IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA
CWP No. 8118 of 2026
Reserved on: September 9, 2026
Date of Decision: September 17, 2026
Uploaded on: September 18, 2026

Superintending Engineer, Operation Circle, Himachal Pradesh State Electricity Board Limited .....Petitioner

Versus

M/s Sunoxx International ... Respondent

Coram:
Hon'ble Mr. Justice Sandeep Sharma, Judge.
Whether approved for reporting? [1] Yes.

For the Petitioner: Ms. Sunita Sharma, Senior Advocate with Ms. Harshita Dogra, Advocate.

For the Respondent: Mr. Peeyush Verma, Senior Advocate with Mr. Manik Sethi, Advocate.

Sandeep Sharma, Judge:

Being aggrieved and dissatisfied with order dated 11.1.2023, Annexure P-11, passed by Divisional Commissioner, Shimla Division (exercising powers of Appellate Authority under S.127 of the Electricity Act, 2003) (hereinafter, 'Act 2003'), whereby appeal filed by the respondent laying therein challenge to Final Assessment Order dated 17.9.2020 for unauthorized use of electricity under S.126 of Act, 2003, issued by Senior Executive Engineer, Electrical Division, HPSEBL, Nalagarh (hereafter, 'Assessing Officer') came to be set aside, petitioner-Superintending Engineer, (OP) Circle, Solan has approached this Court in the instant proceedings filed under Art. 226 of the Constitution of India, praying therein to set aside order dated 11.1.2023 and direct the respondent to pay disputed electricity charges, as determined by Assessing Officer vide Final

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

Assessment Order dated 17.9.2020, for unauthorized use of electricity under S.126 of Act, 2003.

2. For having a bird's eye view of the matter, key facts, relevant for the adjudication of the case at hand, are that on 22.12.2009, a temporary metered supply connection was released in favour of respondent in pursuance to an Application and Agreement Form (A&A Form) with connected load of 48 kW and Contract Demand of 48 kVA. Subsequently, the respondent extended connected load to 492 kW with contract demand of 495 kVA vide Sundry Job Order No. 20827 dated 1.3.2011. Allegedly, the petitioner Board found that the respondent indulged in unauthorized use of electricity by making over-drawl of contract demand from March, 2011 to November, 2015, which was detected by RAO Audit Party on 30.11.2016 (Annexure P-2).

3. On the basis of aforesaid inspection note/audit report, Assessing Officer of petitioner Board, while exercising power under S.126 of the Act, 2003, arrived at a conclusion that the respondent was indulging in unauthorized use of electricity and after assessing provisional electricity charges payable by the respondent, served Provisional Assessment Order dated 3.3.2017, thereby fixing Rs.1,65,34,470/- payable under S.126(1) of the Act, 2003. Upon receipt of aforesaid order, respondent filed objections/representation dated 15.3.2017, stating therein that notice was issued after 15 months from the date of disconnection of electricity connection and after the final bill was settled in terms of Electricity Supply Code etc. Respondent also submitted in the objections that as per Regulation 7.1.6, upon payment, the Licensee shall issue receipt with "FINAL BILL" stamped on it, which shall be treated as ;No Dues Certificate;

and thereafter, licensee shall not have any right to recover any charges beyond the period of billing.

4. Though, pursuant to aforesaid objections, opportunity of personal hearing came to be granted in terms of S.126(3) of the Act on 29.3.2017 (Annexure P-15), but Assessing Officer, after considering objections dated 15.3.2017, rejected the same and arrived at a conclusion that there was unauthorized use of electricity and passed Final Assessment Order dated 19.4.2017, thereby imposing charges to the tune of Rs.1,65,34,470/- upon the respondent (Annexure P-6).

5. Being aggrieved by afore order, respondent preferred an appeal under S.127 of the Act, 2003 before Divisional Commissioner, Shimla Division exercising powers of Appellate Authority under the Act, 2003, which was registered as Appeal No. 176/2017 (Annexure P-7), which came to be allowed vide order dated 30.11.2017, on the ground that Assessing Officer below passed a non-speaking order, without assigning reasons for rejecting the objections. Learned Divisional Commissioner remanded the case back to Assessing Officer, with a direction to decide the objections afresh by passing a speaking order. (Annexure P-8).

6. Vide order dated 9.7.2020, Assessing Officer asked the respondent to attend personal hearing on 15.7.2020 and 17.7.2020 and thereafter, he arrived at a conclusion that unauthorized use of electricity has taken place as such passed fresh assessment order dated 17.9.2020 for an amount of Rs.1,65,34,470/- (Annexure P-9). Being aggrieved and dissatisfied by afore order passed by Assessing Officer under S.126 of the Act, respondent preferred an appeal before Divisional Commissioner, which was registered as Appeal No. 184/2020 under S.126 of the Act (Annexure P-10). Divisional

Commissioner, being Appellate Authority, vide order dated 11.1.2023 allowed the appeal and came to a conclusion that inspection of premises is mandatorily required to be done before issuing Provisional Assessment Order and there is a time stipulation for issuing Provisional Assessment Order and Final Assessment Order, which has not been followed in the case before him. Appellate Authority while noting that impugned order is a non-speaking order, set aside the same.

7. In the afore background, petitioner Board has approached this Court in the instant proceedings, praying therein for the following main relief:

> "That, Writ in the nature of Certiorari may kindly be issued by quashing and setting aside the impugned order dated 11.01.2023 **Annexure P-11**, passed by the Divisional Commissioner cum Appellate Authority Shimla, and the respondents may very kindly be directed to pay the disputed electricity charges on account of unauthorised use."

8. In nutshell, case of the petitioner, as is highlighted in the petition and further canvassed by Ms. Sunita Sharma, learned Senior Counsel duly assessed by Ms. Harshita Dogra, Advocate, appearing for the petitioner Board is that impugned order is against the facts and circumstances besides being based on conjectures and surmises inasmuch as S.126 of the Act, 2003 is a complete Code in itself and consumption of excess of sanctioned/ contracted load amounts to 'unauthorized use of electricity' under S.126 of the Act. She submitted that the Appellate Authority has failed to appreciate that consumption in excess of sanctioned/ connected load is prejudicial to public at large, as it affects the entire system supply, which may lead to collapse of the grid, hence, the impugned order deserves to be quashed and set aside. Ms. Sharma, learned senior counsel further argued that the Appellate Authority failed to appreciate an important aspect

of the matter that S.126 of Act, 2003 which contemplates that Assessing Officer, if on inspection of the record maintained by any person, comes to the conclusion that such person is indulging in unauthorized use of electricity, shall have power to provisionally assess, to the best of his judgment, the electricity charges payable by such person or by any other person benefited by such use. Ms. Sharma, further submitted that while coming to the conclusion that since assessment made by Assessing Officer was merely on the basis of audit report prepared by audit officer, who is not an 'Assessing Officer' and further no inspection was conducted, as required under S.126 of the Act, Appellate Authority below has failed to appreciate the plain language of the statue i.e. S.126 (1) of the Act *ibid*, which clearly provides that inspection of premises in question is not a pre-requisite for issuance of order of provisional assessment, rather, Assessing Officer, if comes to a conclusion that such person is indulging or has indulged in unauthorized use of electricity, he shall provisionally assess, to the best of his judgment, the electricity charges payable by such a person or by any other person benefited by such use.

9. Ms. Sharma, further submitted that it is cardinal principle of the interpretation of statute that when language of statute is clear, such statute ought to have been read in that sense, however, Appellate Authority, while exercising power under S.126 of Act, 2003 has totally misread and mis-understood the plain language of S.126 (1) and did not adhere to its own order qua specific issue of non-requirement of physical inspection of premises, hence, the impugned order is liable to be set aside. Ms. Sharma, further argued that the Appellate Authority, while passing impugned order dated 11.1.2023, has taken a hyper-technical view that since the Board did

not take immediate steps in compliance of order dated 30.11.2019 passed by it in earlier appeal i.e. Appeal No 176/2017, wherein it had quashed the Final Assessment Order on the pretext that said final order dated 19.4.2017 was a non-speaking order and thus, remitted the matter to the Assessing Officer to pass final order afresh by affording opportunity of hearing to the respondent. Ms. Sharma, further submitted that the Appellate Authority, failed to acknowledge that time till July, 2020 was taken due to nationwide pandemic that was at its peak from march, 2020 onwards, hence the view taken by Appellate Authority below is totally wrong, perverse and against settled position of law and S.126 of the Act, hence, cannot be held good. Ms. Sharma, further submitted that since it is established from bare perusal of MRI Data retrieved from system, which is a system generated data, outside human interference, that respondent has overdrawn maximum demand, Appellate Authority has misread and misconceived the material produced before it, hence impugned order is bad in law and liable to be quashed and set aside.

10. While referring to judgment passed by Hon'ble Apex Court in **Executive Engineer, Southern Electricity Supply Company of Orissa Limited (SOUTHCO) and anther** v. **Sri Seetaram Rice Mill**, (2012) 2 SCC 108, Ms. Sharma, learned senior counsel attempted to argue that ‘unauthorized use’ may not be restricted to the stated clause in the explanation but has to be given a wider meaning so as to cover cases of violation of the terms and conditions of supply and the Regulations and provisions of the 2003 Act, governing such supply. She submitted that ‘unauthorized use of electricity’ itself is an expression which would, on its plain reading, take within its scope all the misuse of the electricity or even

malpractices adopted while using electricity and it is difficult to restrict this expression and limit its application by the categories stated in the Explanation. Ms. Sharma submitted that it is indisputable that the electricity supply to a consumer is restricted and controlled by the terms and conditions of supply, the regulations framed and the provisions of the 2003 Act.

11. Ms. Sharma, placed further reliance upon a judgment rendered by Hon'ble Apex Court in **Kerala SEB** v. **Thomas Joseph**, (2023) 11 SCC 700, to contend that overdrawal of electricity amounts to breach of terms and conditions of contract and statutory conditions, besides such overdrawal being prejudicial to public at large.

12. To the contrary, Mr. Peeyush Verma, learned senior counsel duly assisted by Mr. Manik Sethi, learned counsel for the respondent, vehemently argued that demand came to be raised after fifteen months from the date, when final bill was settled, whereas, as per Supply Code, 2009, containing Clause 7.1.6, final bill, including all arrears upto the date of such billing, shall be prepared, within five days from such request by consumer for connection to be disconnected permanently. Mr. Verma submitted that excess contract demand was recorded by the meter only a few times and most of the times, the contract demand had gone up only because of lower power factor, therefore, normal case of occasional contract demand violation has incorrectly been termed as a case under S.126 of the Act. He further argued that as per provisions contained under S.126 of Act, inspection is to be done by Assessing Officer but Provisional Assessment Order does not mention that inspection was done by any authority. He submitted that there is no date of inspection mentioned in the

audit report over a period of four and half years. Mr. Verma submitted that this assessment was post-facto and audit assessment, which is bad in law.

13. Mr. Verma further contended that guidelines notified vide Notification No. HPSEB/CE(Comm)/Electy. Act-2203 (Notifications)/2011-12-20861-21170 dated 19.3.2012 deal with unauthorized use and theft of electricity, which are to be followed meticulously but same were not adhered to in the case at hand, hence impugned order is illegal, void and rightly came to be set aside by Appellate Authority. He submitted that Provisional Assessment Order is required to be issued within 48 hours of inspection but in this case, same was issued after two years of assessment. While referring to Regulation 7.1.6 of Supply Code 2009, Mr. Verma submitted that after issuance of no dues certificate, the licensee has no right to recover any charges for any period beyond the period of billing.

14. In support of afore arguments, Mr. Peeyush Verma, learned senior counsel placed reliance upon judgment passed by Hon'ble Apex Court in **Sri Seetaram Rice Mill** (supra) and judgment dated 25.1.2025 passed by a Co-ordinate Bench of this Court in CWP No. 2142 of 2016, titled **Sundernagar Integrated Rural Development Association (SIRDA)** v. **Himachal Pradesh State Electricity Board Ltd. & others**. Aforesaid judgments would be dealt with, in latter part of this judgment.

15. I have heard learned counsel for the parties and gone through the record.

16. Before ascertaining the correctness of rival submissions made by parties to list vis-à-vis order laid challenge in the instant proceedings, this court finds it necessary to take note of Ss. 50, 126, 127 and 181 of the Act, 2003:

"50. 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 or damage to electrical plant, or electrical line or meter, entry of distribution licensee 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.]"

126. Section 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.

[(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: 2[***] 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 2
[(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.”]
Section 127. (Appeal to Appellate Authority): ---
(1) Any person aggrieved by the final order made under section 126 may, within thirty days of the said order, prefer an appeal in such form, verified in such manner and be accompanied by such fee as may be specified by the State Commission, to an Appellate Authority as may be prescribed. (2) No appeal against an order of assessment under sub-section (1) shall be entertained unless an amount equal to 3[half of the assessed amount] is deposited in cash or by way of bank draft with the licensee and documentary evidence of such deposit has been enclosed along with the appeal.
(3) The Appellate Authority referred to in sub-section (1) shall dispose of the appeal after hearing the parties and pass appropriate order and send copy of the order to the Assessing Officer and the appellant.
(4) The order of the Appellate Authority referred to in sub-section (1) passed under sub-section (3) shall be final.’
(5) No appeal shall lie to the Appellate Authority referred to in sub-section (1) against the final order made with the consent of the parties. (6) When a person defaults in making payment of assessed amount, he, in addition to the assessed amount shall be liable to pay, on the expiry of thirty days from the date of order of assessment, an amount of interest at the rate of sixteen per cent, per annum compounded every six months.

181. Section 181. (Powers of State Commissions to make regulations): --
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(1) The State Commissions may, by notification, make regulations consistent with this Act and the rules generally to carry out the provisions of this Act.

(2) In particular and without prejudice to the generality of the power contained in sub-section (1), such regulations may provide for all or any of the following matters, namely: -

(a) period to be specified under the first proviso of section 14;

(b) the form and the manner of application under sub-section (1) of section 15;

(c) the manner and particulars of application for licence to be published under sub-section (2) of section 15;

(d) the conditions of licence section 16;

(e) the manner and particulars of notice under clause(a) of subsection (2) of section 18;

(f) publication of the alterations or amendments to be made in the licence under clause (c) of sub-section (2) of section 18;

(g) levy and collection of fees and charges from generating companies or licensees under sub-section (3) of section 32;

(h) rates, charges and the term and conditions in respect of intervening transmission facilities under proviso to section 36;

(i) payment of the transmission charges and a surcharge under subclause (ii) of clause(d) of sub-section (2) of section 39;

(j) reduction 1[***] of surcharge and cross subsidies under second proviso to sub-clause (ii) of clause (d) of sub-section (2) of section 39;

(k) manner and utilisation of payment and surcharge under the fourth proviso to sub-clause(ii) of clause (d) of sub-section (2) of section 39;

(l) payment of the transmission charges and a surcharge under subclause(ii) of clause (c) of section 40;

(m) reduction 1[***] of surcharge and cross subsidies under second proviso to sub-clause (ii) of clause (c) of section 40;

(n) the manner of payment of surcharge under the fourth proviso to sub-clause (ii) of clause (c) of section 40;

(o) proportion of revenues from other business to be utilised for reducing the transmission and wheeling charges under proviso to section 41;

(p) reduction 2[***] of surcharge and cross-subsidies under the third proviso to sub-section (2) of section 42;

(q) payment of additional charges on charges of wheeling under subsection (4) of section 42;
(r) guidelines under sub-section (5) of section 42;
(s) the time and manner for settlement of grievances under sub-section (7) of section 42;
(t) the period to be specified by the State Commission for the purposes specified under sub-section (1) of section 43;
(u) methods and principles by which charges for electricity shall be fixed under sub-section (2) of section 45;
(v) reasonable security payable to the distribution licensee under sub-section (1) of section 47;
(w) payment of interest on security under sub-section (4) of section 47;
(x) electricity supply code under section 50;
(y) the proportion of revenues from other business to be utilised for reducing wheeling charges under proviso to section 51;
(z) duties of electricity trader under sub-section (2) of section 52;
(za) standards of performance of a licensee or a class of licensees under sub-section (1) of section 57;
(zb) the period within which information to be furnished by the licensee under sub-section (1) of section 59;
[(zc) the manner of reduction of cross-subsidies under clause (g) of section 61;]
(zd) the terms and conditions for the determination of tariff under section 61;
(ze) details to be furnished by licensee or generating company under sub-section (2) of section 62;
(zf) the methodologies and procedures for calculating the expected revenue from tariff and charges under sub-section (5) of section 62;
(zg) the manner of making an application before the State Commission and the fee payable therefor under sub-section (1) of section 64;
(zh) issue of tariff order with modifications or conditions under subsection(3) of section 64;
(zi) the manner by which development of market in power including trading specified under section 66;
(zj) the powers and duties of the Secretary of the State Commission under sub-section (1) of section 91;
(zk) the terms and conditions of service of the secretary, officers and other employees of the State Commission under sub-section (2) of section 91;

(zl) rules of procedure for transaction of business under sub-section (1) of section 92;
(zm) minimum information to be maintained by a licensee or the generating company and the manner of such information to be maintained under sub-section (8) of section 128;
(zn) the manner of service and publication of notice under section 130;
(zo) the form of preferring the appeal and the manner in which such form shall be verified and the fee for preferring the appeal under sub-section (1) of section 127;
(zp) any other matter which is to be, or may be, specified. (3) All regulations made by the State Commission under this Act shall be subject to the condition of previous publication.

17. Careful perusal of S.126, as reproduced herein above, reveals that the assessment/proceedings would commence with the inspection of premises of Assessing Officer. If Assessing Officer, after 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, comes to the conclusion that such person is indulging in unauthorized 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. As per S.126(2), 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, whereafter, 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.

18. Admittedly, in the case at hand, Senior Executive Engineer, HPSEBL Nalagarh, issued notice to the respondent on 9.7.2020, for personal hearing on 17.7.2020 i.e. after eight months from the date of issuance of notice dated 30.11.2019. Pursuant to afore notice, respondent authorized one Mukesh Bansal to attend the proceedings on behalf of the firm. Another notice was issued on 30.7.2020, when fresh objections were filed against Final Assessment Order.

19. Careful perusal of notice dated 17.9.2020, clearly reveals that same came to be issued merely on the basis of audit report prepared by Audit Officer, which is not the 'Assessing Officer' under the Act. No inspection was conducted as per requirement of S.126 of the Act.

20. Though, Ms. Sunita Sharma, learned senior counsel appearing for the petitioner Board, attempted to argue that in terms of S.126, Assessing Officer is not necessarily required to visit the premises in person, rather he/she can proceed to pass assessment order, on the basis of record maintained by any person, however, this court is not persuaded to accept to afore contention for the reason that bare reading of S.126 clearly reveals that the Assessing Officer, after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, if comes to the conclusion that such person is indulging in unauthorized 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.

21. Admittedly, in the case at hand, Assessing Officer never visited the premises, rather, on the basis of audit report, proceeded to pass order of provisional assessment, which though came to be objected by the respondent Firm by filing objections in terms of S.126 (3) of the Act, but Assessing Officer rejected the objections in a slipshod manner, without there being any reasoned order, as a result whereof, matter was remanded back. However, despite there being a clear cut observation of Appellate Authority that Assessing Officer, in terms of S.126 of the Act, needs to pass a speaking order, Assessing Officer again proceeded to pass same order, reiterating therein demand of the amount in question i.e. Rs.1,65,34,470/-.

22. At this stage, it is apt to take note of judgment pressed into service by Ms. Sunita Sharma, learned senior counsel in **Executive Engineer, Southern Electricity Supply Company of Orissa Limited (SOUTHCO)** (supra), wherein, in para-26, Hon'ble Apex Court, while carving out distinction between Ss. 126 and 135 of Act, 2003, specifically held that 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 `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. Para-26 of afore judgment reads as under:

> "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."

23. Aforesaid judgment relied upon on behalf of petitioner-Board is of no help to the case of petitioner, rather, it enures the case of the respondent. Hon'ble Apex Court in afore case categorically held that for invoking provisions of S.126 of the Act, 2003, 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.' In the instant case, proceedings never came to be commenced with the inspection of premises by Assessing Officer, rather, same came to be initiated on the basis of record of Electricity Board, thus, no illegality can be said to have been committed by Appellate Authority, while passing impugned order.

24. S.127 of the Act *ibid*, as reproduced herein above, gives right of appeal to a party, which may be aggrieved by assessment carried out under S.126 of the Act. S.50 provides for an Electricity Supply Code in terms of aforesaid provision of law. The State Commission shall specify Electricity Code 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 or damage to electrical plant, or electrical line or meter, entry of distribution licensee 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.

25. S.181 of the Act *ibid* deals with power of State Commission to make regulations consistent with the Act and rules generally to carry out the provisions of the Act. S. 181 (2)(x) confers power upon State Commission to frame supply code by way of issuance of Notification, consistent with the Act and Rules framed thereunder.

26. In exercise of power conferred under the Act, State Commission framed Electricity Code, 2009. Chapter VI of the Code deals with unauthorized use and theft of Electricity. Clause 6.1 deals with unauthorized use of electricity. Clauses 6.1.1 to 6.1.7 of the Code read 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, suomoto 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 subcategory 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 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 interalia 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 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.""

27. Careful perusal of aforesaid provisions contained under the Supply Code reveals that, if on inspection of premises, Assessing Officer comes to the conclusion that 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. Clause 6.1.4 provides that Assessing Officer will sign the inspection report and hand over a copy 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.

28. However, in the present case, there is nothing on record, suggestive of the fact that aforesaid provisions of Supply Code were ever adhered to by Assessing Officer, while arriving at a conclusion that the respondent Firm

is indulging in unauthorized use of electricity neither an inspection report ever came to be prepared qua the same nor supplied to the respondent Firm or its representative.

29. There is another aspect of the matter, that there is no date of inspection mentioned in the Provisional Assessment Order and period of duration is over four and a half years, rather, assessment appears to be based on audit assessment, which is bad in law. Moreover, in the instant case, notice was issued after fifteen months from the date of disconnection of connection permanently, on the request of the respondent firm. As per Clause 7.1.6 of the Supply Code, 2009, final bill including all arrears shall be prepared within five days from the date, request is made for disconnection of electricity permanently, by the consumer. Once, the petitioner Board had acceded to the request of respondent firm for disconnection of electricity connection permanently and thereafter final bill was settled, in terms of clause 7.1.6 of Supply Code Regulations, 2009, it otherwise could not have proceeded to pass assessment order in terms of S.126 of the Act, that too, without there being any inspection.

30. Since, there is violation of the Act and Supply Code, while issuing Provisional Assessment Order and Final Assessment Order, no illegality can be said to have been committed by Appellate Authority, while passing impugned order. At this stage, it would be apt to deal with judgment pressed into service by Ms. Sunita Sharma, learned senior counsel, in **Kerala SEB** v. **Thomas Joseph** (supra).

31. Though, after having carefully perused aforesaid judgment, this Court is of the view that the same may not be of any help to the case of petitioner, but for better understanding of provisions contained under S.126

of Act, 2003, this Court deems it necessary to take note of certain observations made by Hon'ble Apex Court in the afore case.

32. Ms. Sunita Sharma, learned senior counsel, while referring to afore judgment, vehemently argued that additional load in the same premises and under same tariff, amounts to unauthorized use of electricity. She further submitted that overdrawal of electricity amounts to breach of terms and conditions of contract and statutory conditions, besides such overdrawal being prejudicial to public at large therefore, the view taken by Appellate Authority to set aside Assessment Order, that no inspection was carried out by Assessing Officer, being hyper-technical one, is not sustainable. She also attempted to argue that in view of aforesaid law, there is no requirement, if any, for physical inspection of the premises by Assessing Officer, rather he/she can proceed on the basis of record maintained by the Electricity Board.

33. However, this Court is not in agreement with the aforesaid submissions of Ms. Sharma, learned senior counsel, for the reason that bare perusal of aforesaid judgment clearly reveals that in the case before Their Lordship, inspection was undertaken by the officials of Electricity Board and consumer was found to be drawing electricity, in excess of the connected/ contracted load, and as such, issue that arose before Hon'ble Apex Court was, “whether the respondents (consumers) can be assessed at the rate equal to twice the tariff applicable as stipulated in Section 126(6) of the Act 2003?”

34. Hon'ble Apex Court, in the afore judgment, which if read in its entirety, nowhere ruled that Assessing Officer, while acting under S.126 of the Act, is not required to inspect the premises, rather, question before

Hon'ble Apex Court was that, “whether consumption of electricity by the respondents (consumers) in excess of the connected load/contracted load would amount to ‘unauthorised use of electricity’ under explanation (b) to Section 126(6) of the Act 2003?” Hon'ble Apex Court, while declaring Regulation 153.15 of 2014 Code invalid being inconsistent with provisions of S.126 of Act 2003, held that the tariff includes both fixed charges and energy charges and that, once the Assessing Officer has reached the conclusion that unauthorised used of electricity has taken place, he is bound to make assessment at the rate equal to twice the tariff applicable, which includes the dues payable towards energy charges also.

35. There cannot be any quarrel with aforesaid proposition of law, rather, this Court is bound by the same, however, careful perusal of aforesaid judgment in its entirety, nowhere enures the case of petitioner. Hon'ble Apex Court held in the aforesaid judgment that If the court had to set right the impugned judgment and order of the High Court and bring in tune with the principles embodied in the decision of this Court in the case of **Seetaram Rice Mill** (supra), then they had no other option but to declare that Regulation 153(15) of the Code 2014 framed by the Commission is inconsistent with S.126 of the Act 2003. If the Regulation 153(15) is to be given effect, then the same would frustrate the very object of S.126 of the Act 2003. Relevant portion of judgment in **Kerala SEB** v. **Thomas Joseph,** is reproduced herein below:

> “FACTUAL MATRIX
>
> 4. The neat question of law that falls for the consideration of this Court is whether the consumption of electricity by the respondents (consumers) in excess of the connected load/contracted load would

amount to ‘unauthorised use of electricity’ under explanation (b) to Section 126(6) of the Act 2003.

5. The appellant Board is a company incorporated under the Companies Act, 1956 (for short, ‘the Act 1956’) and is controlled by the Government of Kerala. It is engaged in the business of generation, transmission and distribution of electricity in the State of Kerala.

6. In the present litigation, all the respondents are commercial/industrial consumers having LT (Law Tension) connections. It is not in dispute that at the time of the inspection undertaken by the officials of the Appellant Board, all the consumers were found to be drawing electricity in excess of the connected/contracted load. The issue that arises is whether the respondents (consumers) can be assessed at the rate equal to twice the tariff applicable as stipulated in Section 126(6) of the Act 2003?

x x x x x

57. While dealing with the challenge to the High Court's order, this Court, inter alia, examined the scope of Sections 126, 127 and 135 resply of the said Act against the backdrop of the scheme of the Act 2003 and summed up its conclusions as under:

"87. … 1. Wherever the 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 and connected load, such consumer would be “in blame and under liability” within the ambit and scope of Section 126 of the 2003 Act.

2. The expression “unauthorised use of electricity means” as appearing in Section 126 of the 2003 Act is an expression of wider connotation and has to be construed purposively in contrast to contextual interpretation while keeping in mind the object and purpose of the Act. The cases of excess load consumption than the connected load inter alia would fall

under Explanation (b)(iv) to Section 126 of the 2003 Act, besides it being in violation of Regulations 82 and 106 of the Regulations and terms of the Agreement.

3. In view of the language of Section 127 of the 2003 Act, only a final order of assessment passed under Section 126(3) is an order appealable under Section 127 and a notice-cum-provisional assessment made under Section 126(2) is not appealable.

4. Thus, the High Court should normally decline to interfere in a final order of assessment passed by the Assessing Officer in terms of Section 126(3) of the 2003 Act in exercise of its jurisdiction under Article 226 of the Constitution of India.

5. The High Court did not commit any error of jurisdiction in entertaining the writ petition against the order raising a jurisdictional challenge to the notice/provisional assessment order dated 25-07-2009. However, the High Court transgressed its jurisdictional limitations while travelling into the exclusive domain of the Assessing Officer relating to passing of an order of assessment and determining the factual controversy of the case.

6. The High Court having dealt with the jurisdictional issue, the appropriate course of action would have been to remand the matter to the assessing authority by directing the consumer to file his objections, if any, as contemplated under Section 126(3) and require the authority to pass a final order of assessment as contemplated under Section 126(5) of the 2003 Act in accordance with law."

53. In our opinion, the first two conclusions quoted hereinabove completely support the appellant Board. The learned counsel appearing for the consumers and the Commission tried to distinguish Seetaram Rice Mill (supra) from the present case on the ground that there was a change in the classification/category which is not so in this case inasmuch as here the consumers remain commercial/industrial having LT connection and, therefore, there is

no issue of unauthorised use within the meaning of Section 126 of the Act 2003. We see no force in the submission that change of category would not attract Section 126 of the Act 2003. In Seetaram Rice Mill (supra), it was contended that only cases of change of user would be covered under Section 126 of the Act 2003. While rejecting such contention, this Court clarified that the explanation to Section 126 is not exhaustive and any use of electricity which is not permissible and beyond the contract demand amounts to unauthorised use of electricity and the blame contemplated under Section 126 of the Act 2003 is not dependent on whether the overdrawal transgresses into another tariff category or not.

x x x x

60. The principles of law discernible from the aforesaid may be summarised as under:

(1) The provisions of Section 126, read with Section 127 of the Act 2003 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 Act 2003 has been enacted with a purpose to achieve i.e., to put an implied restriction on such unauthorised consumption of electricity.

(2) The purpose of Section 126 of the Act 2003 is to provide safeguards to check the misuse of powers by unscrupulous elements. The provisions of Section 126 of the Act 2003 are self-explanatory. They are intended to cover situations, other than, the situations specifically covered under Section 135 of the Act 2003. In such circumstances, the Court should adopt an interpretation which should help in attaining the legislative intent.

(3) The purpose sought to be achieved with the aid of the provisions of Section 126 of the Act 2003 is to ensure stoppage of misuse/unauthorised use of the electricity as well as to ensure prevention of revenue loss.

(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.

(5) The expression 'unauthorised use of electricity' means as it appears in Section 126 of the Act 2003. 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 Act 2003.

x x x x

62. In para 67 of Seetaram Rice Mill (supra) referred to above, it was categorically held that the consumption of electricity in excess of the sanctioned/connected load shall be an 'unauthorised use of electricity' in terms of Section 126 of the Act 2003. According to us, the observations made by this Court in Seetaram Rice Mill (supra) as contained in para 67 goes to the root of the matter. Seetaram Rice Mill (supra) in para 67 has said in so many words that overdrawal of electricity amounts to breach of the terms and conditions of the contract and the statutory conditions, besides such overdrawal being 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. This aspect of the matter has been completely overlooked by the High Court. It is not just a matter of overdrawal of electricity in excess of sanctioned/connected load in the very same premises and for the very same purpose, which does not involve any change in the tariff applicable for the relevant category of services. The tariff applicable may remain the same; the overdrawal may be in the same premises and for the very same purpose, there may not be any loss of revenue but it may lead to a disastrous situation being prejudicial to the public at large, as such overdrawal of electricity in excess of sanctioned/connected load may disturb the entire supply system, undermining its efficiency, efficacy and even-increasing voltage demand.

x x x x

85. It is important to keep in mind that where a rule or regulation is directly inconsistent with a mandatory provision of the statute, then, of course, the task of the Court is simple and easy. But where the contention is that the inconsistency or non-conformity of the rule is not with reference to any specific provision of the enabling Act, but with the object and scheme of the parent Act, the Court should proceed with caution before declaring the same to be invalid.

86. Rules or regulation cannot be made to supplant the provisions of the enabling Act but to supplement it. What is permitted is the delegation of ancillary or subordinating legislative functions, or, what is fictionally called, a power to fill up details.

87. A Constitution Bench of this Court in the case of Sukhdev Singh (supra), while explaining the fine distinction between a rule and regulation and also the power of the delegate authority to frame such rules or regulations has made few very important observations which we must take notice of and quote as under:

> "11. The contentions on behalf of the employees are these. Regulations are made under the statute. The origin and source of the power to make regulations is statutory. Regulations are self-binding in character. Regulations have the force of law inasmuch as the statutory authorities have no right to make any departure from the regulations.
>
> 12. Rules, regulations, schemes, bye-laws, orders made under statutory powers are all comprised in delegated legislation. The need for delegated legislation is that statutory rules are framed with care and minuteness when the statutory authority making the rules is after the coming into force of the Act in a better position to adapt the Act to special circumstances. Delegated legislation permits utilisation of experience and consultation with interests affected by the practical operation of statutes.
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> xx xx xx
>
> 14. Subordinate legislation is made by a person or body by virtue of the powers conferred by a statute. By-laws are made in the main by local authorities or similar bodies or by statutory or other undertakings for regulating the conduct of persons within their areas or resorting to their undertakings. Regulations may determine the class of cases in which the exercise of the statutory power by any such authority constitutes the making of statutory rules.
>
> 15. The words "rules" and "regulations" are used in an Act to limit the power of the statutory authority. The powers of statutory bodies

are derived, controlled and restricted by the statutes which create them and the rules and regulations framed thereunder. Any action of such bodies in excess of their power or in violation of the restrictions placed on their powers is ultra vires. The reason is that it goes to the root of the power of such corporations and the declaration of nullity is the only relief that is granted to the aggrieved party.

xx xx xx

18. The authority of a statutory body or public administrative body or agency ordinarily includes the power to make or adopt rules and regulations with respect to matters within the province of such body provided such rules and regulations are not inconsistent with the relevant law. In America a "public agency" has been defined as an agency endowed with governmental or public functions. It has been held that the authority to act with the sanction of Government behind it determines whether or not a governmental agency exists. The rules and regulations comprise those actions of the statutory or public bodies in which the legislative element predominates. These statutory bodies cannot use the power to make rules and regulations to enlarge the powers beyond the scope intended by the Legislature. Rules and regulations made by reason of the specific power conferred on the statute to make rules and regulations establish the pattern of conduct to be followed. Rules are duly made relative to the subject-matter on which the statutory bodies act subordinate to the terms of the statute under which they are promulgated. Regulations are in aid of the enforcement of the provisions of the statute. Rules and regulations have been distinguished from orders or determination of statutory bodies in the sense that the orders or determination are actions in which there is more of the judicial function and which deal with a particular present situation. Rules and regulations on the other hand are actions in which the legislative element predominates.

xx xx xx

136. The regulations framed under the regulation-making power conferred by the three Acts in question are not the regulations as defined in the General Clauses Act. In interpreting Indian statutes it is unnecessary and might sometimes be misleading to refer to the provisions of English law in connection with subordinate legislation. We have to refer only to the General Clauses Act and the Indian legislative practice. Though "rule" is defined as including a regulation made as a rule, it cannot be said that regulation-making power conferred on the three organisations in question is a rule-making power. Under the legislative practice in India the rule-making power is conferred on the State and the power to make regulations is conferred on bodies or organisations created by the statute.

xx xx xx

161. I have gone through the various statutes only to point out that under the Indian legislative practice rules are what the Central Government or the State Governments make and the regulations

are made by any institution or organisation established by a statute and where it is intended that the regulation should have effect as law the statute itself says so. It is, therefore, as I stated earlier, unnecessary and may be even misleading to refer to the English practice in interpreting the word 'regulation'." (Emphasis supplied)

88. If we have to set right the impugned judgment and order of the High Court and bring in tune with the principles embodied in the decision of this Court in the case of Seetaram Rice Mill (supra), then we have no other option but to declare that Regulation 153(15) of the Code 2014 framed by the Commission is inconsistent with Section 126 of the Act 2003. If the Regulation 153(15) is to be given effect, then the same would frustrate the very object of Section 126 of the Act 2003. The High Court in its impugned judgment says that Regulation 153(15) does not lead to any loss of revenue. The stance of the Commission also is that there is no loss of revenue if the Regulation 153(15) is permitted to be operated. However, we are of the view that it is not just the question of loss of revenue. At the cost of repetition, we emphasis on the fact that overdrawal of electricity is prejudicial to the public at large as it may throw out of gear the entire supply system, undermining its efficiency, efficacy and even-increasing voltage fluctuations."

36. Consequently, in view of detailed discussion made herein above as well as law taken into consideration, this court finds no merit in the present petition, which is accordingly dismissed. Order dated 11.1.2023 (Annexure P-11) passed by the Divisional Commissioner, Shimla (Appellate Authority) is upheld.

All pending applications stand disposed of. Interim directions, if any, also stand vacated. Record, if received, be sent back forthwith.

No order as to costs.

(Sandeep Sharma),
Judge

September 17, 2026
(vikrant)