IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.3132 of 2014
Judgment reserved on: 15.09.2015
Pronounced on: 14.10.2015

Randhir Singh

....Petitioner

Versus

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

1) Whether Reporters of the local papers may be allowed to see the judgment ? **Yes**
2) To be referred to the Reporters or not ? **Yes**
3) Whether the judgment should be reported in the Digest ? **Yes**

Argued by: -
Mr. Preetwinder Singh Dhaliwal, Advocate, for the petitioner.
Mr. S.S. Chandumajra, Addl. A.G., Punjab.
Mr. V.K. Chaudhary, Advocate, for respondents No.2 to 4.

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PARAMJEET SINGH, J.

Instant writ petition under Articles 226/227 of the Constitution has been filed for issuance of a writ in the nature of *certiorari* for quashing the bill-cum-assessment order dated 28.10.2013 (Annexure P-1) under Section 135 read with Section 126(6) and Section 154(5) of the Indian Electricity Act, 2003 (hereinafter referred to as 'the Act') whereby demand of ₹1,14,976/- has been raised and order dated 12.12.2013 (Annexure P-3) passed by respondent No.3 – Executive Engineer, Punjab State Power Corporation Limited, City Barnala, Tehsil and District Barnala, whereby petition of the petitioner has been dismissed by Designated Authority-cum-Deputy Engineer Circle PSPCL, Barnala. Further prayer has been made to restrain the respondents from recovering the amount.

Adumbrated, facts in writ petition are that on 24.10.2013 employees of the Punjab State Power Corporation, Barnala (hereinafter referred to as 'the Corporation') made inspection of the premises of the petitioner and found that petitioner was indulging in consuming electricity by tapping the main electric supply line of the Corporation. In pursuance of that, impugned bill-cum-assessment order dated 28.10.2013 (Annexure P-1) was served upon the petitioner under Section 135 read with Section 126(6) and Section 154(5) of the Act It is mentioned therein that petitioner was drawing electricity by direct *kundi*. Resultantly, as per Rules, a demand of ₹1,14,976/- was raised vide impugned bill-cum-assessment order dated 28.10.2013. Against the bill-cum-assessment order, petitioner filed an appeal before the Executive Engineer, which has been dismissed vide order dated 12.12.2013 (Annexure P-2). Hence, this writ petition.

In pursuance of notice of motion, respondents have filed written statement taking a stand that petitioner was indulging in theft of electricity by means of direct kundi connection tapping the main electric supply line of the Corporation. The menace of *kundi* connections, as it is generally known as drawing electricity from the main line by putting wires without any authority or permission and without any meter, is quite prevalent. To check this tendency, firm action is being taken. Premises of the petitioner were checked on 24.10.2013 and he was found drawing electricity from main line by direct kundi connection. Thereafter, as per Rules and Regulations, impugned bill-cum-assessment order under Section 135 read with Section 126(6) and Section 154(5) of the Act for an amount of ₹1,14,976/- was issued. After receiving notice, petitioner preferred an appeal, which has been dismissed by the Executive Engineer of corporation branch office City, Barnala. The checking report was signed by representative of the petitioner. It is a clear case of theft of electricity. It is further averred that calculations have been made as per Rules and Regulations 36 and 37, applicable in cases of unauthorised use of electricity and theft of electricity, respectively, of Electricity Supply Code and Related Matters Regulations, 2007 notified by Punjab State Electricity Regulatory Commission vide notification No.PSERC/Secy./Regu.31 dated 21.06.2007 and published in Government of Punjab Gazette dated 27.07.2007.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the petitioner vehemently contended that in case of theft of electricity, assessment order cannot be passed under Section 126 of the Act. The assessment order, in the case of theft of electricity is covered under Section 135 of the Act, can only be made by the Special Court under Section 154 of the Act. Provisional assessment order under Section 135 read with Sections 126(6) and 154 of the Act is not sustainable in the eyes of law. In the cases covered under Section 135 of the Act, final assessment under Section 126 of the Act is not contemplated, hence, Annexure P-1 and other proceedings are against law and are without jurisdiction.

On the other hand, learned counsel for respondents No.2 to 4 vehemently contended that the impugned bill-cum-assessment order is legal and valid. Petitioner has admitted before the authorities of the Corporation that he is ready to pay the reasonable amount from 02.10.2013 the date from which construction was started and new meter be installed. The Designated Authority has rightly dismissed the review application of the petitioner. Final bill-cum-Assessment is in accordance with the provisions of law and notified electricity supply code as applicable to the Corporation.

I have considered the contentions raised by learned counsel for the parties.

In the light of submissions made by learned counsel for the parties, following issues arise for consideration of this Court: -

> *"1. Whether Sections 126 and 135 of the Act operate independently in different fields?*
>
> *2. Whether bill-cum-assessment order dated 28.10.2013 (Annexure P-1) is sustainable in the eyes of law?"*

Before I deal with the rival contentions and issues raised by learned counsel for the parties, it would be appropriate to refer to statutory provisions, which read 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.

(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 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 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."

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 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.

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,*
- *(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 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 authorized 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 authorized 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, authorized 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 unauthorized 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, relating to search and seizure shall apply, as far as may be, to searches and seizure under this Act.

147. Penalties not to affect other liabilities. *- The penalties imposed under this Act shall be in addition to, and not in derogation of, any liability in respect of payment of compensation or, in the case of a licensee, the revocation of his licence which the offender may have incurred.*

151. Cognizance of offences. *- No court shall take cognizance of an offence punishable under this Act except upon a complaint in writing made by Appropriate Government or Appropriate Commission or any of their officer authorized by them or a Chief Electrical Inspector or an Electrical Inspector or licensee or the generating company, as the case may be, for this purpose:*

Provided that the court may also take cognizance of an offence punishable under this Act upon a report of a police officer filed under section 173 of the Code of Criminal Procedure, 1973:

Provided further that a special court constituted under section 153 shall be competent to take cognizance of an offence without the accused being committed to it for trial.

151A. Power of police to investigate. *- For the purposes of investigation of an offence punishable under this Act, the police officer shall have all the powers as provided in Chapter XII of the Code of Criminal Procedure,1973.*

151B.Certain offences cognizable and non-bailable. *- Notwithstanding anything contained in the Code of Criminal Procedure,1973, an offence punishable under Sections 135 to 140 or Section 150 shall be cognizable and non-bailable.*

152. Compounding of offences*. - (1) Notwithstanding anything contained in the Code of Criminal Procedure 1973, the Appropriate Government or any officer authorized by it in this behalf may accept from any consumer or person who committed or who is reasonably suspected of having committed an offence of theft of electricity punishable under this Act, a sum of money by way of compounding of the offence as specified in the Table below:*

TABLE

Nature of Service	*Rate at which the sum of money for Compounding to be collected per Kilowatt (KW)/Horse Power(HP) or part thereof for Low Tension (LT) supply and per Kilo Volt Ampere(KVA) of contracted demand for High Tension (HT)*
(1)	(2)
1. Industrial Service	twenty thousand rupees;
2. Commercial Service	ten thousand rupees;
3. Agricultural Service	two thousand rupees;
4. Other Services	four thousand rupees:

Provided that the Appropriate Government may, by notification in the Official Gazette, amend the rates specified in the Table above.

(2) On payment of the sum of money in accordance with sub-

section (1), any person in custody in connection with that offence shall be set at liberty and no proceedings shall be instituted or continued against such consumer or person in any criminal court.

(3) The acceptance of the sum of money for compounding an offence in accordance with sub-section (1) by the Appropriate Government or an officer empowered in this behalf empowered in this behalf shall be deemed to amount to an acquittal within the meaning of section 300 of the Code of Criminal Procedure, 1973.

(4)The Compounding of an offence under sub-section (1) shall be allowed only once for any person or consumer.

***153. Constitution of Special Courts**. - (1) The State Government may, for the purposes of providing speedy trial of offences referred to in1[sections 135 to 140 and section 150, by notification in the Official Gazette, constitute as many Special Courts as may be necessary for such area or areas, as may be specified in the notification.*

(2) A Special Court shall consist of a single Judge who shall be appointed by the State Government with the concurrence of the High Court.

(3) A person shall not be qualified for appointment as a Judge of a Special Court unless he was, immediately before such appointment, an Additional District and Sessions Judge.

(4) Where the office of the Judge of a Special Court is vacant, or such Judge is absent from the ordinary place of sitting of such Special Court, or he is incapacitated by illness or otherwise for the performance of his duties, any urgent business in the Special Court shall be disposed of –

(a) by a Judge, if any, exercising jurisdiction in the Special Court;

(b) where there is no such other Judge available, in

accordance with the direction of District and Sessions Judge having jurisdiction over the ordinary place of sitting of Special Court, as notified under subsection (1).

154. Procedure and power of Special Court. *- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence punishable under sections 135 to 140 and section 150 shall be triable only by the Special Court within whose jurisdiction such offence has been committed.*

(2) Where it appears to any court in the course of any inquiry or trial that an offence punishable under sections 135 to 139 in respect of any offence that the case is one which is triable by a Special Court constituted under this Act for the area in which such case has arisen, it shall transfer such case to such Special Court, and thereupon such case shall be tried and disposed of by such Special Court in accordance with the provisions of this Act :

Provided that it shall be lawful for such Special Court to act on the evidence, if any, recorded by any court in the case of presence of the accused before the transfer of the case to any Special Court :

Provided further that if such Special Court is of opinion that further examination, cross-examination and re-examination of any of the witnesses whose evidence has already been recorded, is required in the interest of justice, it may re-summon any such witness and after such further examination, cross-examination or re-examination, if any, as it may permit, the witness shall be discharged.

(3) The Special Court may, notwithstanding anything contained in subsection (1) of section 260 or section 262 of the Code of Criminal Procedure, 1973, try the offence

referred to in sections 135 to 139 in a summary way in accordance with the procedure prescribed in the said Code and the provisions of sections 263 to 265 of the said Code shall, so far as may be, apply to such trial :

Provided that where in the course of a summary trial under this subsection, it appears to the Special Court that the nature of the case is such that it is undesirable to try such case in summary way, the Special Court shall recall any witness who may have been examined and proceed to re-hear the case in the manner provided by the provisions of the said Code for the trial of such offence:

Provided further that in the case of any conviction in a summary trial under this section, it shall be lawful for a Special Court to pass a sentence of imprisonment for a term not exceeding five years.

(4) A Special Court may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to, any offence tender pardon to such person on condition of his making a full and true disclosure of the circumstances within his knowledge relating to the offence and to every other person concerned whether as principal or abettor in the commission thereof, and any pardon so tendered shall, for the purposes of section 308 of the Code of Criminal Procedure,1973, be deemed to have been tendered under section 307 thereof.

(5) The Special Court shall determine the civil liability against a consumer or a person in terms of money for theft of energy which shall not be less than an amount equivalent to two times of the tariff rate applicable for a period of twelve months preceding the date of detection of theft of energy or the exact period of theft if determined whichever is less and the amount of civil liability so determined shall be recovered as if it were

a decree of civil court.

(6) In case the civil liability so determined finally by the Special Court is less than the amount deposited by the consumer or the person, the excess amount so deposited by the consumer or the person, to the Board or licensee or the concerned person, as the case may be, shall be refunded by the Board or licensee or the concerned person, as the case may be, within a fortnight from the date of communication of the order of the Special Court together with interest at the prevailing Reserve Bank of India prime lending rate for the period from the date of such deposit till the date of payment.

Explanation. - For the purposes of this section, "civil liability" means loss or damage incurred by the Board or licensee or the concerned person, as the case may be, due to the commission of an offence referred to in sections 135 to 140 and section 150.

***155. Special Court to have powers of Court of Session**. - Save as otherwise provided in this Act, the Code of Criminal Procedure, 1973, insofar as they are not inconsistent with the provisions of this Act, shall apply to the proceedings before the Special Court and for the purpose of the provisions of the said enactments, the Special Court shall be deemed to be a Court of Session and shall have all powers of a Court of Session and the person conducting a prosecution before the Special Court shall be deemed to be a Public Prosecutor.*

***156. Appeal and revision.** - The High Court may exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX of the Code of Criminal Procedure, 1973, as if the Special Court within the local limits of the jurisdiction of the High Court is a District Court, or as the case may be , the Court of Session , trying cases within the local limits of jurisdiction of the High Court.*

> ***157. Review.*** *- The Special Court may , on a petition or otherwise and in order to prevent miscarriage of justice, review its judgment or order passed under section 154, but no such review petition shall be entertained except on the ground that it was such order passed under a mistake of fact, ignorance of any material fact or any error apparent on the face of the record :*
>
> *Provided that the Special Court shall not allow any review petition and set aside its previous order or judgment without hearing the parties affected.*
>
> *Explanation.- For the purpose of this Part, "Special Courts" means the Special Courts constituted under sub-section (1) of section 153."*

Sections 126 and 127 are in Part XII "Investigation and Enforcement" whereas Section 135 is in part XIV "Offences and penalties" of the Act. Perusal of Part XII and XIV reveals that 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 judgment the electricity charges payable by such person or by any other person benefited by such use. Firstly provisional assessment shall be made and thereafter objections shall be invited and ultimately final order of assessment shall be passed. The words "unauthorised use of electricity" are defined in explanation (b) of Section 126 of the Act whereas Section 135(1) of the Act begins with words "Whoever dishonestly" and reads as under -

> *"**135. Theft of electricity.**- 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"*

All instances mentioned in Section 135(1) of the Act are instances of "unauthorised use of electricity" as defined in explanation (b) of Section 126 of the Act. The unauthorised use of electricity is genus of which the instances detailed in Section 135(1) of the Act are species. Theft of electricity is unauthorised use of electricity done "dishonestly". Apparent reading of these provisions makes it clear that assessment order under Section 126 of the Act has to follow whenever unauthorised use of electricity is made by a person or a consumer and said unauthorised use of electricity becomes theft when coupled with dishonest intention which invites imprisonment under Part XIV starting from Section 135 of the Act.

Issue with regard to applicability of Parts XII and XIV in different fields is no more *res integra* as the same has been decided by the Hon'ble Supreme Court in ***Executive Engineer, Southern Electricity Supply Company of Orissa Limited (SOUTHCO) and another v. Sri Seetaram Rice Mill***, *(2012) 2 Supreme Court Cases 108.*

It would be appropriate to refer to relevant paras from the judgment of Hon'ble Supreme Court in ***Sri Seetaram Rice Mill*** (supra), which read as under: -

> ***"1(b) Distinction between Sections 126 and 135 of the 2003 Act***
>
> ***24.*** *Upon their plain reading, the mark differences in the contents of Sections 126 and 135 of the 2003 Act are obvious. They are distinct and different provisions which operate in different fields and have no common premise in law. We have already noticed that Sections 126 and 127 of the 2003 Act read together constitute a complete code in themselves covering all relevant considerations for passing of an order of assessment in cases which do not fall under Section 135 of the 2003 Act.*
>
> ***25.*** *Section 135 of the 2003 Act falls under Part XIV relating to `offences and penalties' and title of the Section is `theft of electricity'. The Section opens with the words `whoever, dishonestly' does any or all of the acts specified under clauses*

(a) to (e) of Sub-section (1) of Section 135 of the 2003 Act so as to abstract or consume or use electricity shall be punishable for imprisonment for a term which may extend to three years or with fine or with both. Besides imposition of punishment as specified under these provisions or the proviso thereto, Sub-section (1A) of Section 135 of the 2003 Act provides that without prejudice to the provisions of the 2003 Act, the licensee or supplier, as the case may be, through officer of rank authorized in this behalf by the appropriate commission, may immediately disconnect the supply of electricity and even take other measures enumerated under Sub-sections (2) to (4) of the said Section. The fine which may be imposed under Section 135 of the 2003 Act is directly proportional to the number of convictions and is also dependent on the extent of load abstracted.

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.*

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.*

x x x x x x x

49. *Once the court decides that it has to take a purposive construction as opposed to textual construction, then the legislative purpose sought to be achieved by such an interpretation has to be kept in mind. We have already indicated that keeping in view the legislative scheme and the provisions of the 2003 Act, it will be appropriate to adopt the approach of purposive construction on the facts of this case. We have also indicated above that the provisions of Section 126 of the 2003 Act are intended to cover the cases over and above the cases which would be specifically covered under the provisions of Section 135 of the 2003 Act.*

x x x x x x x

87. *Having dealt with and answered determinatively the questions framed in the judgment, we consider it necessary to precisely record the conclusions of our judgment which are as follows:-*

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 `unauthorized 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 25th July, 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 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."*

In view of law laid down by the Hon'ble Supreme Court in ***Sri Seetaram Rice Mill*** (supra), there is clear distinction between "unauthorised use of electricity" and "theft of electricity". In such circumstances, it can be said that unauthorised use of electricity, which is not deliberate and is unintentional, shall not be regarded as a theft and would fall within the ambit of Section 126 of the Act. Whereas, if the means as mentioned in Section 135 of the Act are used then the offence of theft will be made out and Section 135 of the Act will apply. In Sections 126 and 135 of the Act two expressions "unauthorised use of electricity" and "theft of electricity", respectively, have been used. There is no commonality between them in law. They operate in different and distinct fields. Perusal of Part XIV reveals that cognizance of offence under the Act can be taken on the basis of a complaint in writing made to the police by the appropriate authority or appropriate commission or any other authorised person and in view of section 151B of the Act offences under the Act have been made cognizable and non-bailable. The offences under the Act can be compounded in view of Section 152 of the Act. Procedure and powers of the Special Court are provided under Section 154 of the Act. Section 147 of the Act specifically states that the penalties imposed under the Act shall be in addition to, and not in derogtion of, any liability for which the offender may have rendered himself liable in respect of payment of compensation or, in the case of a licensee, the revocation of his licence. Section 154(5) gives power to the Special Court to determine the civil liability against a consumer or a person in terms of money for theft of energy which shall not be less than an amount equivalent to two times of the tariff rate applicable for a period of twelve months preceding the date of detection of theft of energy or the exact period of theft, if determined, whichever is less and the amount of civil liability so determined shall be recovered as a decree of civil Court. Civil liability has also been explained in explanation given to Section 154 of the Act. Meaning thereby, civil liability can be assessed by the Special Court in accordance with law in cases falling under Section 135 of the Act and not in the cases falling under Section 126 of the Act. Though the provision relating to assessment i.e. Section 126 figures in Part XII and Section 135 figures in Part XIV but to some extent there is an overlapping. A detailed procedure has been provided under Section 126 of the Act and it is applicable when the authorities are satisfied that consumer/person is indulging in unauthorized use of electricity. This term has been defined in Explanation (b) to Section 126 of the Act. Section 135 of the Act also refers to some aspects which are included within the term of "unauthorised use of electricity" and also constitute theft under Section 135 of the Act e.g. use of electricity through a tampered meter also constitutes theft. Clause (v) to Explanation (b) to Section 126 of the Act did not exist prior to 15.06.2007. Section 135(1)(e) also covers use of electricity for the purpose other than for which the usage of electricity was authorised. This has also been added w.e.f. 15.06.2007. In fact, there is no provision in the Act in respect of assessment in cases of theft, the power has been given under Section 154(5) of the Act whereby assessment can be made by the Special Court.

Sections 151-A and 151-B of the Act, which have been inserted , provides that even FIR can be lodged for an offence punishable under the Act. The issue has already been decided by the Hon'ble Supreme Court in ***Vishal Agrawal and another v. Chhattisgarh State Electricity Board and another**, (2014) 3 SCC 696*, wherein the Hon'ble Supreme Court has held as under: -

> *"**23.** Thus, the clear principle which emerges from the aforesaid discussion is that even when a Magistrate is to take cognizance when a complaint is filed before it, that would not mean that no other avenue is opened and the complaint/FIR cannot be lodged with the police. It is stated at the cost of repetition that the offences under the Electricity Act are also to be tried by applying the procedure contained in the Code. Thus, it cannot be said that a complete machinery is provided under the Electricity Act as to how such offences are to be*

dealt with. In view thereof, we are of the opinion that the respondent's Counsel is right in his submission that if the offence under the Code is cognizable, provisions of Chapter XII containing Section 154 Cr.P.C. and onward would become applicable and it would be the duty of the police to register the FIR and investigate into the same. Sections 135 and 138 only prescribe that certain acts relating to theft of electricity etc. would also be offences. It also enables certain persons/parties, as mentioned in Section 151, to become complainant in such cases and file complaint before a Court in writing. When such a complaint is filed, the Court would be competent to take cognizance straightway. However, that would not mean that other avenues for investigation into the offence which are available would be excluded. It is more so when no such special procedure for trying the offences under the Electricity Act is formulated and the cases under this Act are also to be governed by the Code of Criminal Procedure.

24. *In this backdrop, the notification dated 8.6.2005 issued by the Central Government in exercise of powers under Section 176 of the Electricity Act also requires a mention. Vide this notification the Electricity Rules, 2005, have been framed and Rule 12, which is relevant, reads as under:*

> *12 (1) The police shall take cognizance of the offence punishable under the Act on a complaint in writing made to the police by the Appropriate Government or the Appropriate Commission or any of their officer authorized by them in this regard or a Chief Electrical Inspector or an Electrical Inspector or an authorized officer of Licensee or a Generating Company, as the case may be.*
>
> *(2)The police shall investigate the complaint in accordance with the general law applicable to the*

investigation of any complaint. For the purposes of investigation of the complaint, the police shall have at the powers as available under the Code of Criminal Procedure, 1973.

(3) The police shall after investigation, forward the report along with the complaint filed under Sub-clause (1) to the Court for trial under the Act.

(4) Notwithstanding anything contained in Sub-clauses (1), (2) and (3) above, the complaint for taking cognizance of an offence punishable under the Act may also be filed by the Appropriate Government or the Appropriate Commission or any of their officer authorized by them or a Chief Electrical Inspector or an Electrical Inspector or an authorized officer of Licensee or a Generating Company, as the case may be directly in the appropriate Court.

(5) Notwithstanding anything contained in the Code of Criminal Procedure 1973, every special Court may take cognizance of an offence referred to in Section 135 to 139 of the Act without the accused being committed to it for trial."

The Punjab State Electricity Regulatory Commission has notified the regulations called as the Punjab State Electricity Regulatory Commission (Electricity Supply Code and Related Matters), Regulations, 2007. Relevant regulations are reproduced for reference, which read as under:-

*"**36.** **<u>Unauthorized use of electricity</u>***

36.1 Procedure in a case of unauthorized use of electricity *(a) An Assessing Officer, designated as such by the State Government will suo-motu or on receipt of information/complaint regarding unauthorized use of electricity in a premises/area, promptly inspect such premises/ area.*

(b) The Assessing Officer and other members of his team will at the time of inspection carry along with them identity cards, which will on demand be shown to the person present at site before entering the premises.

(c) If on inspection of the premises/area and/or scrutiny of the records, the Assessing Officer comes to the conclusion that the person is indulging in unauthorized use of electricity, he will prepare an inspection report inter alia indicating connected load, condition of seals and meter and also giving details of evidence substantiating the unauthorized use. The Assessing Officer will wherever possible photograph/videograph the means of such unauthorized use.

(d) The inspection report will be signed by the Assessing Officer and a copy handed over to the person/consumer or his/her representative present at site. In case of refusal to accept the report, a copy of the inspection report will be pasted at a conspicuous place in/outside the premises and another sent under registered post. The Inspection Report may also be signed by the person present at site.

(e) In case theft of electricity is detected by the Assessing Officer at the time of inspection under Regulation 36.1 (a), then in case the Assessing Officer is himself not an Authorized Officer under Section 135 of the Act, an immediate reference reporting the facts will be made to the Authorized Officer for taking further action under

Regulation 37. 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.

(f) The Assessing Officer will provisionally assess the amount payable by the consumer/person benefited by the unauthorized use of electricity as per procedure specified in Annexure-8.

(g) The provisional assessment order will be issued within forty eight hours of inspection and served upon the consumer/person in such a manner as may be prescribed by the State Government.

(h) The consumer/person served with the order of provisional assessment may accept such assessment and deposit the assessed amount with the Licensee within seven days of the order being served on him.

36.2 Final Assessment

(a) Any consumer/person not satisfied with the provisional assessment shall be entitled to file objections, if any, against the provisional assessment order before the Assessing Officer within seven days of the order having been served upon him.

(b) Within seven days of submission of the objections, the Assessing Officer will scrutinize the case and if no unauthorized use of electricity is established, the case will be dropped immediately and the person/consumer informed accordingly.

(c) If the Assessing Officer is still of the view that unauthorized use of electricity has taken place, he shall after providing an opportunity of personal hearing to the

consumer/person pass a final order of assessment specifying the amount payable within thirty days of the date of service of order of provisional assessment. In such a case the Assessing Officer will assess the electricity consumption and electricity charges as per the procedure given in Annexure-8.

(d) The consumer/person will be required to deposit the assessed amount with the Licensee within seven days of receipt of the final order of assessment. The Licensee may extend the last date of payment of the assessed amount or allow the payment in installments subject to payment of interest on the unpaid amount for the extended period beyond seven days at the SBI's Short Term PLR prevalent on first of April of the relevant year.

(e) The consumer/person served with the final order of assessment may accept it and deposit the assessed amount with the Licensee.

36.3 Appeal to appellate authority

(a) The consumer/person aggrieved by the final assessment order made under Regulation 36.2 may, within thirty days of the said order, prefer an appeal in such form, verified in such manner and accompanied by such fee as specified by the Commission in its Regulations for 'Procedure of filing Appeal before the Appellate Authority'. No appeal shall be entertained by the Appellate Authority prescribed by the State Government unless the consumer/person deposits with the Licensee an amount equal to half of the assessed amount inclusive of the amount already deposited as per Regulation 36.2 (d) and encloses documentary evidence of such deposit along with the appeal. No appeal will lie against the final order of the assessment if it has been

passed with the consent of the parties.

(b) The Appellate Authority will within ninety days of an appeal being admitted, pass a final order (Appellate Order) and forward copies thereof to the Licensee, the Assessing Officer and the appellant. The order of the Appellate Authority shall be final.

(c) In case the Appellate Authority holds that no case of unauthorized use of electricity is established, no further proceedings will be initiated by the Licensee and the amount deposited by the appellant refunded alongwith interest for the period from the date of deposit till the amount recovered is adjusted, at the SBI's Short Term PLR prevalent on first of April of the relevant year, through adjustment in the electricity bills of the immediately succeeding months.

(d) Where a case of unauthorized use of electricity is established, the consumer/person will within thirty days effect payment of the balance amount as per the Appellate Order.

(e) In case the amount payable as determined by the Appellate Authority is less than the amount already deposited by the consumer/person, the excess amount will be refunded by adjustment in the bills of the immediately succeeding months together with interest at SBI's Short Term PLR prevalent on first of April of the relevant year for the period from the date of such excess deposit till the date of actual adjustment.

36.4 Default in payment of amount assessed

In case of default in payment of the assessed amount or any installments thereof by a consumer, the Licensee will, *without any notice disconnect the supply of electricity. The defaulter, on the expiry of thirty days from the final order of assessment or the decision of the appeal as the case may be, will also be liable to pay interest on the outstanding amount at the rate of sixteen percent per annum compounded every six months till the assessed amount is finally paid.*

37. Theft of Electricity

37.1 Procedure in a case for theft of electricity

(a) An Authorized Officer will promptly inspect such a premises where he has reason to believe or has been intimated by an Assessing Officer under Regulation 36.1 (e) that theft of electricity has occurred or is occurring.

(b) The Authorized Officer and other members of his team will, at the time of inspection carry identity cards, which will on demand be shown to the consumer/ person present at site before entering the premises.

(c) The Authorized Officer will prepare an inspection report inter alia indicating connected load (wherever required), status of meter/metering equipment, condition of meter and seals and any other irregularity noticed (such as means adopted for theft of electricity) in such premises.

(d) The Authorized Officer will record evidence substantiating theft of electricity in the premises and will, wherever possible, photograph/videograph the means of theft of electricity.

(e) The occupant of the place of search or any person on his behalf shall remain present during the search and a list of all items seized in the course of such search shall be prepared and delivered to such occupant or person. Provided that no inspection, search and seizure of any

domestic places or premises shall be carried out between sunset and sunrise except in the presence of an adult male member occupying such premises.

(f) The Authorized Officer will sign the inspection report and hand over a copy to the occupant/person present at the premises during the search. In case of refusal to receive the inspection report, a copy of the same will be pasted at a conspicuous place in/outside the premises and another copy sent to the consumer/ person under registered post. The inspection report will, in the case of suspected theft of electricity, indicate the time in which the occupant/person may respond to the said report before the Authorized Officer gives his findings in accordance with Regulation 37.2 (a) (iii).

(g) The Authorized Officer will obtain signatures of the occupant/person present during the search on the seizure memo and inspection report referred to in (e) and (f) above.

37.2 Consequences of theft of electricity

(a)(i) In case theft of electricity by a consumer/person is prima facie established, then the supply to such premises will be immediately disconnected by an officer of the Licensee as authorized for the purpose by the Commission or any other officer of the Licensee of the rank higher than the rank of an officer so authorized by the Commission. In such a case, an officer so authorized by the Commission shall lodge a complaint in writing, in this respect with the police station having jurisdiction of the area within twenty four hours from the time of such disconnection. The Authorized Officer will also immediately initiate action under Regulation 37.2 (b).

(ii) In case where a consumer is suspected to have

indulged/indulging in theft of electricity by tampering with the meter/metering equipment and/or its seals or otherwise then such equipment shall be sealed by the Authorized Officer so as to keep it as 'in found condition'. The consumer or his representative will also be permitted to affix his seal at that time.

(iii) In all cases falling under Regulation 37.2 (a) (ii) the Authorized Officer will, after giving the consumer/person an opportunity of being heard, determine within seven days whether or not there is sufficient evidence to conclude that a case of theft of electricity is prima facie established.

(iv) In case of suspected theft of electricity by tampering with meter/metering equipment or its seals or otherwise, detected as per Regulation 37.2 (a) (ii) is not established, the Authorized Officer will record reasons therefor after which all further proceedings will be dropped and the consumer/person informed accordingly.

(v) In the event a suspected case of theft of electricity by tampering with meter/metering equipment or its seals or otherwise is prima facie established, then further action will be immediately initiated in accordance with Regulation 37.2 (a) (i).

(b) Where theft of electricity in a premises is prima facie established under Regulation 37.2 (a) (i) or Regulation 37.2 (a) (v), the Authorized Officer will assess the amount payable by the consumer/person who has benefited by such theft as per procedure specified at Annexure-8. The assessment order will state the basis on which theft of electricity has been established. The Authorized Officer may, after recording reasons in writing, suitably reduce the presumptive period of theft of electricity as specified in

Annexure-8 in case he is satisfied that such theft had actually occurred for a lesser period. Such an order of assessment will be delivered to the concerned consumer/person within 24 hours of theft of electricity having been established.

(c) (i) A consumer/person not satisfied with the assessment order may prefer within 15 days of the assessment a representation before an authority designated for this purpose by the Commission in respect of each Licensee. The designated authority will after giving the consumer/person an opportunity of being heard pass a final order within seven days of the representation having been received.

(ii) The Authorized Officer or the designated authority under Regulation 37.2 (b) or 37.2 (c) (i) as the case may be, will furnish a copy of the final order to the consumer and the Licensee. The Licensee will submit a copy of the final order in the Special Court immediately after submission of the challan by the Police.

(iii) A consumer/person will deposit with the Licensee the assessed amount under Regulation 37.2 (b) within fifteen days of the assessment or the finally determined amount under Regulation 37.2 (c) (i) within three days of the order having been passed. Even after depositing the assessed amount, a consumer/person will have the right to prefer a representation before the designated authority in accordance with Regulation 37.2 (c) (i).

(iv) The Licensee may extend the last date of payment of the assessed amount/amount determined under Regulation 37.2 (c) (i) or allow the consumer to make payment in instalments subject to payment of interest for the unpaid amount for the extended period beyond fifteen days at SBI's

Short Term PLR prevalent on first of April of the relevant year.

(v) After the assessed/determined amount is deposited by the consumer, in full, the Licensee will resume supply of electricity to the premises within forty eight hours of such deposit.

(vi) After the assessed amount/determined amount is deposited by a person who is not an existing consumer, the supply to his premises will be released treating it as a case of release of a new connection.

(vii) In case the amount determined under Regulation 37.2 (c) (i) varies from the assessment effected, then any excess amount or shortfall in the earlier deposited amount will be adjusted/recovered in the electricity bills of the immediately succeeding months.

37.3 In case the civil liability finally determined by the Special Court is less than the amount deposited by the consumer/person under Regulation 37.2, the excess amount so deposited will be refunded within fifteen days from the date of communication of the order of the Special Court to the Licensee together with interest at SBI's Short Term PLR prevalent on first of April of the relevant year for the period from the date of such excess deposit till the date of payment.

37.4 Compounding

(a) The State Government or any Officer authorized by it may accept from any consumer/person who has committed or is reasonably suspected of theft of electricity, a sum of money as compounding fee at rates notified by the State Government. In the event of such rates not having been notified, rates as in Section 152 of the Act will apply.

(b) On receipt of such amount, all criminal proceedings against the consumer/person under this Act shall be dropped. The payment of compounding fee will be in addition to any civil liability accruing under Regulation 37.2.

(c) The compounding of an offence of theft of electricity shall be allowed only once to any consumer/person.

38. Tampering, distress or damage to electrical plant, lines or meter

38.1 If any person intentionally or by negligence damages or allows to be damaged any electric plant or electric line belonging to a Licensee, he will be liable to pay the expenses likely to be incurred for repair/replacement of such plant/line, as assessed by the Licensee without prejudice to the right of the Licensee to take any other action under the Act.

38.2 (i) The Licensee will, within 24 hours of any such damage to an electric line or plant, arrange that the likely expenditure for the repair/replacement thereof is provisionally assessed. The person concerned will be required to deposit the provisionally assessed amount within two days of the intimation of the assessment. In the event of the person not being satisfied with the provisional assessment, he may after depositing such amount submit a representation to the notified officer of the Licensee who will after providing the concerned person an opportunity of being heard, make final assessment within seven days.

(ii) In case the amount deposited by the person exceeds the finally assessed amount then such excess amount will be refunded by the Licensee within two working days of the

final assessment. Where the person is a consumer, the refund will be allowed through adjustment in the electricity bills of the immediately succeeding months.

(iii) In the event of the person still not being satisfied with the final assessment amount so made, he may seek redressal as per the Consumer Complaint Handling Procedure of the Licensee approved by the Commission.

38.3 . The Licensee may discontinue the supply of electricity to the consumer until the finally assessed expenses have been deposited.

38.4 Any case of damage to a meter will be dealt with as per regulation 21 of these Regulation."

There is no provision in the Act in respect of assessment in cases of theft of electricity, however, Punjab State Electricity Regulatory Commission exercising the powers provided in the Act has enacted Regulations. Regulations 36 and 37 deal with the unauthorized use of electricity and theft of electricity respectively. In the present case, petitioner was committing theft of electricity by way of direct *kundi* connection. It is a clear case of theft of electricity and as such governed by section 135 of the Act. Under Section 154 of the Act, Special Court has power to determine the civil liability and Regulation 37 deals with the theft of electricity. Regulation 37.2(b) clearly mentions that if theft of electricity in a premises is prima facie established under Regulation 37.2(1)(i) or Regulation 37.2(a)(v), the Authorised Officer will assess the amount payable by the consumer/person who has benefited by such theft as per Annexure-8 appended to the Regulations and in the assessment order basis on which theft of electricity is established is to be stated and the same will be delivered to the consumer concerned within 24 hours of the theft of electricity having been established. Under Regulation 37.2(c)(i), if the consumer/person is not satisfied with the assessment order he may prefer within 15 days of the assessment a representation before the authority designated for this purpose by the Commission. The Designated Authority after giving opportunity of being heard, will pass final order within seven days of representation having been received. Under Regulation 37.2(c)(ii) Authorised Officer or the Designated Authority under Regulation 37.2(b) or 37.2(c)(i), as the case may be, will furnish a copy of final order to the consumer and the licensee. The licensee will submit a copy of final order in the Special Court immediately after submission of the challan by the police. Under Regulation 37.2(c)(vi) after the assessed amount/determined amount is deposited by the person who is not existing consumer, the supply to his premises will be released treating it as a case of release of a new connection. Under Regulation 37.3, in case, civil liability determined by the Special Court is less than the amount deposited by the consumer under Regulation 37.2, the excess amount so deposited will be refunded within fifteen days from the date of communication of the order of the Special Court. For assessment of amount under Regulation 37.2(b) a specific procedure has been provided in Annexure-8 appended to the Regulations. The said appendix reads as under: -

"(1) ***Assessment of electricity charges in the case of***

<u>Unauthorized use of electricity under Section 126 of the Act.</u>

(a) Where it is concluded that unauthorized use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorized use has been continuing. If, however, in a case where the period of unauthorized use cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection.

(i) The consumption of electricity in such case will be computed on the basis of the meter reading.

(ii) If, the consumption of electricity can not be computed on the basis of meter reading, then the same will be computed on the basis of the LDHF formula as detailed in para 4 below.

(b) The consumer will, on the basis of consumption of electricity computed as above, be liable to pay electricity charges at a rate equal to twice the tariff applicable for the relevant category in which the service should have been classified.

(c) Electricity charges in all cases of unauthorized use of electricity will continue to be levied as in sub-para (b) above till the cause of unauthorized use of electricity is rectified.

(2) ***<u>Assessment of electricity charges in cases of theft of electricity as per Section 135 of the Act.</u>***

(a) Where it is prima facie established that theft of electricity has taken place, the consumption of electricity will be computed on the basis of the LDHF formula as detailed in para 4 below.

(b) The consumption of electricity so computed will be charged for a presumptive period of twelve months preceding the date of detection of theft at two times the normal tariff

rate. The period of 12 months may however, be suitably reduced if the Authorized Officer, for reasons to be recorded in writing, is satisfied that theft of electricity has actually taken place for a lesser period.

(3)
(a) The electricity charges already paid by a consumer for the electricity consumed during the presumptive period of assessment, if any, will be adjusted in the electricity charges assessed as per paras 1 and 2 above.
(b) Any liability under other Laws/Regulations or provisions of the Supply Code will be in addition to the electricity charges payable in accordance with paras 1 & 2 above."

Even in the Regulations 36 and 37 complete distinction has been made with respect to unauthorized use of electricity and theft of electricity, respectively. These Regulations provide complete scheme for assessment of civil liability as referred in the foregoing paragraphs, specifically under Regulation 37.2(b) and 37.2(c)(i)&(ii). Since there are specific provisions in the Act and procedure for calculation, the Special Court will determine the liability which is like a civil Court decree.

In the light of above discussion, now coming to the facts of the present case, the inspecting team of the Corporation found the petitioner extracting electricity directly by way of direct *kundi* connection i.e. putting wire on the main electricity line of the Corporation, meaning thereby he was dishonestly extracting the electricity. As such he can be penalised under Section 135 of the Act and civil liability can be assessed under Section 154 of the Act read with Regulation 37 by the Special

Court. Penal action under Section 135 of the Act does not bar assessment of civil liability by the Special Court. Petitioner apparently appears to be indulging in offence committed under the provisions of Section 135 of the Act but the Corporation has not proceeded against him in consonance with the provisions of the Act. Nor the petitioner has opted for compounding the same in view of Section 152 of the Act and Regulation 37.4.

In view of the discussion above, this Court directs that respondent Corporation shall proceed in accordance with Regulation 37, specifically 37.2(b)&(c). It is admitted fact on record that petitioner was drawing electricity directly from the main line of the Corporation and his case prima facie falls under the definition of "theft". Even the petitioner has admitted that he is ready to pay the reasonable amount which is required to be determined in accordance with law, specifically the provisions of the Act and the Regulations.

In view of above, present writ petition is allowed. Bill-cum-assessment order dated 28.10.2013 (Annexure P-1) and order dated 12.12.2013 (Annexure P-3) passed by respondent No.3 – Executive Engineer, Punjab State Power Corporation Limited, City Barnala, are set aside. After following the due procedure a notice should be issued to the petitioner by the Authorised Officer or Designated Authority. In case the amount is deposited by the petitioner, supply to the premises of the petitioner shall be released treating it as a case of release of a new connection under Regulation 37.2(c)(vi). However, if the petitioner fails to comply with the assessment order, as discussed above, respondents will be at liberty to proceed in accordance with law.

(Paramjeet Singh)
Judge

October 14, 2015
R.S.