

(2006) 06 AP CK 0028

In the Andhra Pradesh High Court

Case No : CRP No. 1156, 2162 and 2163 of 2005

Chairman and Managing Director, APCPDCL and Others

APPELLANT

Vs

P.C. Dhoot and Sons

RESPONDENT

Date of Decision : 06-06-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11

Criminal Procedure Code, 1973 (CrPC) — Section 260, 262, 263, 264, 265

Electricity Act, 2003 — Section 126, 127, 135, 136, 137

Citation : (2006) 4 ALD 835

Hon'ble Judges : G. Rohini, J

Bench : Single Bench

Advocate : V. Ajay Kumar, for the Appellant; Duba V. Nagarjuna Babu, for the Respondent

Final Decision : Allowed

Judgement

G. Rohini, J.—Since common questions of fact and law arise for consideration, these three civil revision petitions are heard together and decided by this common order.

2. The petitioners herein-APCPDCL, are the defendants in (E) O.S. No. 3 of 2003; (E) O.S. No. 1 of 2003 and (E) O.S. No. 2 of 2003 on the file of the Court of 1st Additional District Judge, Nalgonda. The respondents in these revision petitions are the plaintiffs in the respective suits.

3. Having received summons in the suits, the defendants/revision petitioners filed applications under Order VII Rule 11 of the CPC to reject the plaints on the grounds that the Court of the 1st Additional District Judge, Nalgonda, which is functioning as the Special Court under the Electricity Act, 2003 (Act 36 of 2003) (for short "the Act"), had no jurisdiction to entertain the said suits. The said applications numbered as I.A.Nos. 1673; 876 and 1722 of 2004 in (E) O.S.No. 3 of 2003; (E) O.S. No. 1 of 2003 and (E) O.S.No. 2 of 2003 were dismissed by the Court below by separate orders dated 5-10-2004; 13-12-2004 and 13-12-2004

respectively. The said orders are under challenge in these three revision petitions filed by the defendants-APCPDCL.

4. As can be seen from the orders impugned, the three suits were filed with a prayer to declare the disconnection of the power supply to the consumer (plaintiff) as arbitrary and illegal, and also questioning the imposition of penalty and alleged filing of false case against the plaintiff and also questioning the collection of amounts towards the alleged theft of energy.

5. It appears that the grievance of the plaintiffs in the said suits was that the defendants-APCPDCL had illegally collected electricity consumption charges by converting their LT power supply connections into HT power supply, that they had also collected consumption charges during the period of disconnection of power supply and that the demand for surcharge was also illegal and without any basis. Thus, the plaintiffs sought for recovery of different amounts together with interest thereon.

6. It is not in dispute that the 1st Additional District Judge, Nalgonda, has been constituted as a Special Court u/s 153 of the Act, to try the offences punishable u/s 135 - 139 of the Act.

7. The defendants having filed their written statements contesting the suit claim on merits, raised a further objection as to the maintainability of the suits on the ground that the Court has no jurisdiction to entertain the suits, since the Special Courts under the Act have been established only for providing speedy trial of offences under Sections 135 - 139 of the Act following the procedure prescribed under the Code of Criminal Procedure, 1973 and, therefore, the Court has no jurisdiction to try the suits in question which relate to the determination of civil liability of the defendants against a consumer in terms of money. Accordingly, the defendants filed separate applications (I.A.Nos. 1673; 876 and 1722 of 2004 in (E) O.S.No. 3 of 2003; (E) O.S.No. 1 of 2003 and (E) O.S.No. 2 of 2003), under Order VII Rule 11 of CPC to reject the plaints.

8. The said applications were opposed by the plaintiffs/respondents herein stating that the Special Court functions both as criminal and civil Court and, therefore, it has jurisdiction to determine the civil liability as well.

9. The Court below while placing reliance upon a decision of this Court in Brilliant Industries Limited Vs. Transmission Corporation of Andhra Pradesh Limited and Others, , held that the Special Court constituted under the Act was competent to determine the civil liability for the loss or damage incurred by the Board or the licensee due to the commission of offences under Sections 135 - 139 of the Act, Accordingly, it was held that the suits were maintainable, and the applications were dismissed.

10. I have heard the learned Counsel for both the parties and perused the material on record.

11. For better appreciation of the controversy involved in the matter, it is

necessary to note the object and purport of the Electricity Act, 2003 and the relevant provisions thereunder.

12. Prior to the enactment of the Electricity Act, 2003, the Electricity Supply Industry in India was governed by three enactments viz., the Indian Electricity Act, 1910, the Electricity (Supply) Act, 1948 and the Electricity Regulatory Commission Act, 1998. Whereas the Indian Electricity Act, 1910 envisaged growth of the electricity industry through private licensees and for the said purpose provided for licensees who could supply electricity in a specified area, the Electricity (Supply) Act, 1948, mandated the creation of a State Electricity Board, to arrange supply of electricity in the State. Subsequently, the Electricity Regulatory Commission Act was enacted in the year 1998 creating Central Electricity Regulatory Commission and also enabling the State Governments to create State Electricity Regulatory Commissions mainly for the purpose of determination of tariffs.

13. Subsequently, the Electricity Act, 2003 (Act 36 of 2003) has been enacted to consolidate the laws relating to generation, transmission, distribution, trading and use of electricity and for several other matters connected therewith or incidental thereto. The said Act, which came into force with effect from 10-6-2003 replaced the Indian Electricity Act, 1910, the Electricity (Supply) Act, 1948 and the Electricity Regulatory Commission Act, 1998.

14. Part XV of the Electricity Act, 2003 specifically deals with the Special Courts under the Act. Section 153 of the Act, which provides for constitution of Special Courts and Section 154, which provides for procedure and power of Special Courts, may be extracted hereunder.

153. Constitution of Special Courts /?The State Government may, for the purposes of providing speedy trial of offences referred to in Sections 135 - 139, 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 consists 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).

154. Procedure and power of Special Court :-(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence punishable under Sections 135 - 139 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 - 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 Sub-section (1) of Section 260 or Section 262 of the Code of Criminal Procedure, 1973 (2 of 1974), try the offence referred to in Sections 135 - 139 in a summary way in accordance with the procedure prescribed in the said Code and the provisions of Sections 263 - 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 Sub-section, 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 with or 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 (2 of 1974), be deemed to have been tendered u/s 307 thereof.

(5) The Special Court may 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 items 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 theft if determined whichever is less and the amount of civil liability so determined shall be recovered as if it were a decree of a civil Court.

(6) In case the civil liability so determined finally by the Special Court is less than the amount deposited by the consumer or the person, the excess amount so deposited by the consumer or the person, to the Board or licensee or the concerned person, as the case may be, within a fortnight from the date of communication of the order of the Special Court together with interest at the prevailing Reserve Bank of India prime lending rate for the period from the date of such deposit till the date of payment.

Explanation :?For the purpose of this Section, "civil liability" means loss or damage incurred by the Board or licensee or the concerned person, as the case may be, due to the commission of an offence referred to in Sections 135 - 139.

15. Section 155 of the Act, which provides that the Special Court under the Act shall be deemed to be a Court of Session and shall have all powers of a Court of Sessions, runs as under :

155. Special Court to have powers of Court of Sessions Save as otherwise provided in this Act, the Code of Criminal Procedure, 1973 (2 of 1974), 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 enactment, the Special Court shall be deemed to be a Court of Sessions and shall have all the powers of a Court of Sessions and the person conducting a prosecution before the Special Court shall be deemed to be a Public Prosecutor.

16. A reading of Sub-section (1) of Section 153 itself makes it clear that Special Courts constituted under Part XV of the Act are meant for the purpose of providing speedy trial of offences referred to in Sections 135 - 139 of the Act.

17. Having regard to the language employed in Sections 153 - 155, the learned Counsel for the petitioners contends that the Special Court is competent to try the matters relating to the offences referred to under Sections 135 - 139 of the Act or the matters relating to the civil liability arising out of the offences under the said Sections, but the Special Court is not competent to try a suit which does not arise out of the offences under Sections 135 - 139 of the Act.

18. Section 135 of the Act deals with theft of electricity and provides for punishment therefor; whereas Section 136 deals with theft of electric lines and materials and also provides for the punishment therefor. Similarly, Section 137 provides for punishment for receiving stolen property and Section 138 provides for punishment for interference with meters or works of licensees. Section 139 provides for punishment for negligently wasting electricity or injuring works. All

the above Sections are included in Part XIV of the Act, which deals with offences and penalties.

19. Thus it is clear that Sections 135 - 139 of the Act deal with the offences under the Act and the prosecution and punishment for the said offences. The fact that u/s 154(3) of the Act, the summary procedure prescribed under the Code of Criminal Procedure and the provisions of Sections 263 - 265 of Code of Criminal Procedure were made applicable to the trial of offences referred to in Sections 135 - 139 of the Act, makes it further clear that the Special Court constituted u/s 153 of the Act is meant for prosecution of offences referred to in Sections 135 - 139 of the Act .

20. However, Sub-section (5) of Section 154 specifically provides that the Special Court may also determine the civil liability against a consumer in terms of money for theft of energy and that the amount of civil liability so determined shall be recovered as if it were a decree of a civil Court.

21. While placing reliance upon Sub-section (5) of Section 154 of the Act, the learned Counsel for the respondents (plaintiffs) vehemently contended that the Special Court is also competent to determine the civil liability and it can act as a civil Court as well as Criminal Court while conducting the cases before it.

22. It is relevant to note that the Explanation to Sub-section (6) of Section 154 of the Act defines civil liability as loss or damage incurred by the Board or licensee or the concerned person, as the case may be, due to the commission of an offence referred to in Sections 135 - 139 of the Act.

23. Having regard to the definition of civil liability under the Explanation to Sub-section (6) of Section 154 of the Act, it is clear that the word civil liability under Sub-section (5) of Section 154 refers to civil liability due to the commission of offences referred to in Sections 135 - 139 alone. In other words, the civil liability shall be confined only in relation to the theft of electricity; theft of electric lines and material; dishonestly receiving stolen property; interference with meters or works of licensee; and negligently causing the electricity to be wasted. There is absolutely no reason to hold that the jurisdiction of the Special Court for determination of the civil liability can be extended to the matters arising out of other provisions of the Act, except Sections 135 - 139.

24. Though the learned Counsel for the respondents contended that in view of Section 145 of the Act, which bars the jurisdiction of the Civil Court to entertain any suit in respect of matters relating to the Act, in case it is held that the Special Court has no jurisdiction to determine the civil liability, the consumer will be left with no other remedy under the Act, I am unable to agree.

Section 145 of the Act runs as under :

145, Civil Court not to have jurisdiction :?"No Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an assessing officer referred to in Section 126 or any appellate authority referred to in Section

127 or the adjudicating officer appointed under this Act is empowered by or under this Act to determine and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act,

25. A bare reading of the above provision shows that the jurisdiction of the civil Court is barred only relating to matters referred to under Sections 126 and 127 of the Act i.e., with regard to assessment of the electricity charges by the Electrical Inspector and the order of the appellate authority against such assessment, but not the matters relating to other provisions of the Act. Hence, with regard to civil liability arising out of other provisions of the Act, it is always open to the aggrieved party to maintain a suit in a civil Court having jurisdiction.

26. For the aforesaid reasons, the conclusion of the Court below that the Special Court alone has jurisdiction even to determine the civil liability and no other civil Court has jurisdiction to entertain the suits in view of Section 145 of the Act, cannot be accepted.

27. The learned Counsel for the revision petitioners vehemently contended that the claim of the plaintiffs in the present suits does not relate to the civil liability arising out of the offences referred to in Sections 135 - 139 of the Act and, therefore, the suit cannot be maintained in the Special Courts.

28. The copies of the complaints in the suits in question are not made available and, particularly, the Court below did not refer to the individual prayers in the respective suits, the basis for the suit claim and the cause of action. In the circumstances, I am not inclined to express any opinion on merits, but it would be appropriate to remit the matter back to the Court below for consideration afresh in the light of the law laid down above.

29. Accordingly, the impugned orders are set aside and the revision petitions are allowed with a direction to the Court below to consider the respective applications filed by the defendants under Order VII Rule 11 of CPC afresh keeping in view the particular facts and circumstances of the respective cases in the light of the principles of law laid down above and to pass appropriate orders. Such exercise shall be completed as expeditiously as possible, preferably within a period of eight weeks from the date of receipt of this order.

30. The three civil revision petitions are accordingly allowed. No costs.