

**ORISSA ELECTRICITY REGULATORY COMMISSION  
BIDYUT NIYAMAK BHAWAN  
UNIT-VIII, BHUBANESWAR - 751 012  
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Present : Shri B.K. Das, Chairperson  
Shri K.C. Badu, Member  
Shri B.K. Misra, Member

**Case No. 45/2011**

M/s. Sri Siva Shankar Industries .... Petitioner  
Vrs.  
CEO, SOUTHCO & Anr. .... Respondents

**In the matter of : Application u/s 142 of the Electricity Act, 2003.**

For the Petitioner : Shri R.P. Mahapatra, authorized representative.

For the Respondent : Shri Debasish Das, G.M (R&A), CSO-SOUTHCO  
Shri S.C. Dash, Advocate.

**ORDER**

**Date of Hearing: 22.6.2011**

**Date of Order: 25.6.2011**

The petitioner has filed the present case on 21.6.2011 for initiation of proceeding against the respondents under section 142 of the Electricity Act, 2003 (hereinafter "Act") for contravention of the provisions of the Act and impose a maximum penalty on the Respondents under the Act, for willful contraventions of the provisions of the Act and the Rules and Regulations framed there under. He has also prayed that pending final hearing of the petition, the commission may pass an Ex-Parte Order, directing the Respondents to immediately reconnect the power supply to the premises of the Petitioner.

2. On 22.6.2011 at 11.00 AM the petitioner moved the above petition before the Commission to take up the matter on the same date and to pass an ex-parte order prayed for. The Commission directed the petitioner to serve the copy of the above petition on the representative of SOUTHCO who was present at the hearing, for other cases and also directed the representative of SOUTHCO to file its reply by afternoon so that the prayer for an interim order could be taken up for consideration at 4.30 PM.

3. The commission took up the case for hearing at 4.30 PM in presence of the authorized representatives of both the petitioner and the respondent. The reply filed by the respondent the copy of which was also served on the petitioner was taken on record. Heard both the parties at length.
4. On perusal of both the written and oral submissions made by Shri R.P. Mohapatra, on behalf of the petitioner M/s. Sri Siva Shankar Industries and the respondent SOUTHCO, we find that on 13.4.2011, the Superintendent Engineer (Electrical), Jeypore Circle, SOUTHCO had inspected the premises of the petitioner and alleged that power supply for the 75 KW additional load was being tapped from the LT bushing of the 150 KVA transformer. On the same day, G.V. Ramana, Managing Partner of M/s. Sri Siva Shankar Industries wrote to the Executive Engineer (Elect.) Jeypore as under:

*"I do hereby undertake that I shall make payment towards the un-metered consumption of my oil mill if the bill is served as per existing rule and OERC Regulation. Do not disconnect my power supply."*

5. Thereafter, the Executive Engineer (Elect.), Jeypore Electrical Division in his letter No.1157(4) dated 16.4.2011 issued the provisional assessment liability of Rs.21,93,217.00 (Rupees twenty one lakh ninety three thousand two hundred seventeen) only, for such unauthorized use of electricity under Section 126(2) of the Electricity Act, 2003. On 16.4.2011 the Managing Partner of M/s. Sri Siva Shankar Industries wrote to the Executive Engineer (Elect.), Jeypore Circle as under:

*"Now, I have received a provisional assessment amounting to Rs.21,93,217.00 under Section 126 of Electricity Act, 2003. I accept and agree to pay the assessment amount. However, I may be permitted to deposit the 50% of the accepted provisional assessment amount and balance 10-monthly installment with current charges and also requires reconnecting the power supply and obliging. Enclosed herewith the Cheque No.088309 dated 16.4.2011 amounting to Rs.10,96,910/-."*

6. The petitioner deposited Rs.10,96,910/- without any protest. Thereafter, the petitioner moved the Hon'ble High Court in a Writ Petition (Civil) bearing No.13204 of 2011. The Hon'ble High Court in their judgment dated 17.5.2011 vide para 5 and 6 observed and directed as under:-

*"5. Sub-section(4) of Section 126 of the Electricity Act clearly spells out that any person served with the order of provisional assessment may, accept such assessment and deposit the*

*assessed amount with the licensee within seven days of service of such provisional assessment order upon him and in case the person deposits the assessed amount, he shall not be subjected to any further liability or any action by any authority whatsoever. Faced with such a situation, learned counsel for the petitioners vehemently argued that the petitioner No.1 agreed to pay the amount through Annexure-9 on account of threat given by the opposite parties for disconnection of power supply in case the total provisional assessed amount is not paid. This contention of the learned counsel for the petitioner is liable to be noticed only for the sake of rejection. In fact, the letter of the petitioner under Annexure-9 has added another nail to the coffin of the case of the petitioner since no where it has been mentioned therein that 50% of the amount is being paid by him under protest or on account of threat given by the opposite parties for disconnection of power supply.*

6. *In view of all this, no case is made out to allow this writ petition and in the final analysis, the writ petition is dismissed. Parties are left to bear their own cost.”*
7. The Respondent, SOUTHCO submitted before the Commission that without mentioning anything about the above Writ Petition filed by the petitioner and subsequent disposal of the said petition by the Hon’ble High Court, the petitioner has filed the appeal on 13.6.2011 before the Electrical Inspector. The petitioner has not mentioned anything about the fate of the writ petition rather the petitioner has filed an affidavit on 16.6.2011 wherein it was mentioned “that there is no case pending in higher forum”. The Electrical Inspector on 16.6.2011 issued notice to the respondent to file counter within 15 days and refrain from disconnection of power and fixing the case for hearing on 04.7.2011. The Respondent submitted that, if this fact would have been mentioned by the petitioner in his appeal petition, then the Appellate Authority would not have entertained the appeal at all. This fact has been deliberately suppressed before the Appellate Authority to obtain the present order.
8. It is alleged by the Petitioner that the Respondents threatened immediate disconnection of supply and therefore, under duress he agreed to pay towards the unmetered supply for his oil mill, if a bill is issued as per regulation and further requested not to disconnect the supply. Despite such a request and acceptance to pay, power supply was disconnected on 13.4.2011 itself. Since supply was already disconnected on 13.4.2011 and as per the dictates of the Respondent, the Petitioner further agreed to pay the provisional assessment of

Rs.21,93,217/- with a request to deposit 50% of the provisional assessment immediately and the balance in ten monthly instalments. A sum of Rs.10,96,910/- was paid by cheque on 16.4.2011. The Respondent thereafter without affording him an opportunity of personal hearing, served upon him the final Assessment Order dt.16.5.2011 on 20.5.2011 for a sum of Rs.17,22,406/- . The Executive Engineer (Electrical) while communicating the said final assessment order in his letter No.1339 dated 16.5.2011 asked the petitioner to make payment of balance of final assessment amount of Rs.6,25,496/- within 15 days from the date of receipt of the order failing which appropriate steps shall be taken for disconnection of power supply as per law. Thereafter, the respondent on 01.6.2011 issued disconnection notice under section 56 of the Act, vide his disconnection notice No.1516(4) dated 01.6.2011. The Petitioner further submitted that he had not only informed the Respondent that he was filing an appeal vide his letter of 13.6.2011 but also made a request not to take any coercive action till the appeal is disposed of. It is alleged by the petitioner that the order of the Appellate Authority restraining the respondent from disconnecting power supply was served on the Executive Engineer (Elect.) Jeypore on the morning of 18.6.2011 but the E.E.(Elect.) disconnected power on 18.6.2011 in the evening at about 5.00 PM. This being willful contravention of the Act on the part of the respondent Commission he has prayed as under:-

*“1. That pending hearing of the Petition, pass an Ex-Parte Order, directing the Respondents to immediately reconnect the power supply to the premises of the Petitioner.  
2. That maximum penalty be imposed on the Respondents under Section 142 of the EA, 2003, for willful contraventions of the provisions of the EA, 2003 and the Rules and Regulations framed there under as submitted above.”*

9. The representative of the Respondent vehemently opposed the contention of the petitioner. He submitted that, since the petitioner in his letter dated 16.4.2011 had accepted and agreed to pay the provisional assessment made on 16.4.2011 amounting to Rs.21,93,217.00 (Rupees twenty one lakh ninety three thousand two hundred seventeen) , finally assessed amount of Rs.17,23,604/- arrived at by rectifying the clerical mistake automatically becomes payable as agreed amount which is less than the amount provisionally assessed. As per Section 127(5) of the EA, 2003 the Appellate Authority cannot entertain the appeal because according to said sub-section, no appeal shall lie to the

appellate authority referred to in sub-section (1) of Section 127 against the final order made with the **consent of the parties**.

10. It is further submitted by the learned Advocate of the respondent that, in the present petition, the petitioner has also not brought to the knowledge of the Commission as well as the Appellate Authority about the filing of writ petition by the petitioner which has been dismissed by the Hon'ble High Court in their Judgment dated 17.5.2011 wherein challenge was made against the provisional assessment of Rs.21,93,217.00/-. The petitioner has challenged before the Appellate Authority the final assessed amount of Rs.17,23,604/- which is less than the provisional assessment of Rs.21,93,217.00/- which was agreed to be paid vide his letter dtd.16.4.2011 as indicated in para 5. Since out of the final assessment of Rs.17,23,604/- balance amount was pending at Rs.6,25,495/- as on 18.5.2011 for which disconnection notice was duly issued on 01.6.2011 under Section 56 of the Act, the respondent has not violated provision of Act or regulation there under by disconnecting power supply to the premises of the petitioner on 18.6.2011. The order of the appellate authority has not been violated as because the appellate authority lacks jurisdiction to entertain the appeal as per Section 127(5) of the Electricity Act, 2003.
11. Shri R.P. Mohapatra, authorized representative of the petitioner on the other hand pointed out that the rejection of the writ petition by the Hon'ble High Court, in respect of the provisional assessment order has nothing to do with the final assessment order. Secondly, when more than 50% of the final assessed amount have been paid by the petitioner, the petitioner is not entitled to pay the balance amount until the final disposal of the appeal by the Appellate authority for which the petitioner has filed an appeal on 13.6.2011 before the Appellate Authority.
12. The learned counsel of the respondent stated that, sub-section (2) of Section 127 states that "No appeal against an order of assessment under sub-section(1) shall be entertained unless an amount equal to half of the assessed amount is deposited in cash or by way of bank draft with the licensee and documentary evidence of such deposit has been enclosed along with the appeal." As such a plain reading of the section 127(2) of the Electricity Act makes it clear that 50% of the assessed amount is to be deposited as a necessary condition to be fulfilled before appeal as entertained. If 50% of the assessed amount is not deposited, the appeal cannot be entertained. It does not mean automatically the

balance 50% is not payable or automatically stayed by the Appellate authority without specific order of the Appellate authority to that effect.

13. It has been further stated by the learned counsel for the respondent that as per sub-section (6) of Section 126 that the assessment shall be made at a rate equal to twice the tariff applicable for the relevant category of services specified in sub-section (5). Hence, practically the amount assessed under Section 126 is essentially an electricity charges and as such after final assessment if any amount remains unpaid form a part of electricity charges payable by the consumers, the distribution licensee is competent to issue disconnection notice under Section 56 of Act.
14. The respondent further submitted that, if the order of the Appellate Authority is violated by the respondent, then the aggrieved party is to approach the Appellate Authority, the order of which has been violated. The Commission is not the proper forum for the same.
15. The Commission refrains from going into the question of law or the question of facts raised on either side. The Commission shall not make any pronouncement or observations on the merit of the submission made by the petitioner as well as the Respondent with reference to facts of the case as well as legal issue involves in this case. These should be put forth before the Appellate Authority who would duly consider the submissions made by the petitioner as well as the respondent and take an appropriate decision in the matter in accordance with the provisions of law.
16. However, the fact remains that power supply to the petitioner remains disconnected and his business is being seriously affected. At the same time the respondent after rejection of the writ petition of the Petitioner by the Hon'ble High Court, rightfully expects to receive the balance amount of Rs.6,35,496/- before restoring power supply to the premises of the petitioner. An acceptable solution, pending the disposal of the Appeal, lies in mutual agreement without giving up the merits of their contention and as may be decided by the Appellate Authority. The parties after mutual discussions filed a written joint submission as follows:-

*“Out of the arrear of Rs.6,25,496/- as per the disconnection notice dated 16.6.2011, the licensee is willing to restore power supply on depositing of Rs.2,50,000/- along with reconnection charge which the consumer (Siva Shankar Ltd., Koraput), agrees to pay.*

*The balance amount, if any, would be paid after disposal of the case pertaining to the assessment made u/s 126 of the Electricity Act, 2003 by the Appellate Authority or any other competent authority”.*

17. In view of the above, the petition is disposed of in terms of the above compromise deed. Proceedings under Section 142 of the Electricity Act, 2003 are not allowed. Before power supply is restored, the MRT Dept. of the licensee must check the metering arrangement of both the feeders having contract demand of 20 KW and additional contract demand of 75 KW and ensure that the meters are in order and no part of the load are bypassed from the meters. Pending the disposal of the case by the Appellate Authority the current bills must be paid regularly for continued power supply to the consumer.
18. Liberty is granted to both the Petitioner and the Respondent to approach the Commission appropriately if the terms of the compromise are not honoured by the Licensee or the Petitioner. The Commission further directs that a copy of this order should be brought to the notice of the Appellate Authority u/s 127 of the Electricity Act, 2003 for appropriate decision at his end after hearing both the petitioner as well as the respondent.

Sd/-  
**(B.K. Misra)**  
**Member**

Sd/-  
**(K.C. Badu)**  
**Member**

Sd/-  
**(B. K. Das)**  
**Chairperson**