

**ODISHA ELECTRICITY REGULATORY COMMISSION**  
**BIDYUT NIYAMAK BHAWAN,**  
**UNIT – VIII, BHUBANESWAR – 751 012**  
\*\*\* \*\*

**Present :** **Shri S. P Nanda, Chairperson**  
**Shri S. P. Swain, Member**  
**Shri A. K. Das, Member**

**Case No. 81/2014**

Shri Sanjay Kumar Tripathy  
Vrs.  
SOUTHCO

.....

**Petitioner**

.....

**Respondents**

**In the matter of :** U/s 142 of Electricity Act 2003 for Non-Compliance of the order of the Commission.

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

**For the Respondents :** Smt. M. K. Mohapatra, Advocate

**ORDER**

**Date of hearing:** 02.06.2015

**Date of order:** 22.08.2015

1. The petitioner Shri Sanjay Kumar Tripathy, Giri Road, Berhampur, Ganjam has brought before us a case where officials of SOUTHCO have initiated proceeding against him both under Section 126 and 135 of the Electricity Act, 2003 concurrently in spite of clear cut direction of the Commission in this regard. Therefore, the Petitioner seeks penalty under Section 142 of the Act on the Respondent official of the SOUTHCO.
2. According to the petitioner, SOUTHCO officials had inspected his premises on 26.06.2013 and initiated proceeding under Section 126 of the Electricity Act, 2003. Consequently a provisional assessment amounting to Rs.1,98,163/- was made by the Executive Engineer of SOUTHCO. Simultaneously, SOUTHCO also initiated a proceeding under Section 135 of the Act against the Petitioner and disconnected power supply to his premises. Petitioner paid Rs.50,000/- against the assessment for resumption of power supply. Then the petitioner moved the Deputy Electrical Inspector (T&D), Berhampur, the Appellate Authority, under Section 152 of the Act to get himself acquitted from charges under Section 135 of the Electricity Act, 2003.

By depositing of Rs.20,000/- with the Dy. Electrical Inspector (T&D), the charges under Section 135 of the Act were compounded and further action was dropped inconsonance with Section 152 of Electricity Act on 17.07.2013. Subsequently the licensee SOUTHCO also issued a final assessment order of Rs.99,231/- against the petitioner on 26.08.2013.

3. Now, the petitioner submits that imposition of penalty under Section 126 and initiating action under Section 135 concurrently is illegal and amounts to the disobedience of the order of OERC vide letter No. DIR(T)-335/08/1066 dt.18.06.2011 and hence action against the licensee under Section 142 needs to be taken up.
4. The petitioner had come before us earlier on this same issue. We had directed the petitioner to approach the Appellate Authority under Section 127 of the Act within 30 days. The Petitioner submits that since the Appellate Authority is not empowered to condone the delay in filing appeal after 30 days of the final assessment, the matter may be heard under Section 142 of the Act by the Commission.
5. On his rejoinder Shri R P Mahapatra the authorised representative of the Petitioner submitted that as per Section 126 of the Act the final assessment order should have been served within 30 days from the date of service of provisional assessment order i.e. well before 26.07.2013 whereas the final assessment order was issued on 26.08.2013 constituting violation under the Act.
6. Further, Shri Mahapatra submitted that in para 15 of the judgement dated 20.10.2011 in Civil Appeal No. 8859 of 2011, Hon'ble Supreme Court has categorically distinguished the applicability of Section 126 and Section 135 of the Electricity Act. The fine which may be imposed under Section 135 of the Electricity Act, 2003 is directly proportional to the number of convictions and also dependent on the extent of load abstracted by a consumer. Further, letter No. Dir(T)-335/08/1066 dated 18.6.2011 of Secretary, OERC has directed all the DISCOMs not to use both Section 126 and Section 135 simultaneously. In view of the above SOUTHCO has violated the order of the Commission as well as order of Hon'ble Supreme Court and hence action under Section 142 should be initiated against the licensee and Rs.50,000/- which has been deposited should be refunded with interest to the petitioner.
7. On the other hand, respondent submitted that during inspection of the premises of the Petitioner slow recording of the meter was found by SOUTHCO officials reasons of which was attributed to the Petitioner. Therefore, the consumer was held guilty of unauthorised use and theft of electricity within the meaning of Electricity Act, 2003. Accordingly, assessment was made under Section 126 and simultaneously FIR was also lodged under Section 135 of the Act. Without any protest or objection, the consumer paid an amount of Rs.20,000/- for compounding of offence on 11.07.2013 under Section 152 of the Act. Notice was also issued to the consumer for personal hearing and the consumer deposited Rs.50,000/- voluntarily and took part in the proceeding. The Assessing Officer passed the Final Assessment Order on 26.08.2013 amounting to Rs.99,321 But due to non-payment of final assessment amount under section 126 of the Act, the same was added to the energy bill. The

provisions under Section 126 and Section 135 are to be construed according to law. The submissions of the petitioner is not correct since remedy under Section 127 has not been availed.

8. Heard the parties at length.

Written submissions including rejoinders are taken into consideration.

9. We observe that the petitioner has relied on this Commission's view regarding implementation of Section 126 and Section 135 of the Electricity Act, 2003 communicated in the letter dated 18.06.2011 and has sought penal action against the respondent for violation of the same under Section 142 of the Electricity Act.

The matter has subsequently been examined in other contexts by Hon'ble Apex Court's order in Civil Appeal No. 8859 of 2011. It is held by said Hon'ble Court that *there is a clear distinction between the cases that would fall under Section 126 of the 2003 Act on the one hand and Section 135 of the 2003 Act on the other. There is no commonality between them in law. They operate in different and distinct fields.* Therefore, Section 126 and Section 135 of the Electricity Act can be implemented either disjointedly or conjunctively depending upon the situation and there is no bar to its conjoint application in appropriate circumstances. Section 135 deals with abstraction of electrical energy with dishonest intention whereas Section 126 deals with matters relating to unauthorised use of energy. Accordingly, we find no merit in the ground taken by the petitioner to attract Section 142 of the Act on this account.

We note that in the reply of the respondent, adequate justification for receiving Rs.50,000/- (Rupees fifty thousand only) from the petitioner before conclusion of proceeding under Section 126 or Section 135 of the Electricity Act, 2003 has not been furnished by the respondent.

Therefore, we direct the respondent Executive Engineer to issue a speaking order under Section 126 of the Act considering all the relevant issues raised in the present petition within thirty days of this order serving a copy on the Petitioner. Power supply to the premises of the petitioner shall not be disconnected until the above orders of the Commission are implemented and following due procedure as per Section 56 of the Electricity Act, 2003.

10. Accordingly the case is disposed of.

Sd/-  
**(A. K. Das)**  
**Member**

Sd/-  
**(S. P. Swain)**  
**Member**

Sd/-  
**(S. P. Nanda)**  
**Chairperson**