

**ODISHA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN
PLOT NO.-4, CHUNUKOLI, SHAILASHREE VIHAR
BHUBANESWAR - 751 021**

**Present: Shri U. N. Behera, Chairperson
 Shri A. K. Das, Member
 Shri S. K. Parhi, Member**

Case No. 50/2016

Sanjaya Kumar Tripathy	Petitioner
Vrs.		
SOUTHCO Utility & others	Respondents

In the matter of: An application under Section 142 of the Electricity Act, 2003 for non-compliance of Order dated 22.08.2015 of the Commission passed in Case No. 81 of 2014.

**For Petitioner : Shri R. P. Mahapatra, authorised representative.
 Shri Sanjay Kumar Tripathy.**

**For Respondent: Shri M. K. Mahapatra, Advocate
 Shri Chandan Das, E.E. (Elect.), SOUTHCO utility.**

ORDER

Date of hearing: 16.05.2017

Date of order: 09.04.2019

The present petition has been filed by one Shri Sanjay Kumar Tripathy for non-compliance of our order in Case No. 81/2014 dated 22.08.2015 by the Executive Engineer of SOUTHCO Utility. In the said order the Commission had directed the concerned Executive Engineer to issue a speaking order under Section 126 of the Act within 30 days of the order of the Commission. The Commission had further directed that power supply to the premises of the Petitioner should not be disconnected until the above orders of the Commission are implemented and without following due procedure as per Section 56 of the Electricity Act, 2003. The speaking order should also contain the justification for receiving Rs.50,000/- from the Petitioner before the conclusion of proceeding under Section 126 or Section 135 of the Electricity Act, 2003.

2. SOUTHCO Utility in its counter submitted that it has already served the speaking order as well as account statement on 3.9.2015 on the Petitioner. It is ready to settle the dispute under law as a result of which no disconnection notice has been issued under Section 56 of the Act. The Respondent further submitted that since final order

under Section 126 has been issued this cannot be set aside in a proceeding under Section 142 of the Act.

3. However the Petitioner in its rejoinder submitted that the letter giving the speaking order appears to be manufactured one and has never been delivered to the Petitioner. Though the Respondent claimed that the letter has been sent through courier, no courier receipt is attached to the reply of the Respondent dated 27.10.2016. The Petitioner further submitted that it has received the reply of the Respondent only during the hearing of the present case on 16.05.2017 as per the direction of the Commission.
4. The Petitioner in its rejoinder has further stated that the so called speaking order of the Respondent does not contain the justification of collecting Rs.50,000/- during the pendency of the proceeding under Section 126 of the Act. It is not understood why the respondent has passed the final assessment order after more than 30 days of passing of provisional assessment order violating Section 126 (3) of the Act.
5. The Petitioner also pointed out that he cannot approach the Appellate Authority under Section 127 of the Act as the said Authority is not empowered to condone delay in filing appeal after 30 days of final assessment.
6. Heard the parties carefully. Respondent could not clarify the issues raised by the Petitioner on non-delivery of the final order to the latter, and also on justification for receiving Rs.50,000/- from the Petitioner unlawfully during pendency of proceedings. Though, for record, the respondent has claimed that the order of Commission has been complied and speaking order as per Section 126 has been passed, it has tacitly avoided key contention of Petitioner for what reason Rs.50,000/- has been collected. Absence of appropriate reason for collecting money from the consumer is serious offence from legal point of view and in addition the Respondent has not properly followed our order.
7. Therefore, we direct, that the Respondent shall pass a speaking order under Section 126 afresh addressing all the raised issue herein and serve on the petitioner with due acknowledgement, within fifteen days of this order. The Respondent shall also provide satisfactory explanation in the order towards the amount collected by them during pendency of Section 126 proceeding. Failing the above, we opine, is an appropriate situation where violation has been made to the provisions of the Act and

penalty under Section 142 need to be imposed as a deterrent. We feel a token penalty of Rs.100/- for each day of delay beyond the stipulated date line of fifteen days need to be recovered from the respondent if he fails to comply with this order. We direct accordingly.

8. Accordingly, the case is disposed of.

Sd/-
(S. K. Parhi)
Member

Sd/-
(A. K. Das)
Member

Sd/-
(U. N. Behera)
Chairperson