

(2016) 10 AP CK 0019

In the Andhra Pradesh High Court

Case No : Writ Petition Nos. 18093 of 2003, 24938 of 2001 and 18460, 23252 & 23900 of 2007

Pavan Kumar Chiripal

APPELLANT

Vs

Transmission Corporation of A.P. Limited

RESPONDENT

Date of Decision : 20-10-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Electricity Act, 1910 — Section 49-C(1)
Electricity Act, 2003 — Section 153(1), Section 154(5)

Citation : (2017) 2 ALT 332

Hon'ble Judges : Ramesh Ranganathan, ACJ. and Sri A. Shankar Narayana, J.

Bench : Division Bench

Advocate : Mr. D.V. Nagarjuna Baby, Advocate, for the Petitioner; Mr. Vinod Reddy, Advocate, for the Respondent; Smt. J. Koteswari Devi, Counsel, for the Respondent in W.P. No. 24938 of 2001

Final Decision : Disposed Off

Judgement

Ramesh Ranganathan, ACJ.—In these batch of writ petitions, the proceeding of the Divisional Engineer, directing the petitioners-consumers to pay different amounts, for misuse of electrical energy supplied to them, are questioned as without jurisdiction, and as arbitrary and illegal.

2. The learned Single Judge, by his order in W.P. No.24938 of 2001 dated 10-10-2007, referred the question:

"Whether the competent authorities notified as per the terms and conditions of supply framed under the Electricity (supply) Act 1948 have power to value the loss of energy on the allegation of pilferage or defect in meters after A.P. Amendment Act 2000 to the Indian Electricity Act 1910 and also in view of the new terms and conditions framed under the Indian Electricity Act 2003"

to be considered by a Division Bench as this question necessitated an authoritative pronouncement.

3. Earlier, by the order in W.P. No.13660 of 2002 dated 18.07.2007, the learned Single Judge had held that power was conferred, with regards fixation of civil liability for theft of energy, only on the Special Court which was hitherto the Special Tribunal; and the Superintending Engineer lacked jurisdiction to pass the order, impugned in those writ petitions, fixing the civil liability on the consumers for theft of energy.

4. Sections 49-B to 49-I were inserted in the Indian Electricity Act, 1910, by A.P. Act 35 of 2000, with effect from 31-07-2000. As Section 49-B(1), starts with a non-obstante clause, the provisions made thereunder were meant to prevail notwithstanding anything contained in the Code of Criminal Procedure. Section 49-B(1) provided for the compounding of the offences specified in the table, and conferred power on any Officer of an Electricity Utility, specially empowered in this behalf by the State Government, to accept, from any consumer or person who committed or who was reasonably suspected of having committed an offence of theft of energy punishable under the Act, a sum of money by way of compounding of the offence. Section 49-C related to constitution of Special Tribunals and, under sub-section (1) thereof, for the purpose of providing a speedy trial, the State Government was required, with the concurrence of the Chief Justice of the High Court and by notification in the Official Gazette, to specify, for a District or Districts, a Court of the District and Sessions Judge to be the Special Tribunal to try the offences under the Act and determine the compensation to be awarded to the Electricity utility where the compensation to be awarded is upto the value of Rupees five lakhs.

5. Section 49-C (4) stipulated that it shall be lawful for the Special Tribunal to pass an order, in any case decided by it, awarding compensation, in terms of money, for theft of energy which shall not be less than an amount equivalent to twelve months assessed quantity of the energy, committed theft of, at three times the tariff rate applicable to the consumer or person as per the guidelines prescribed by the State Government from time to time, and the amount of compensation, so awarded, shall be recovered as if it were a decree of a Civil Court. The proviso thereto required the Special Tribunal, before passing an order under clause (4) of Section 49-C, to give the consumer an opportunity of making his representation or adducing evidence, if any, in this regard; and to consider every such representation and evidence. Clause (5) of Section 49-C provided for transfer of pending cases and, thereunder, any case pending before any Court or other authority immediately before the commencement of the Indian Electricity (Andhra Pradesh Amendment) Act, 2000, as would have been within the jurisdiction of a Special Tribunal, was to stand transferred to the Special Tribunal, having jurisdiction, as if the cause of action on which such suit or proceeding is based had arisen after such commencement.

6. Consequent on the amendment to the Indian Electricity Act, 1910, by insertion of Clauses (1), (4) and (5) of Section 49-C with effect from 31-07-2000, all cases pending before the authorities (Officers of the Electricity Utility) ought to

have been transferred to the Special Tribunal constituted under Section 49-C(1) of the Indian Electricity Act. In all these writ petitions the cases, relating to theft of energy by consumers, were pending before the designated Officers of the Andhra Pradesh State Electricity Board (Electricity Utility) and, in view of clause (5) of Section 49-C, ought to have been transferred to Special Tribunal constituted under Section 49-C(i), on the coming into force of the Indian Electricity (Andhra Pradesh Amendment) Act, 2000 with effect from 31.07.2000.

7. While matters stood thus, the Indian Electricity Act, 2003 (Act 36 of 2003) (hereinafter called "2003 Act") came into force with effect from 10-06-2003. Part - XIV of the 2003 Act relates to offences and penalties, and Section 135 thereunder relates to theft of electricity. Part-XV of the 2003 Act relates to Special Courts and Section 153 thereunder relates to its constitution. Under Section 153 (1) of the 2003 Act the State Government may, for the purpose 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. Section 153 (2) of the 2003 Act stipulates that a Special Court shall consist of a single Judge who shall be appointed by the State Government with the concurrence of the High Court. Clause (3) of Section 153 of the 2003 Act stipulates that 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.

8. The Special Tribunal, constituted under Section 45-C of the Indian Electricity (Andhra Pradesh Amendment) Act, 2000 was the Court of the Additional District Judge, and the very same Court was designated as the Special Court under Section 153 (1) of the 2003 Act. Section 154 of the 2003 Act prescribes the procedure and powers of the Special Court. Section 154 (5) requires the Special Court to determine the civil liability against a consumer in terms of money, for theft of energy, which shall not be less than an amount equivalent to two times 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 the Civil Court. Under the explanation thereto, for the purposes of Section 154, civil liability shall mean "loss or damage incurred by the Board or Licensee or the concerned person, as the case may be, due to commission of an offence referred to in Sections 135 to 139".

9. Unlike the A.P. amendment to Indian Electricity Act, 1910, which provided for cases, pending before the authorities, to be transferred to the Special Tribunal, the 2003 Act makes no provision for transfer of cases for determining civil liability. Section 154 (2) requires a Court in the course of inquiry or trial, if it appears that the offence punishable under Sections 135 to 140 and Section 150 is in respect of any offence which is triable by the Special Court constituted under the 2003 Act, to transfer such cases to such Special Court, and thereupon

such case shall be tried and disposed of by such Special Court in accordance with the provisions of the 2003 Act. Section 154(2) provides for the transfer of cases to the Special Court, from the Court before which the Criminal Case was instituted and not from the authority before whom an application, for determination of civil liability for theft of electricity, was made.

10. As noted herein above, the cases pending before the authorities were required, under Section 49-C (5) of the Indian Electricity (Andhra Pradesh Amendment) Act, 2000, to be transferred to the Special Tribunal which, after the 2003 Act came into force, was constituted as a Special Court. Failure on the part of the authorities of the electricity utility to transfer such cases to the Special Tribunal, after the Indian Electricity (Andhra Pradesh Amendment) Act, 2000 came into force with effect from 31.07.2000, cannot result in these cases not being inquired into, or the civil liability of consumers, who are found to have indulged in theft of energy, determined in accordance with the provisions of the 2003 Act. If these cases had been transferred, under Section 49-C (5) of the Indian Electricity (Andhra Pradesh Amendment) Act, 2000 to the Special Tribunal, then after 2003 Act came into force, and since the earlier Special Tribunal has itself been constituted as a Special Court, these cases would have been heard and decided by the Special Courts constituted under 2003 Act.

11. We answer the reference holding that the competent authorities, notified as per the terms and conditions of supply under the Electricity Supply Act, 1948, lack jurisdiction to value the loss of energy, or determine the civil liability of consumers on allegations of pilferage or defect in meters after the Indian Electricity (A.P. Amendment) Act, 2000 came into force w.e.f. 31.07.2000; such cases pending before these competent authorities ought to have been transferred to the Special Tribunal constituted under Section 49-C(1) of the Indian Electricity (A.P. Amendment) Act, 2000; and matters which ought to have been transferred or are pending before the Special Tribunal, constituted under Section 49-C (1) of the Indian Electricity (A.P. Amendment) Act, 2000, shall be heard and decided by the Special Courts exercising jurisdiction under Section 154 (5) of the 2003 Act.

12. While we would have ordinarily, after answering the reference, sent these Writ Petitions back to the learned Single Judge to decide the Writ Petitions on merits, Sri D. V. Nagarjuna Babu, learned counsel for the petitioners, and Sri R. Vinod Reddy and Smt. J. Koteshwari Devi, learned Standing Counsel for the respondents, would agree that these writ petitions may be disposed of directing the respondents officials to transfer all these cases to the Special Court constituted under the 2003 Act.

13. These Writ Petitions are, accordingly, disposed of directing the respondent-officials to forthwith transfer the cases pending before them, to the Special Court constituted under Section 153 (1) of the 2003 Act, for determination of the civil liability of the writ petitioners with regards the allegation of theft of electricity by them. No costs. As a sequel thereto, Miscellaneous Petitions, if any pending in

these writ petitions, stand disposed of.