IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWP No.3941 of 2010
Decided on: 25.04.2026

Himachal Pradesh State Electricity Board and Anr.

....Petitioners

Versus

M/s Shree Ganesh Fats (P) Ltd and Ors.

...Respondents

Coram

Ms. Justice Jyotsna Rewal Dua

[1] *Whether approved for reporting?*

For the petitioners:	Ms. Sunita Sharma, Sr. Advocate with Mr. Dhananjay Sharma, Advocate.
For the respondents:	Mr. O.C.Sharma, Advocate, for respondent No.1. None for respondents No. 2 and 3.

Jyotsna Rewal Dua, Judge

The Himachal Pradesh State Electricity Board, feels aggrieved against order passed on 06.04.2010 by the Divisional Commissioner, Shimla Division, allowing an appeal preferred by respondent No.1 under Section 127 of the Indian Electricity Act, 2003 (the Act in short), against the final

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[1] *Whether reporters of Local Papers may be allowed to see the judgment? Yes*

assessment order dated 29.07.2009, made against it under Section 126 of the Act.

2. The case

2(i) Petitioners' case was that it had put many major industries under surveillance as huge energy losses were felt on the feeder. Respondent No.1 was also one such industry put under surveillance w.e.f. 08.01.2009. On 11.02.2009, a raid was conducted in the premises of respondent No.1. Minutes of inspection were prepared (Annexure P-3). Respondent No.1-industry was found to be involved in unauthorized use of electricity, accordingly, its electricity meter was disconnected the same day. It is the case of the petitioner that entire raid process was photographed and video-graphed. The Authorized Officer provisionally assessed the loss at Rs. 4,28,20,977/-, which was conveyed to respondent No.1 through a notice issued on 13.02.2009 under Section 126 of the Act. Since the unauthorized use of electricity by respondent No.1 also amounted to theft of electricity under Section 135 of the Act, therefore, simultaneously, FIR No. 21/2009 was got registered on 15.02.2009 at Police Station Barotiwala. Intimation about the unauthorized use of electricity by respondent No.1 was conveyed to the authorized authority on 12.02.2009.

2(ii) Respondent No.1 on 19.02.2009, requested for restoration of electricity subject to deposit of 50% of the provisionally assessed amount in installments under protest. Petitioner did not accept the request.

2(iii) Respondent No.1 moved Himachal Pradesh State Consumer Disputes Redressal Commission, Shimla on 24.02.2009 for restoration of electricity. Learned Commission vide its order dated 24.02.2009, directed restoration of electricity to respondent No.1-industry on deposit of 25% of the provisionally assessed amount with further direction to keep on depositing 12.5% of the total amount till clearance of the entire amount, in terms of the directions. Pursuant thereto, respondent No.1-industry on 25.02.2009 deposited an amount of Rs.1,07,05,250/-. Electricity supply was restored to it. Till 08.04.2009, respondent No.1-industry had deposited Rs. 2,14,10,492-00/- i.e. 50% of the amount as provisionally assessed under Section 126 of the Act. The complaint moved by respondent No.1 before learned State Commission, was permitted to be withdrawn on 10.04.2009 with liberty to take such recourse as available to it in law.

2(iv) During pendency of the complaint before the learned State Commission, on 13.03.2009 petitioner on the strength of the interim order passed by the learned State Commission, directed respondent No.1 to pay installments in terms of the order passed by the learned State Commission. Respondent No.1 assailed the directions contained in letter dated 13.03.2009 by treating it as final assessment under Section 126 of the Act and filed appeal under Section 127 of the Act. The appeal was decided on 29.06.2009 by the Divisional Commissioner, holding the same to be premature as final assessment order had not yet been issued by the respondents.

2(v) Post decision of the appeal by the Divisional Commissioner and withdrawal of complaint from the State Commission, a fresh notice was issued by the Assessing Authority to respondent No.1 on 07.07.2009, directing it to appear on 13.07.2009. The Assessing Authority before issuing the final assessment order, inspected the premises of respondent No.1 on 27.07.2009 statedly in presence of authorized representatives of respondent No.1. The inspection report was prepared on 28.07.2009. Final assessment order was issued on 29.07.2009, holding respondent No.1 liable to pay Rs. 4,28,20,977-00/-. Since respondent No.1 had already deposited 50% of this amount, it was directed to deposit the remaining amount of Rs.2,14,10,498-00/-. Respondent No.1 assailed the assessment order dated 29.07.2009 by filing appeal under Section 127 of the Act before the Divisional Commissioner. The Divisional Commissioner allowed the appeal on 06.04.2010.

It is in the above background, that H.P. State Electricity Board Limited has preferred this writ petition, seeking quashing of order dated 06.04.2010 passed by the Appellate Authority i.e. the Divisional Commissioner, Shimla Division and for restoration of final assessment order dated 29.07.2009 passed the Assessing Authority.

3. I have heard learned counsel on both sides and considered the case file.

4. Consideration.

4(i) The Appellate Authority, while considering respondent's appeal, had, inter alia, formulated questions as to whether it had been proved beyond doubt by virtue of any evidence that respondent-firm had been unauthorizedly using electricity and further as to whether the provisions of Section 126 of the Act had been followed by the petitioner.

The Appellate Authority returned findings that inspection of respondent's premises had not been carried out by the Assessing Authority but by a team which did not associate any independent person or representative of the said firm in the inspection, such recourse was contrary to the provisions of Section 126(1) of the Act. The Appellate Authority further held on facts:-

- In the assessment order, it has been clearly said that meter box seal had not been tampered and the method/device for unauthorized use could only be explained by the respondent.
- No evidence, documentary, machines, gadgets etc. were exhibited in any manner or taken on record to bring out the alleged unauthorized use of electricity in a categorical/clear manner against the respondent.
- No evidence, documentary or otherwise was

brought on record to substantiate the conclusions of the Assessing Officer.

The Appellate Authority also observed that mandate of the Act is to ensure that powers available with the Government Officer /Licensee are utilized in a transparent manner, which does not lead to harassment of the consumers. The allegations of unauthorized use of electricity have to be proved beyond doubt and with cogent evidence. In the given case, on appreciation of entire case, the Appellate Authority concluded that that petitioner had failed to prove unauthorized use of electricity by the respondent.

4(ii) Learned Senior Counsel for the petitioner-Electricity Board placing reliance upon ***Sulabha Marketing (P) Ltd. Vs. Kerala State Electricity Board and Ors.***[2] contended that presence of Assessing Officer is not mandatory at the time of inspection as adoption of this recourse may create procedural hurdles in the matter of detection of theft or unauthorized usage of energy and assessment of penalty. Following conclusions were drawn in *Sulabha Marketing*[2]: -

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[2] WP (C) No. 31025 of 2008 ® decided on 12.04.2017

"31. For the reasons stated hereinbefore, we hold as follows:-

(i) The presence of the assessing officer at the time of inspection and detection of unauthorised use of electricity in the premises of a consumer is not a mandatory requirement for initiating assessment proceedings under Section 126(1) of the Act.

(ii) The expression 'unauthorised use of electricity' under Section 126 of the Act deals with cases of unauthorised use even in the absence of intention. Hence, the intention of the consumer is not the foundation for invoking powers of the competent authority and passing of an order of assessment under Section 126 of the Act.

(iii) Whenever a consumer commits the breach of the terms of the agreement, Regulations and the provisions of the Act by consuming electricity in excess of the sanctioned/connected load, such consumer would be in blame and under liability to pay at the rate equal to twice the tariff applicable for the relevant category of services in terms of Section 126 of the Act.

(iv) The term 'tariff' in Section 126(6) of the Act includes both fixed charges and charges for the electricity supplied, which has to be assessed in the case of a consumer indulged in unauthorised use of electricity, at a rate equal to twice the tariff applicable for the relevant category of services specified in subsection (5).

(v) In case of unauthorised use of electricity in a higher tariff, such assessment shall be made at the rate equal to twice the tariff applicable for the relevant category of services attracting such higher tariff for which electricity supplied was unauthorisedly used and not the relevant category of service to which the consumer belongs.

(vi) However, in the case of a consumer, who is blamed with overdrawal of electricity in excess of sanctioned/connected load in the very same premises and for the very same purpose, which do not involve any change in tariff applicable for the relevant category of services, which consumption has already been metered and paid by the consumer, since such usage being not by any artificial means or through a tampered meter, assessment under Section 126(6) of the Act can only be equal to twice the fixed charges payable and such consumer cannot be saddled with the liability to pay twice the energy charges applicable for the relevant category of services, unless regularisation of such additional connected load or enhancement of contract demand necessitates upgradation of the existing distribution system or

enhancement of voltage level of supply.

(vii) *In all other cases falling under Explanation (b) to Section 126 of the Act, the assessing officer is empowered to assess unauthorised use of electricity at the rate prescribed in Section 126(6) and for the period specified in Section 126(5), as amended by the Electricity (Amendment) Act, 2007 for both fixed charges and energy charges. Penalty charges for current charges shall be levied for proportionate energy charge and normal current charge collected shall be deducted.*

(viii) *Though Regulation 51(1) of the Conditions of Supply, 2005 employs the term 'penalised', what is contemplated under the said Regulation is only assessment of unauthorised use of electricity in terms of Section 126 of the Act for the period specified in Section 126(5) and at the rate specified in Section 126(6) of the Act. As such, Regulation 51(1) of the Conditions of Supply, 2005 is neither ultra vires the provisions of Section 126 of the Act nor unenforceable.*

(ix) *What is contemplated under Board Order dated 7.2.2008 is only assessment of unauthorised use of electricity in terms of Section 126 of the Act, as amended by the Electricity (Amendment) Act, 2007, for the period specified in Section 126 (5) and at the rate specified in Section 126(5) of the Act. As such, the said Board Order is neither ultra vires the provisions of Section 126 of the Act nor unenforceable."*

Instant instant case was admittedly not that of surprise inspection. Respondent was already under petitioner's surveillance w.e.f. 08.01.2009 Inspection carried out of respondent No.1-industry on 11.02.2009 was led by the Sub Divisional Officer, who admittedly had not even been designated as an Assessing Officer in terms of notification issued by the State Government vis-à-vis HT Consumers. Respondent No.1 was an HT Consumer. *Sulabha Marketing*[2] was partly reversed in ***Kerala State Electricity Board***

and others Vs. Thomas Joseph alias Thomas M.J. and others[3] in relation to directions given in para 31(vi). Remaining directions issued in *Sulbha Marketing*[2] were not under scanner in *Kerala State Electricity Board and others*[3] as would be apparent from following para:-

> *"28. It is necessary for us to clarify at this stage itself that the appeals have been filed by the appellant Board, essentially, being aggrieved and dissatisfied with the finding recorded by the High Court in SCC OnLine Ker para 31(vi) of the impugned judgment! [set out in para 9 hereinabove]. The High Court, over and above SCC OnLine Ker para 31(vi), has dealt with many other issues arising between the parties. There is no cross-appeal at the instance of any of the consumers. We propose to look into and decide only the legality and validity of the finding recorded by the High Court so far as SCC OnLine Ker para 31(vi) is concerned. We shall not go into any other issue decided by the High Court other than SCC OnLine Ker para 31(vi)."*

The inspection note (Annexure P-3) does not mention presence/association of any authorized representative of the respondent on the spot.

4(iii) There is no denial to the submissions made by learned counsel for the respondent that photographs and videos allegedly pertaining to the inspection of respondent No1's premises on 11.02.2009, were not part of the show-cause notice /provisional assessment order issued on

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[3] (2023)11 SCC 700

13.02.2009. There is also some force in the submissions made by learned counsel for the respondent that in case the inspection carried out by the designated Assessing Officer on 27.07.2009, is to be taken into consideration, which otherwise would be the second inspection and its findings in terms of the inspection report are to be considered, the same may have to be treated as provisional assessment requiring compliances of Section 126 of the Act or in other words, issuance of notice to the petitioner, calling for its reply etc. Regarding this, following pertinent factual observations were made by the Divisional Commissioner in the impugned order:-

> *"12. I have gone through the record carefully and also heard the arguments of both the learned counsels. The provisional assessment had been made on 13.02.2009 wherein the show cause notice had been issued to the effect that the appellant firm had been caught red handed and tapping clandestinely and surreptitiously. In this show cause notice for preliminary assessment no date of raid or checking has been mentioned nor it has been mentioned as to who caught the firm red handed. Inspection note forwarded by the H.P.S.E.B. dated 11.02.2009 has the signatures of the Officers and officials of the H.P.S.E.B. who said to have inspected the promises on 11.02.2009. The Zimni Orders of the Senior Executive Engineer of 12.02.2009*

bring out that such a team under the A.E.E., Barotiwala had inspected the spot whereafter the provisional assessment was issued. This inspection note (page-4 of the Lower Court file) does not bring out any independent person or representative of the said firm who had been associated with such inspection. The information/FR lodged in the Police Station under Section 135 of the Act is on 15.02.2000 i.e. after the delay of more than four days of the stated assessment. Moreover, inspection had been carried out by the Assessing Officer on 27.07.2009 i.e. after issue of the provisional show cause notice.

13. This matter whether it was incumbent upon the Assessing Officer to inspect the promises before issuing of show cause notice himself had been debated by both the learned counsels in this Court. The contention of the counsel for the appellant is that the notified/designated Assessing Officer has to himself inspect the promises and not only inspect the premises, come to a conclusion that the said premises was unauthorisedly using electricity. The contention of the learned counsel for the respondent is that it was incumbent upon the Assessing Officer to reach the conclusion and not himself inspect the promises. If Section 126 of the Act is read, spirit of the Section is of the Assessing Officer to inspect the promises himself and come to such conclusion that there was an unauthorized use of electricity, has also been provided in Section 126(2) of the Act that the order of the provisional assessment shall be served upon the person in occupation or in possession or in-charge of the place or premises upon such inspection. In this case, the inspection notice has not been handed over *on the date of inspection. It has not been done by the Assessing Officer. The Assessing Officer had himself inspected the premises on 27.07.2009 much after the issue preliminary show cause notice. It has not been stated as to who caught the firm red handed and no independent person or persons from the firm have been associated. The raid was conducted by the party headed by S.D.O. and 2 A.E.Es. Nothing prevented them from calling A.O./Executive Engineer and the persons of the firm when they detected the unauthorised use. This is violative of Section 120(1) of the Act. As per Section 120(1) raid inspection of site, record or gadgets is to be conducted by the Assessing Officer as notified in this case the Senior Executive Engineer. Provisional assessment is to be done only after the above. In the present case while the provisional assessment has been done on l3.02.2009 inspection has been done by the Assessing Officer on 27.07.2009 and as brought out the raid conducted by the team has been done without associating any private person or representative of the firm as laid down in Section 120(2) of the Act."*

4(iv) Further the show-cause notice/provisional assessment order refers to alleged 'theft of energy' by the respondent. It does not use the expression 'unauthorized use of energy' at all.

At this juncture, it will be appropriate to extract Section 126 of the Act which falls under Part XII of the Act: -

"126. Assessment.–

(1) If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorised use of electricity, he shall provisionally assess to the best of his judgment the electricity charges payable by such person or by any other person benefited by such use.

(2) The order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such manner as may be prescribed.

(3) The person, on whom an order has been served under sub-section (2), shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who shall, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment within thirty days from the date of service of such order of provisional assessment, of the electricity charges payable by such person.

(4) 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.

(5) If the assessing officer reaches to the conclusion that unauthorised use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorised use of electricity has taken place and if, however, the period during which such unauthorised use of electricity has taken place cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection.

(6) The assessment under this section shall be made at a rate equal to twice the tariff rates applicable for the relevant category of services specified in sub-section (5).

Explanation.–For the purposes of this section,–

(a) "assessing officer" means an officer of a State Government or Board or licensee, as the case may be, designated as such by the State Government;

(b) "unauthorised use of electricity" means the usage of electricity–

(i) by any artificial means; or

(ii) by a means not authorised by the concerned person or authority or licensee; or

(iii) through a tampered meter; or

(iv) for the purpose other than for which the usage of electricity was authorised; or

(v) for the premises or areas other than those for which the supply of electricity was authorised."

The unauthorized use of electricity in terms of explanation (b) to Section 126 means usage of electricity (i) by any artificial means; (ii) by a means not authorized by the concerned persons or authority or licensee or: (iii) through a tampered meter or; (iv) for the purpose other than for which the usage of electricity was authorized or; (v) for the premises or areas other than those for which the supply of electricity was authorized.

The theft of energy for which notice had been issued to the respondent under Section 126 of the Act is government by Section 135 falling under Part XIV of the Electricity Act.: -

"135. Theft of Electricity:–

(1) Whoever, dishonestly–

(a) taps, makes or causes to be made any connection with overhead, underground or under water lines or cables, or service wires, or service facilities of a licensee or supplier, as the case may be; or

(b) tampers a meter, installs or uses a tampered meter, current reversing transformer, loop connection or any other device or method which interferes with accurate or proper registration, calibration or metering of electric current or otherwise results in a manner whereby electricity is stolen or wasted; or

(c) damages or destroys an electric meter, apparatus, equipment, or wire or causes or allows any of them to be so damaged or destroyed as to interfere with the proper or accurate metering of electricity; or

(d) uses electricity through a tampered meter; or

(e) uses electricity for the purpose other than for which the usage of electricity was authorised,

so as to abstract or consume or use electricity shall be punishable with imprisonment for a term which may extend to three years or with fine or with both:

Provided that in a case where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use–

(i) does not exceed 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction the fine imposed shall not be less than six times the financial gain on account of such theft of electricity;

(ii) exceeds 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction, the sentence shall be imprisonment for a term not less than six months, but which may extend to five years and with fine not less than six times the financial gain on account of such theft of electricity:

Provided further that in the event of second and subsequent conviction of a person where the load *abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use exceeds 10 kilowatt, such person shall also be debarred from getting any supply of electricity for a period which shall not be less than three months but may extend to two years and shall also be debarred from getting supply of electricity for that period from any other source or generating station:*

Provided also that if it is proved that any artificial means or means not authorised by the Board or licensee or supplier, as the case may be, exist for the abstraction, consumption or use of electricity by the consumer, it shall be presumed, until the contrary is proved, that any abstraction, consumption or use of electricity has been dishonestly caused by such consumer.

(1A) Without prejudice to the provisions of this Act, the licensee or supplier, as the case may be, may, upon detection of such theft of electricity, immediately disconnect the supply of electricity:

Provided that only such officer of the licensee or supplier, as authorised for the purpose by the Appropriate Commission or any other officer of the licensee or supplier, as the case may be, of the rank higher than the rank so authorised shall disconnect the supply line of electricity:

Provided further that such officer of the licensee or supplier, as the case may be, shall lodge a complaint in writing relating to the commission of such offence in police station having jurisdiction within twenty-four hours from the time of such disconnection:

Provided also that the licensee or supplier, as the case may be, on deposit or payment of the assessed amount or electricity charges in accordance with the provisions of this Act, shall, without prejudice to the obligation to lodge the complaint as referred to in the second proviso to this clause, restore the supply line of electricity within forty-eight hours of such deposit or payment.

(2) Any officer of the licensee or supplier as the case may be, authorised in this behalf by the State Government may–

(a) enter, inspect, break open and search any place or premises in which he has reason to believe that electricity has been or is being, used unauthorisedly;

(b) search, seize and remove all such devices, instruments, wires and any other facilitator or article which has been, or is being, used for unauthorised use of electricity;

(c) examine or seize any books of account or documents which in his opinion shall be useful for or relevant to, any proceedings in respect of the offence under sub-section (1) and allow the person from whose custody such books of account or documents are seized to make copies thereof or take extracts therefrom in his presence.

(3) The occupant of the place of search or any person on his behalf shall remain present during the search and a list of all things seized in the course of such search shall be prepared and delivered to such occupant or person who shall sign the list:

Provided that no inspection, search and seizure of any domestic places or domestic premises shall be carried out between sunset and sunrise except in the presence of an adult male member occupying such premises.

(4) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to search and seizure shall apply, as far as may be, to searches and seizure under this Act."

The show cause notice-cum-provisional assessment order dated 13.02.2009 uses the expression 'theft' of energy by the respondent. The FIR was registered against the respondent with complaint of 'stealing electricity'. The minutes of second inspection carried out on 28.07.2009 use the word 'unauthorized use/theft of electricity'. As per final assessment order dated 29.07.2009, respondent was guilty of unauthorized use of electricity. Pertinently, different provisions of the Act govern 'unauthorized use of electricity' and 'theft of electricity'. ***Uttar Pradesh Power Corporation Limited and others Vs. Anis Ahmad***[4] , holds that 'a bare reading of Section 126 and Sections 135 to 140 of the Act makes it clear that while acts of unauthorized use of electricity attract civil consequence of penal charge of electricity twice the rate of electricity for which assessment is made by the Assessing Officer under Section 126. The very same act of unauthorized use of electricity constitutes offences under Sections 135 to 140 of the Act, for which sentence and fine has been prescribed'.

Executive Engineer, Southern Electricity Supply Company of Orissa limited (SOUTHCO) and another Vs. Sri Seetaram Rice Mill[5] lays down that Section 126 of the Act would be applicable to cases where there is no theft of electricity but electricity is being consumed in violation of the terms and conditions of supply leading to malpractices which may squarely fall within the expression 'unauthorized use of electricity'. The

[4] (2013) 8 SCC 491
[5] (2012)2 SCC 108

assessment/proceedings would commence with the inspection of the premises by an assessing officer and recording of finding that such consumer is indulging in an 'unauthorized use of electricity' followed by compliance to the procedure prescribed in Section 126 of the Act. There is distinction between cases that would fall under Section 126 of the Act on one hand and Section 135 on the other. There is no commonality between them in law. They operate in different and distinct fields. Relevant paras from the judgment pertaining to Sections 126 and 135 are extracted hereinafter:-

> "26 *In contradistinction to these provisions, Section 126 of the 2003 Act would be applicable to the cases where there is no theft of electricity but the electricity is being consumed in violation of the terms and conditions of supply leading to malpractices which may squarely fall within the expression 'unauthorized use of electricity'. This assessment/proceedings would commence with the inspection of the premises by an assessing officer and recording of a finding that such consumer is indulging in an 'authorized use of electricity'. Then the assessing officer shall provisionally assess, to the best of his judgment, the electricity charges payable by such consumer, as well as pass a provisional assessment order in terms of Section 126(2) of the 2003 Act.*
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> 27 *The officer is also under obligation to serve a notice in terms of Section 126(3) of the 2003 Act upon any such consumer requiring him to file his objections, if any, against the*

provisional assessment before a final order of assessment is passed within thirty days from the date of service of such order of provisional assessment. Thereafter, any person served with the order of provisional assessment may accept such assessment and deposit the amount with the licensee within seven days of service of such provisional assessment order upon him or prefer an appeal against the resultant final order under Section 127 of the 2003 Act. The order of assessment under Section 126 and the period for which such order would be passed has to be in terms of Sub-sections (5) and (6) of Section 126 of the 2003 Act. The Explanation to Section 126 is of some significance, which we shall deal with shortly hereinafter. Section 126 of the 2003 Act falls under Chapter XII and relates to investigation and enforcement and empowers the assessing officer to pass an order of assessment.

28. Section 135 of the 2003 Act deals with an offence of theft of electricity and the penalty that can be imposed for such theft. This squarely falls within the dimensions of Criminal Jurisprudence and mens rea is one of the relevant factors for finding a case of theft. On the contrary, Section 126 of the 2003 Act does not speak of any criminal intendment and is primarily an action and remedy available under the civil law. It does not have features or elements which are traceable to the criminal concept of mens rea.

29. Thus, it would be clear that the expression 'unauthorized use of electricity' under Section 126 of the 2003 Act deals with cases of unauthorized use, even in absence of intention. These cases would certainly be different from cases where there is dishonest abstraction of electricity by any of the methods enlisted under Section 135 of the 2003 Act. A clear example would be, where a consumer has used excessive load as against the installed load simpliciter and there is violation of the terms and conditions of supply, then, the case would fall under Section 126 of the 2003 Act. On the other hand, where a consumer, by any of the means *and methods as - specified under Sections 135(a) to 135(e) of the 2003 Act, has abstracted energy with dishonest intention and without authorization, like providing for a direct connection bypassing the installed meter, the case would fall under Section 135 of the Act.*

30. Therefore, 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. The assessing officer has been vested with the powers to pass provisional and final order of assessment in cases of unauthorized use of electricity and cases of consumption of electricity beyond contracted load will squarely fall under such power. The legislative intention is to cover the cases of malpractices and unauthorized use of electricity and then theft which is governed by the provisions of Section 135 of the 2003 Act.

31. Section 135 of the 2003 Act significantly uses the words 'whoever, dishonestly' does any of the listed actions so as to abstract or consume electricity would be punished in accordance with the provisions of the 2003 Act. 'Dishonesty' is a state of mind which has to be shown to exist before a person can be punished under the provisions of that Section."

Kerala State Electricity Board and others Vs. Thomas Joseph alias Thomas M.J. and others[3], inter-alia, held that 'unauthorized use of electricity' means as it appears in Section 126 of the Act. It is an expression of wider connotation and principle construed purposively in contrast to contextual interpretation, while keeping in mind the object and purpose of the 2003 Act. Provisions of Section 126 are intended to cover situations other than the situations specifically covered under Section 135 of the Act. The Court should adopt an interpretation which helps in attaining the legislative intent. The purpose sought to be achieved with aid of Section 126 is to ensure stoppage of misuse/unauthorized use of electricity to ensure prevention of revenue loss. Relevant para reads as under: -

> *"60. The principles of law discernible from the aforesaid may be summarised as under:*
>
> *60.1 The provisions of Section 126, read with Section 127 of the 2003 Act become a Code in themselves. It specifically provides the method of computation of the amount that a consumer would be liable to pay for excessive consumption of electricity and for the manner of conducting assessment proceeding. Section 126 of the 2003 Act has been enacted with a purpose to achieve i.e., to put an implied restriction on such unauthorised consumption of electricity.*
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> *60.2 The purpose of Section 126 of the 2003 Act is to provide safeguards to check the misuse of powers by unscrupulous elements. The provisions of Section 126 of the 2003 Act are self-explanatory. They are intended to cover situations, other than, the situations specifically covered under Section 135 of the 2003 Act. In such circumstances, the Court should adopt an interpretation which should help in attaining the legislative intent.*
>
> *60.3 The purpose sought to be achieved with the aid of the provisions of Section 126 of the 2003 Act is to ensure stoppage of misuse/unauthorised use of the electricity as well as to ensure prevention of revenue loss.*
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> *60.4 The overdrawal of electricity is prejudicial to the public at*

large, as it is likely to throw out of gear the entire supply system, undermining its efficiency, efficacy and even-increasing voltage fluctuations.

60.5 The expression 'unauthorised use of electricity' means as it appears in Section 126 of the 2003 Act. It is an expression of wider connotation and principle construed purposively in contrast to contextual interpretation, while keeping in mind the object and purpose of the 2003 Act."

During hearing of the case, learned counsel for the respondent placed on record an order dated 01.11.2021, passed by the Court of competent jurisdiction, closing the proceedings in FIR No. 21/ 2009 that was registered against respondent No.1 on 15.02.2009 under Section 135 of the Act.

4(v) The ambit and scope of Section 126 with reference to 'unauthorized use of electricity' was explained as under in *Sri Seetaram Rice Mill*[5]: -

"36. Having dealt with the principle of interpretation of these provisions and the distinction between Sections 126 and 135 of the 2003 Act, we shall now discuss the ambit and scope of Section 126. The provisions of Section 126 contemplate the following steps to be taken :

(i) An assessing officer is to conduct inspection of a place or premises and the equipments, gadgets, machines, devices found connected or used in such place.

(ii) The formation of a conclusion that such person has indulged in unauthorized use of electricity.

(iii) The assessing officer to provisionally assess, to the best of his judgment, the electricity charges payable by such person.

(iv) The order of provisional assessment to be served upon the person concerned in the manner prescribed,

giving - him an opportunity to file objections, if any, against the provisional assessment.

v) The assessing officer has to afford a reasonable opportunity of being heard to such person and pass a final order of assessment within 30 days from the date of service of such order of provisional assessment.

(vi) The person, upon whom the provisional order of assessment is served, is at liberty to pay the said amount within seven days of the receipt of such order and where he files such objections, final order of assessment shall be passed, against which such person has a right of appeal under Section 127 of the 2003 Act within the prescribed period of limitation.

37 ....

38. We have already indicated that the provisions of Section 126 do not attract the principles of Criminal Jurisprudence including mens rea. These provisions primarily relate to unauthorized use of electricity and the charges which would be payable in terms thereof. To determine the controversy in the present case, it will be essential to examine the implication of the expression 'unauthorised use of electricity' as contained in Explanation (b) of Section 126 of the 2003 Act.

39&40 ....

41 The 'unauthorized use of electricity' means the usage of electricity by the means and for the reasons stated in sub clauses (i) to (v) of clause (b) of Explanation to Section 126 of the 2003 Act. Some of the illustratively stated circumstances of 'unauthorised use' in the section cannot be construed as exhaustive. The 'unauthorized use of electricity' would mean what is stated under that Explanation, as well as such other unauthorized user, which is squarely in violation of the abovementioned statutory or contractual provisions."

The final assessment order dated 29.07.2009, inter-alia, records as under against the respondent: -

"(iv) From the photographs and video it is amply clear that the pipe enclosing the metering wires had been intentionally

displaced to shunt and earth the measuring current. This has been very meticulously done by some trained employee of the opponent party. Although the secondary terminal of CT had been fully covered with the seal of Sr. Executive Engineer and also HT meter, meter box were also sealed but the opponent party has been caught red handed by using electricity through unfair means. The method devised can only be explained by the opponent party:

(v) *On enquiry, complainant told that whenever the complainant's party visited the premises of opponent party for MRI reading, lot of time was consumed by the opponent party for opening the gates whereby it was surmised that some thing wrong is happening in the premises which lead to the doubt regarding unauthorized use of electricity. This further strengthened the doubt due to high energy losses occurring on this feeder when it was put on surveillance by the complainant*

vi) *By delaying the gate opening timings, the opponent party used to gain the time to remove the unauthorized devices so as to maintain the status quo in respect of the seals of the metering equipments.*

vii) *Since the seals were found intact & some other method as explained above has been used for bye passing the metering current, the method of which was only known to the opponent party. Hence following the instruction 104 of Sales Manual does not apply.*

viii - xi)..

xii) *The plea of the opponent party that the inspection is contrary to Section, 163 of Electricity Act, 2003 is not applicable in the present case, where unfair means were adopted by the opponent party for making unauthorized use of electricity. This provisional assessment is totally based on the facts & the figures and is just & right and is not based on surmises & conjectures.*

In view of above reasoning, there is no merit in the *objection of opponent party as pointed out in the reply of opponent party.*

.......There is logic in the claim of Complainant that the actual supply to the premises of opponent party was being siphoned out without allowing the same to be metered. From the details of the videography & the photographs supplied by the complainant, it can be easily made out that it is possible to bye pass the measuring load current and the claim that the full connected load has been used by the opponent party is believable. There is no explanation coming out from the opponent party with regard to the use of unauthorized devices employed by them which are clearly visible in the photographs and are claimed to have been seen by the inspecting team on 11/2/09. The opposite party may be using these unauthorized devices for long time but Section 126 of the Electricity Act bars assessment for the period more than 12 months. Since tariff for two months was different from the tariff of 10 months as pointed out in the provisional assessment referred above, therefore, the calculation made in the provisional order are just & proper. However, Section 126(6) for making the assessment at the rate equal to twice the tariff applicable. Therefore, the opponent party is liable to pay the amount as indicated in the provisional assessment/order which is hereby re-affirmed. In view of above reasoning, the provisional order No. HPSEB/PED/DB/08-09-13427-31 dt.13/2/09 is made as final assessment and opponent party is held liable to pay Rs.4,28,20,977/- only to the complainant HPSEB. In view of the order passed by the appellate authority in its order dt.29/6/09 referred above, after deducting the amount already paid. the opponent party is directed to deposit Rs.2,14,10,489/- only with in a period of 30 days from the receipt of the present order failing which, action as permissible under Electricity Act, 2003 may be taken against the opponent party."

The final assessment order issued to the petitioner does not conclusively determine that petitioner had unauthorizedly used the electricity. The final assessment order records that seals of all metering equipments were found intact, no tampering in meter/machines was detected during two inspections, but then observes that only respondent No.1 knows how it carved out theft of electricity. On the basis of evidence on record, learned Divisional Commissioner had justly observed that above conclusion was not sufficient to hold respondent No.1 guilty of unauthorized use of electricity under Section 126 of the Act. Further, it was not for the respondent to prove petitioner's case as to the method and manner of alleged unauthorized use of electricity. Some relevant observations of the Divisional Commissioner are as under:-

> *"….Thus, nowhere the Assessing Officer had reached the conclusion about the manner of unauthorized use of electricity as per provisions of Section 126(1) of the Act. Conclusion has to be reached by (a) inspection of the spot (b) inspection of goods or records of the assessee and it is not for the accused to explain the method and manner of theft rather for the Respondent Board to bring out the method and manor of unauthorised use. Thus the findings of the unauthorised use by the Assessing Officer is not clear or based on empirical data or material seized and*

taken in evidence on site. There has been no finding on behalf of Assessing Officer that power was being supplied only to the assessee from 132 KV Sub Station or 11 KV Kundla's Feeder. The final assessment notice is only to the effect that it is "possible" to bye-pass the measuring load current and claim of unauthorised use is 'believable" as per requirement of Section 126(1) of the Act. The Assessing Officer should come to a clear conclusion on the unauthorised use of power and not mere suspicion. The learned counsel for the respondent also argued on the aspect of videography and photographs. No such record has been presented either in this Court nor was in the Lower Court file. No such record/evidence has been given to the appellant or exhibited or brought out even on request, the said photographs wore not presented before this Court. No further evidence has been brought out by the respondents to make out a transparent and fair case wherein all stake holders have been associated so that no ground for administrative discretion had been left."

The offence alleged against respondent No.1 had not been substantiated. It was at best a case of doubt and suspicion. In the given facts and circumstances, the Divisional Commissioner correctly observed that *'it is for the respondent to ensure that the premises of the firm were checked regularly and consumption pattern vis-a-vis manufacturing continuously monitored. Also, at the time of installation of meters to ensure that for all such firm, the* *meters are installed in an open and easily accessible space. Modern techniques like Automatic Meter Reading etc., (AMR), the use of which goes a long run in bringing out consumption of electricity in an empirical and transparent manner should be explored and utilized.'*

The Appellate Authority has given detailed reasoning in the impugned order for not accepting the conclusion drawn by the Assessing Officer.

5. Considering the impugned order in the background of the facts & circumstances of the case, the evidence adduced and the legal position, petitioner had not been able to prove its case against the respondent. Accordingly, I do not find it a fit case to interfere with the impugned order.

For the forgoing reasons, there is no merit in the present writ petition. The same is dismissed.

Pending miscellaneous application(s), if any, also to stand disposed of.

Jyotsna Rewal Dua
Judge

April 25, 2026
R.Atal