

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA****CWP No.2142 of 2016****Decided on: 25.11.2025**

Sundernagar Integrated Rural Development
Association (SIRDA)

... Petitioner

Versus

Himachal Pradesh State Electricity Board
Ltd. & others

... Respondents

Coram**Hon'ble Mr. Justice Ajay Mohan Goel, Judge.****Whether approved for reporting?¹Yes**

For the petitioner : M/s Rakesh Gupta and Sangeeta
Bandhu, Advocates.

For the respondents : Ms. Sunita Sharma, Senior Advocate,
with Ms. Minakshi Katoch, Advocate.

Ajay Mohan Goel, Judge (Oral)

By way of this petition, the petitioner has, *inter alia*,
prayed for the following reliefs:-

“A. Writ of Certiorari may kindly be issued for the quashment of Judgment Orders passed by Ld. Divisional Commissioner Mandi, in Case No. 38/2015 decided on dated 3-6-2016 vide Annexure P-3 and consequent, Notice dated 21-7-2016 vide Annexure P-11 wherein he has concurred with the final Assessment Orders dated 6-1-2015 passed by Assistant Executive Engineer, H.P.S.E.B. Ltd. Sub Division Sunder Nagar, District: Mandi, H.P vide Memo NO. HPSEBL/E4/2014-2472-74. As the same was inflicted upon the petitioner's society without conducting any tangible inspection in the presence of authorized persons vis a vis Principal Director of the Institute nor any

¹ Whether reporters of the local papers may be allowed to see the judgment?



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site inspection note was prepared or got signed from the consumer / petitioner which is in flagrant violation to the provisions of Electricity Act, 2003, as well as against the well settled provisions as laid down in the guidelines for AT 2 AM by the Chief Engineer (Commercial) H.P.S.E.B.Ltd., vide letter dated 19-trar and has also illegally, erroneously taken into assessment of industrial connection Xi-1 (SMS) into account of SIRDA Society.

B. Further, by way of Writ of Mandamus necessary directions be issued to the Respondent authorities to refund half of the amount deposited by the petitioner to the sum of Rs. 9,61, 181 with 16% rate of interest.”

2. Brief facts necessary for the adjudication of the present petition are that the petitioner is a Society engaged in the production of Khadi Goods, Gram Udyog Articles and Brick Kiln Industries alongwith retail sales. In terms of the contents of the writ petition, Assistant Executive Engineer of Sub-Station, Sub-Division, Sundernagar, alongwith other officials of the respondent-Board without any prior notice inspected the premises of the petitioner situated at Kanaid, Tehsil Sundernagar w.e.f. 03.12.2014 to 05.12.2014. During the course of inspection of the premises, according to the respondent-Board, the petitioner was found to have connected electricity load un-authorizedly, for which a provisional order of assessment for unauthorized use of electricity under Section 126 of the Electricity Act, 2003 (hereinafter to be referred as ‘the 2003 Act’) was issued vide letter dated 05.12.2014 (Annexure R-



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1). The petitioner had filed a detailed reply to the Provisional Assessment Order by mentioning therein that neither the alleged inspection was not done in the presence of the petitioner, no Site Inspection Note was prepared and signed by the consumer, nor the signed Inspection Note was accompanied with the Provisional Assessment Order dated 05.12.2014, which according to the petitioner was a flagrant violation of the provisions of Electricity Act, 2003.

3. As per the petitioner, the objections of the petitioner were not considered by respondent No.2 and a letter dated 29.12.2014 was issued, which was replied to by the petitioner. The petitioner on 01.01.2015 made a request for grant of opportunity to cross-examine the persons who had visited the premises.

4. To cut the issue short, thereafter, a Final Assessment Order was issued by the Authority, dated 06.01.2025, in terms whereof, the petitioner was called upon to deposit Rs.19,22,362/- as penalty/ recoverable charges etc. Copy of the Final Assessment Order is appended with the petition as Annexure P-2/A.

5. The petitioner, feeling aggrieved and dissatisfied with the said order, preferred an appeal under Section 127 of the 2003 Act. The appeal was dismissed by the Appellate Authority in terms of order dated 03.06.2016 (Annexure P-3) and feeling aggrieved, the petitioner has approached this Court.



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6. Learned Counsel for the petitioner argued that the entire process undertaken by the respondent-Board in the present case is vitiated, for the reason that there is a fragrant violation of the statutory provisions as well as the provisions of the Himachal Pradesh Electricity Supply Code, 2009, in particular Chapter- VI thereof, which deals with the unauthorized use and theft of the electricity. Learned Counsel took the Court through the provisions of this Chapter, copy whereof is appended with the petition as Annexure P-7 and submitted that the Electricity Supply Code is statutory in nature and the provisions of Chapter-6.1 stand flagrantly violated in the present case, as the procedure which has been prescribed under this Chapter as to how the premises are to be inspected and what has to be done in the course of the inspection, was not been done by the Authorities in letter and spirit. Learned Counsel referred to Clauses 6.1.2, 6.1.3 and 6.1.4 of the Electricity Code and submitted that a harmonious reading thereof demonstrates that the Assessing Officer and other members of the team at the time of inspection of the premises, have to carry alongwith them their Photo Identity Cards which on demand have to be shown to the persons present at the site and if on the inspection of the premises/area etc. or scrutiny of the record, the Assessing Officer comes to the conclusion that the consumer is indulging in unauthorized use of electricity, he will prepare an Inspection Report,



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inter alia, indicating connected load for unauthorized use of electricity etc. and the Assessing Officer will wherever possible, photograph/ videograph means of such unauthorized use and further he will sign the Inspection Report and hand over a copy thereof to the person or his representative present at the site. Learned Counsel further submitted that in terms of these Clauses, the persons present at the site may also sign the Inspection Note and in case of refusal to accept the report, a copy of the same will be posted at a conspicuous place in/outside the premises and another copy of the same has to be sent under Registered Post. Learned Counsel submitted that these provisions have been violated with impunity, for the reason that neither any Inspection Report was prepared at the site as is the mandatory requirement of the Supply Code and therefore, obviously no copy thereof was supplied to the petitioner at the site. Even if, it was to be assumed that some Inspection Note was prepared and copy thereof was refused by petitioner, then the compliance of affixation of such an Inspection Note at a conspicuous place, followed by the same being sent by a Registered Post, was not been done in the present case by the Board. Learned Counsel further submitted that no photography or videography of the Inspection was done by the Authorities which was very much possible in light of the technology available as on the date when the Inspection took place. He submitted that as all these



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issues have been ignored at the time of passing of the provisional order as well as Final Assessment Order and as the Appellate Authority has also not appreciated this aspect of the matter, the petition be allowed, as prayed for.

7. On the other hand, learned Senior Counsel for the respondents has vehemently argued that the premises in issue were inspected strictly as per the provisions of the Electricity Act as well as the Supply Code. She submitted that the Inspection was carried out in the presence of the representatives of the petitioner, which was evident from the pleadings itself, as the petitioner does not deny that the premises were inspected by the Officers of the respondent-Board. Learned Senior Counsel further submitted that as Inspection Note was duly prepared and the same was handed over to the petitioner alongwith the Provisional Assessment Order, which was supplied within 48 hours of the carrying out of the Inspection, therefore, it cannot be said that there was any violation of the statutory provisions under the Electricity Act, 2003, or of the provisions of the Supply Code. Learned Senior Counsel further submitted that perusal of the Provisional Assessment Order as well as the Final Assessment Order and the order passed by the Appellate Authority would demonstrate that the same were based on what was noted at the spot and due opportunity was granted to the petitioner by all the Authorities before the orders were passed and



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therefore also, the orders under challenge do not call for any interference. She prayed that as the petition lacks merit, the same be dismissed.

8. I have heard learned Counsel for the petitioner as also learned Senior Counsel for the respondent-Board and have also carefully gone through the pleadings including the order under challenge.

9. When this case was listed on 21.11.2025, the following order was passed:-

*“Heard in part. List for continuation on **25.11.2025**, to enable learned Senior Counsel for the respondent-Board to demonstrate by producing record that when the premises of the petitioner were inspected, an Inspection Report was prepared at the spot in terms of Annexure P-7, appended with the writ petition, i.e. Chapter-VI of the Himachal Pradesh Electricity Supply Code, 2009 and the Assessing Officer got the Inspection Report either signed by handing over a copy of the same to the person or his representative and if there was a refusal on the part of the representative of the petitioner to except the Report that the copy of the Inspection Report was posted at a conspicuous place in/outside the premises and another copy was sent by Registered Post.”*

10. In compliance thereto, the original record relating to the Inspection of the premises has been produced before the Court.

11. The moot issue which this Court has to decide in the



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present petition is as to whether the Inspection of the premises of the petitioner was carried out by the Officers of the respondent-Board strictly in-consonance with the statutory provisions under the Electricity Act and the Supply Code or there indeed was any violation thereto.

12. Before proceeding further, this Court, at this stage, would like to refer to the relevant statutory provisions.

13. Section 126 of the Indian Electricity Act, 2003 provides as under:-

“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 unauthorized use of electricity, he shall provisionally assess to the best of his judgement 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.

1 [(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



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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:

3[(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 unauthorized 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 1 [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 authorized.”]

14. Section 127 of the Indian Electricity Act deals with the right of appeal of the parties which may be aggrieved by the assessment that may be carried out under Section 126 of the Act.

15. Section 50 of the Electricity Act, 2003 provides for the Electricity Supply Code. This Section provides that the State Commission shall specify an Electricity Supply Code to provide for recovery of electricity charges, intervals for billing of electricity charges, disconnection of supply of electricity for non-payment, thereof, restoration of supply of electricity, measures for preventing tampering, distress of damage to electrical plant or electrical line or meter, entry of distribution licence or any person acting on his behalf for disconnecting supply and removing the meter, entry for replacing, altering or maintaining electric lines or electrical plants or meter and such other matters.

16. Section 181 of the Electricity Act, 2003 deals with the power of the State Commission to make Regulations and sub-clause (x) and Section 181 (2) (x) confers the State Commission the power to frame the Supply Code by way of issuance of a Notification, consistent with the Act and the Rules framed thereunder.

17. In exercise of this power, the Statutory Body has framed the Himachal Pradesh Electricity Supply Code, 2009. The relevant extract of this Code, which is relevant for the purpose of the



adjudication of the petition, is appended with the petition as Annexure P-7.

18. Chapter-VI of the 2009 Code deals with unauthorized use and theft of electricity and Clause 6.1 thereof deals with unauthorized use of electricity. Clauses 6.1.1 onwards of the same upto Clauses 6.1.7 provide as under:-

“6.1 Unauthorized use of electricity:-

6.1.1 An “assessing officer”, designated as such by the State Government under Section 126 of the Act will, suo-moto or on receipt of information/complaint regarding “unauthorized use of electricity” as explained in Explanation (b) of the said section, promptly inspect such premises.² However increase in the connected load, without permission from the licensee, shall not be considered as unauthorized use of electricity under section 126 of the Act, if –

(i) there is no change in applicable tariff category, or sub-category thereof, as a result of increase in connected load; and

(ii) the actual demand (kVA) does not exceed the maximum limit arrived at by converting the sanctioned connected load (kW) into kVA, based on an assumed power factor of 0.9, by more than 10 kVA:

Illustration.- if the sanctioned connected load of the consumer is 360kW and actual demand is 410 kVA or less it shall not be considered as unauthorized use of electricity under the section 126 of the Act even if the sanctioned contact demand is less than 410 kVA, so long as the conditions under other clauses are adhered to; and



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(iii) *there is no usage of electricity through a tampered meter; and*

(iv) *the electricity is used only for the purpose for which the same was authorized; and*

(v) *the electricity is used only for the premises or the areas for which the supply of electricity is authorized; and*

(vi) *the increase in connected load does not exceed the limit computed as under-*

(a) *10 kW in case where the sanctioned connected load is upto 100 kW; and*

(b) *10% of the sanctioned connected load subject to a maximum of 200 kW, in case where the sanctioned connected load is more than 100 kW: Provided that where the extension of connected load comes to the notice of the licensee, irrespective of the fact, whether or not, such extension is considered to be unauthorized use of supply under section 126 of the Act, it shall, apart from taking any other steps as may be necessary, give an option to the consumer to either get such extension(s) regularized by completing the formalities or to remove the extension(s) of the connected load. The licensee shall be entitled to disconnect the supply if the consumer does not take any steps in this direction even after service of a notice on him by the licensee. However, the licensee may disconnect the supply temporarily even without a notice if it reasonably believes that continuation of supply is likely to result in loss of human or animal life or injury to a human being or any animal or damage to property.]*

6.1.2 *The assessing officer and other members of his team will at the time of inspection carry alongwith them their photo identity cards, which will, on demand, be shown to*



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the person present at site before entering the premises.

6.1.3 If on inspection of the premises/area and/or scrutiny of the records, the assessing officer comes to the conclusion that the consumer is indulging in unauthorized use of electricity, he will prepare an inspection report inter-alia indicating connected load for unauthorized use of electricity, condition of meter and its seals and also details of evidence substantiating the unauthorized use. The assessing officer will wherever possible photograph/videograph the means of such unauthorized use.

6.1.4 The assessing officer will sign the inspection report and a copy handed over to the person or his/her representative present at site. The person present at site may also sign the inspection report. In case of refusal to accept the report, a copy of the inspection report will be posted at a conspicuous place in/outside the premises and another copy of the same shall be sent under registered post.

6.1.5 In case theft of electricity is detected by the assessing officer at the time of inspection under para 6.1.1, and in case the assessing officer is himself not an authorized officer, to be appointed by the State Government under Section 135 of the Act , an immediate reference reporting the facts will be made to the authorized officer for taking further action under para 6.2. The assessing officer will also take suitable measures to ensure that status of the means adopted for theft is maintained as 'in found condition' at the premises till investigation is initiated by the authorized officer.

6.1.6 The assessing officer will provisionally assess the



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amount payable by the person benefited by the unauthorized use of electricity as per procedure specified in Annexure- A.

6.1.7 The provisional assessment order will be issued within forty- eight hours of inspection and served upon the person in such a manner as may be prescribed by the State Government.”

19. Thus, in terms of the above quoted provisions of the Supply Code, if on inspection of the premises, the Assessing Officer come to the conclusion that the consumer is indulging in unauthorized use of electricity, he will prepare an Inspection Report, *inter alia*, indicating connected load for unauthorized use of electricity, condition of meter and its seal, and also details of evidence substantiating the unauthorized use. Clause 6.1.3, which deals with this duty cast upon the Assessing Officer, further provides that the Assessing Officer will, wherever possible, photograph and videograph of such unauthorized use. Thereafter, Clause 6.1.4 provides that the Assessing Officer will sign the Inspection Report and hand over a copy thereof to the person or his/her representative at the site. The person present at site may also sign the Inspection Report and in case of refusal to accept the report, copy of the Inspection Report will be posted at a conspicuous place in/outside the premises and another copy of the same shall be sent under Registered Post.

20. In order to ascertain as to whether there was a



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compliance of Clause 6.1.3 and Clause 6.1.4, the original record was summoned. A perusal of the record demonstrates that no Inspection Report, which can be termed as such, was actually prepared at the spot. What was prepared therein, as per the respondent-Board, was the "Main Abstract." This "Main Abstract" is otherwise also placed on record by way of an additional Affidavit that has been filed by the respondent-Board.

21. The "Main Abstract." has been perused by me and the same demonstrates that it contains three dates, i.e. is 03.12.2024, 04.12.2014, and 05.12.2014. The abstract also contains the sign of the Officers of the respondent-Board, i.e. Engineers Balwant Singh, H.K. Sharma and R.R. Sharma. These abstracts, which purportedly as per the respondent-Board were prepared at the site or spot do not contain any signature or its receipt by any representative of the petitioner-Society. Learned Senior Counsel for the respondent-Board submitted that as per her instructions, the representative of the Society refused to receive a copy thereof. If that is so, then there is nothing on record of the file brought by the Board, which either contains this fact in black and white or from which it can be inferred that after the representative of the Society allegedly refused to accept a copy of the "Main Abstract," the copy thereof was affixed at a conspicuous place, as is the requirement under Clause 6.1.4, and thereafter, it was sent to the petitioner by a Registered Post.



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22. Thus, in terms of the record that has been made available for the perusal of this Court by the respondent-Board, the facts which emerge are that no Inspection Report was prepared at the spot and further, there is nothing on record to demonstrate that the so called "Main Abstract", which was purportedly prepared at the spot was handed over to any representative of the petitioner-Society and in the alleged event of the representative refusing to receive the same, the requirements of Clause 6.1.4 were met with. No photography or videography of the Inspection was done. In this backdrop, now I will refer to the pleadings also.

23. In Para-3 of the writ petition, there is a categorical averment made to the effect that the premises of the petitioner were inspected by the Officers of the respondent-Board without notice and neither the alleged Inspection was done in the presence of the petitioner nor any "Site Inspection Note" was prepared or got signed from the consumer.

24. Now, if one peruses a counter thereto filed by the respondent-Board, these averments made in the writ petition have not been denied. What is mentioned in Para-3 of the petition is that Assistant Executive Engineer, Sundernagar alongwith other officials inspected the premises/building of the petitioner-Society and it was detected that the petitioner has unauthorizedly connected electricity load. A detailed Inspection Note was prepared and provisional order



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of assessment was issued on 05.12.2014, under Section 126 of the Electricity Act, 2003 and the petitioner was afforded an opportunity to reply to the said notice.

25. It is nowhere mentioned in the reply that the detailed Inspection Note was either prepared at the spot and if prepared, the same was made available to the representative of the petitioner, who purportedly refused to accept the same, as was stated by the learned Senior Counsel for the petitioner on the basis of instruction at the bar.

26. In the backdrop of what has been discussed hereinabove, this Court is of the considered view that as there is a flagrant violation of the provisions of the 2009 Supply Code, The Provisional Assessment Order as well as the Final Assessment Order and the subsequent order passed by the Appellate Authority are *per se* bad in law and the same are liable to be quashed and set aside.

27. The contention of the learned Senior Counsel that the Main Abstract/Inspection Note was made available to the petitioner alongwith the provisional order and that too, within 48 hours, does not cure this defect, because providing the Provisional Assessment Order within 48 hours is the statutory requirement and further when the Supply Code envisages that the Inspection Report was to be handed over at the spot where it was prepared, the supply thereof later on with the Provisional Assessment Order, is of no use.



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28. In the considered view of this Court, there is a reason and a rationale as to why the Inspection Report has to be not only prepared but also supplied to the party at the spot. The reason and the rationale behind the same obviously is that whatever the Inspection team sees at the spot and record and in writing has to be simultaneously handed over to the party, so that there is no scope of interpolation or manipulation subsequently in the report after the visiting party leaves the premises.

29. Thus, as already observed hereinabove, as the provisions of the Supply Code were not followed in letter and spirit in the present case, which are statutory and mandatory in nature, the impugned act of the respondent-Board of levying assessment and the rejection of the appeal of the petitioner is not sustainable in the eyes of law.

30. In light of the above discussion, this petition is allowed and impugned Judgment/Order dated 03.06.2016 (Annexure P-3), passed by learned Divisional Commissioner Mandi, in Case No. 38/2015 decided and consequent Notice dated 21-7-2016 (Annexure P-11) wherein he has concurred with the final Assessment Orders dated 06-01-2015, passed by Assistant Executive Engineer, H.P.S.E.B. Ltd., Sub Division Sunder Nagar, District Mandi, H.P., vide Memo No. HPSEBL/E4/2014-2472-74, are quashed and set aside. The amount which the petitioner has deposited, be now



refunded back to the petitioner. No order as to costs. Record returned back.

31. The petition stands disposed of, so also pending miscellaneous application(s), if any.

(Ajay Mohan Goel)
Judge

November 25, 2025
(Rishi)