

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

REVISION APPLICATION NO. 159 OF 2023

BEST undertaking ... Applicant

vs.

Muttum Abdul Khalid and Ors. ... Respondents

**WITH
CRIMINAL APPLICATION NO. 694 OF 2023**

Muttum Abdul Khalid ... Applicant

vs.

BEST Undertaking and Ors. ... Respondent

Mr. Karan Bhosale a/w. Ms. Priyanka Dubey, Ms. Khushboo Acharya i/b. Hedgehog & Fox LLP :-	Advocates for Applicant in Cr. Application No. 694/2023 and for Respondent No. 1 in Cr. Revision Application No. 159/2023.
Counsel H. Toor a/w. Adv. Rakesh L. Singh i/b. M. V. Kini & Co. :-	Advocates for Respondent-BEST.

CORAM : S. M. MODAK, J.

DATE : 13th SEPTEMBER 2024

P. C. :-

1. Heard learned Advocate Mr. Bhosale for Accused / Applicant.

He has relied upon following judgments.

- (i) **Executive Engineer, Southern Electricity Supply Company of Orissa Limited (SOUTHCO) and Anr. vs. Sri Seetaram Rice Mill.**¹
- (ii) **Dhairiyashil Arun Doifode vs. Maharashtra State Electricity Distribution Company Ltd. And Anr.**²
- (iii) **Pradeep kumar Jain and Ors. vs. The State of Jharkhand.**³
- (iv) **J. M. D. Alloys Ltd. vs. Bihar State Electricity Board and Others.**⁴
- (v) **Kerala State Electricity Board and Others vs. Thomas Joseph Alias Thomas M. J. and Others.**⁵
- (vi) **M/s Hajipur Roller Flour Mills vs. Bihar State Electricity Board & Ors.**⁶
- (vii) **Sushil Kumar Agarwal vs. Meenakshi Sadhu and Others.**⁷

2. He made following submissions :-

- (i) The liability under Section 126 and liability under Section 154 of the Electricity Act, 2003 stand on different footing and they are not interconnected.
- (ii) The BEST has never made final assessment under Section 126 of the said Act.
- (iii) The trial Court has wrongly considered the undertaking given by the Applicant. In fact it is for replacing of cash with cheques.

1 (2012) 2 SCC

2 2018 SCC OnLine Bom 2770

3 Cr. M. P. No. 1987 of 2023 : 12th June 2023 : High Court of Jharkhand, Ranchi.

4 (2003) 5 SCC 226

5 (2023) 11 SCC 700

6 2012 SCC OnLine Pat 1709

7 (2019) 2 SCC 241

- (iv) This undertaking will not come in his way of challenging provisional assessment.
- (v) The phrase 'without prejudice' used in the third proviso to Section 135(1A) of the Act has to be interpreted so as to give benefit not only to BEST but also to the Applicant.
- (vi) He relied upon few of the judgments on the point of interpretation of statute. He invited my attention to duration of the assessment as per Section 126 and as per Section 154 of the said Act.
- (vii) He invited my attention to the documents relating to replacement of meter and the date of last visit (It is earlier to date of inspection).
- (viii) He submitted the assessment is for 695 days which is in excess of the permissible limit.

3. Stand over to **25th September 2024** as 'Part Heard' for hearing reply arguments of learned Advocate for BEST.

[S. M. MODAK, J.]

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