counter-affidavit was filed by the respondents asserting that the Order of this Court dated 26.10.2006 was made in Writ Petition No. 21623 of 2006 based on the Judgment of a Division Bench of this Court which was subsequently overruled by the Order dated 27.04.2007 in Writ Petition No. 5090 of 2006 and batch. Further, it is stated that the matter is pending in the Special Court in C.C. No. 15 of 2007.

Heard learned counsel for the petitioner as well as learned Standing Counsel for the respondents.

When the matter is taken up for hearing, learned counsel for the respondents has placed on record the judgment in Special C.C.No. 15 of 2007 on the file of the I Additional Sessions Judge's Court at Adilabad, dated 15.03.2016. The respondents therein are

the proprietors of the petitioner firm. They were prosecuted for the offence punishable under Section 138 of the Indian Electricity Act, 2003 on the complaint of the Vigilance Wing of the respondent DISCOM. The Court found the charges not proved and further, directed 50% of the amount demanded i.e. Rs.2,712,041/- to be adjusted towards the existing bills of the petitioner, if any or towards the future bills.

In the light of the subsequent developments, nothing survives in the Writ Petition and the same is accordingly, closed. If the amount is not already adjusted, the same shall be adjusted towards the future bills. No costs.

Consequently, the miscellaneous Applications, if any shall also stand closed.



CHALLA KODANDA RAM, J

03rd December 2018

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