

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2184 of 2014

Achyutananda Meher and others

....

Petitioners

Mr. Mahesh Das, Advocate

-Versus-

State of Odisha and another

....

Opposite Parties

Mr. S.N. Das, ASC

CORAM:

JUSTICE R.K. PATTANAİK

ORDER

29.07.2022

Order No.

17.

1. Heard learned counsel for the petitioners and learned counsel for the State. None appears for OP No.2, namely, the complainant.

2. Instant petition under Section 482 Cr.P.C. is filed by the petitioners for quashing of the criminal proceeding in I.C.C. No.848 of 2013 and consequential order of cognizance dated 20th March, 2014 registered under Sections 120(B), 465, 471 and 379 IPC on the grounds *inter alia* that no prima facie case is made out and that apart, it is not tenable in law in view of Section 168 of the Electricity Act, 2003 (hereinafter referred to as 'the Act').

3. Briefly stated, the complaint was filed by OP No.2 alleging that the petitioners in collusion with the landlord disconnected the power supply to his firm and as such, committed the offences punishable under Sections 120-B1, 465, 471 and 379 IPC. After the complaint was filed, the learned court below recorded initial statement of the complainant and also held an enquiry under Section 202 Cr.P.C. and

finally passed the impugned order of cognizance dated 20th March, 2014.

4. Learned counsel for the petitioners submits that OP No.2 initially informed petitioner No.1 to disconnect the electricity supply on the ground that the landlord has instituted a suit in C.S.No.116 of 2013 for his eviction and for that, he does not want to enter into any kind of controversy with him, pursuant to which, power supply was discontinued by referring to Annexure-3. It is further submitted that OP No.2 thereafter by letter dated 23rd October, 2013 (Annexure-4) informed petitioner No.1 that the power supply should be restored since because someone forged Annexure-3 which was sent earlier requesting disconnection of electricity supply to his establishment by name M/s. Deepak Engineering Works, in response to which, it was intimated to him to provide the present status regarding the ownership of the land and passage for the purpose of restoring such supply. According to the learned counsel for the petitioners, the complainant, namely, OP No.2 then approached the GRF and the Ombudsman and ultimately filed the complaint alleging conspiracy by the petitioners and the landlord claiming that it was at their instance, the power supply was disconnected to the unit. As per the contention of the learned counsel for the petitioner on a good faith after receiving Annexure-3, the electricity supply was disconnected and as such, the allegation of conspiracy which has been alleged by OP No.3 is an afterthought and false.

5. Learned counsel for the State justified the impugned order dated 20th March, 2014.

6. Learned counsel for the petitioners while advancing argument referred to the provisions of Orissa Electricity Regulatory Commission Distribution (Conditions of Supply) Code, 2004 (hereinafter referred as

‘the Code, 2004’) and in particular Regulation 61 thereof, which reads as under:

“61. (1) It shall be the responsibility of the consumer to get his connection disconnected if he vacates the premises, as otherwise he shall continue to remain liable for all charges.

(2) Notice and request for disconnection is to be given by the consumer at least 7(seven) days before the proposed date of vacation. The licensee shall arrange to take a special reading of the meter after intimating the consumer.

(3) If the licensee fails to disconnect the supply even after seven days notice, no claim shall lie on the consumer either for consumption of energy or safety of the licensee’s equipment in consumer’s premises.”

7. It is submitted that on the request of the consumer, the licensee shall have no option except to disconnect the power supply or else it shall be held liable in view of Regulation 61(3) of the Code which stipulates that If the licensee fails to disconnect the supply even after seven days notice, no claim shall lie on the consumer for consumption of energy or safety of the licensee’s equipment in consumer’s premises. Furthermore, it is contended that as per the Regulation, the consumer shall have to provide the frontage or passage for ensuring power supply which is in view of Regulation 8 of the Code, 2004 which is as follows:

“When the applicant’s premises have no frontage on a street and the service line from the licensee’s mains has to go over or under the adjoining premises of any other person (whether or not the adjoining premises is owned jointly by the applicant and such other person) the applicant shall obtain at his own expense necessary way-leave, licence, sanction, permission or other right or interest from the adjoining owner or co-owner. The licensee shall not supply power until such way-leave, licence, sanction or other right or interest is obtained and produced. Any extra

expenditure incurred in placing the service line in accordance with the terms of way-leave, licence, sanction or other right or interest obtained from the owner or co-owner shall be borne by the applicant. No way-leave, licence, sanction or other right or interest once granted shall be cancelled or withdrawn, without giving six months notice by registered post to the Engineer and the concerned consumer and a provision to this effect should be incorporated in the terms of the way-leave, licence, sanction, or other right or interest arranged by the consumer and submitted to the licensee. The consumer may however arrange for alternative route, if any, to retain the supply of power. In all such cases, the consumer shall bear the cost of diversion and other incidental expenses as may be estimated by the Engineer. It shall not be incumbent on the licensee to ascertain the validity or adequacy of the way-leave, licence, sanction, or other right or interest obtained by the applicant.”

It is thus, contended that as per the above provision, the petitioners acted upon and immediately on the intimation received from OP No.2 under Annexure-3 disconnected the power supply to the establishment in question and as such, it was in good faith without having knowledge about any such mischief which is alleged by OP No.2 in the complaint. It is drawn to the attention of the Court to the fact that OP No.2 never alleged any conspiracy or fraud being perpetuated at the instance of the petitioners in connivance with the landlord and therefore, filing of the complaint on such ground is an afterthought and that apart, a criminal action cannot be sustained against such officials having acted in good faith pursuant to Annexure-3.

8. Section 168 of the Act, 2003 stipulates that:

“Protection of action taken in good faith-No suit, prosecution or other proceeding shall lie against the Appropriate Government or Appellate Tribunal or the Appropriate Commission or any officer of Appropriate Government, or any Member, Officer or other employees of the Appellate Tribunal or any

Members, officer or other employees of the Appropriate Commission or the Assessing Officer or any public servant for anything done or in good faith purporting to be done under this Act or the rules or regulations made thereunder.”

9. The above provision clearly mandates that no suit, prosecution or other proceeding shall lie against any officer or employees of the Government or any public servant for anything done or purporting to be done under this Act or the rules or regulations and the disconnection to the unit, which according to the learned counsel for the petitioners, was done by virtue of Annexure-3. Of course, whether it was done in good faith or otherwise would have been examined by the court below. However, looking at Annexure-4, this Court finds that OP No.2 never alleged the petitioners to have forged Annexure-3 or attributed any kind of role being played by them as to the connivance with the landlord. So without any basis when the petitioners acted in due discharge of duty of receiving Annexure-3 and having disconnected the power supply to the unit of OP No.2 could not have turned around in filing the complaint against them alleging conspiracy or fraud. On a bare reading of the complaint, it appears that OP No.2 did not allege any overt act or fraud or conspiracy while having correspondence with petitioner No.1. Therefore, it appears that all the petitioners being officials of WESCO and having acted upon on intimation received vide Annexure-3, which may be a forged document, discontinued the power supply and thus, can be said to have done it in good faith.

10. Having regard to the above facts, the Court is of the view that the learned court below should have considered Annexures-3 and 4 and ought to have held otherwise instead of taking cognizance of the offences against the petitioners, who clearly appears to have acted in good faith and that too when nothing was alleged against them in

Annexure-4 which, therefore, persuades the Court to set it aside in exercise of inherent jurisdiction and accordingly, it is ordered.

11. In the result, the CRLMC stands allowed. As a logical sequitur, the criminal proceeding in I.C.C. No.848 of 2013 pending before the learned S.D.J.M., Panposh is hereby quashed.

(R.K. Pattanaik)
Judge



KC Bisoi