

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.24541 OF 2004

AND

W.P.M.P.29828 OF 2004

M/s.Shri Kanchi Steel Pvt. Limited,
rep. by its Managing Director
N.V.Baabu,
Survey No.239/1-B, Arcot Road,
Kilambi Village,
Kancheepuram.

... Petitioner

Vs

1. The Tamil Nadu Electricity Board,
rep. by its Chairman,
800, Anna Salai,
Chennai-600 002.
2. The Chief Engineer/Distribution Circle,
Tamil Nadu Electricity Board,
Vellore.
3. The Superintending Engineer,
Tamil Nadu Electricity Board,
Kanchi Electricity Distribution Circle,
Anna Maaligai, Oli Mohammedpet,
Kanchipuram-2.
4. The Executive Engineer/O & M North,
Tamil Nadu Electricity Board,
Kanchipuram.

... Respondents

PRAYER :

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent in proceeding No.2821/142/CEV/SFT/F. Appeal No.5/01-02 (Kanchee)/04 dated 19.04.2004, quash the same and consequently forbear the respondents from in any manner taking action against the petitioner on the basis of the allegations contained in Show Cause Notice of the 4th respondent in Lr.No.EE/O&M/N/K/PI/Doc/D. 74/2001, dated 27.11.2001.

For Petitioner : Mr.Rahul Balaji
For Respondents : Mr.S.K.Rameshuwar,
Standing Counsel

O R D E R

This Writ Petition has been filed challenging the impugned order of the 2nd respondent dated 19.04.2004 and quash the same and consequently forbear the respondents in any manner taking action against the petitioner on the basis of the allegation contained in the show cause notice of the 4th respondent dated 27.11.2001.

2. The case of the petitioner is that the petitioner is a private limited company incorporated under the Companies Act, 1956 in the year 1992 with the object of setting up a composite steel unit. The petitioner has established an induction furnace near Kanchipuram for production of MS Ingots, rolled products and structurals of about 20000 to 30000 tonnes annual capacity. After establishing the industry, the petitioner has obtained power sanction for a demand of 2500 KVA for its furnace unit and the petitioner was assigned service connection 'HTSC No.134'. The electricity supply was extended to the petitioner in December 1994, whereafter, the petitioner commenced the trial production in January 1995 and regular production in February 1995. The end product viz., MS steel ingots is an excisable commodity, for which the petitioner has to pay the excise duty at the rate of 16% on the price. Since its inception, the petitioner has been consuming on an average 1183 units per tonne of finished products.

3. The petitioner has further averred that in the year 1996, the 1st respondent Board commenced the process of changing all the existing electro-mechanical meters to electronic meters. The local meter relay testing wing visited the petitioner's factory at 10.15 a.m. on 04.10.1996 after giving an intimation on 03.10.1996, to carry out the change of meter. At the time of their visit, the production activity was in progress in the factory. At the request of MRT wing, the production was stopped so as to enable them to carry out the change of meter. Before removal of the meter, the essential preliminary steps have been taken including the verifying the correctness of the reading and functioning of electro-mechanical meter after satisfying themselves about proper functioning of the meter. Thereafter, the electro-mechanical meter was removed and a new electronic meter was installed and necessary wiring was also completed by the MRT wing. Just before the commissioning of the new electronic meter was installed, the Territorial Assistant Executive Engineer served a notice upon the petitioner giving

information as if the said officers had visited the premises on 04.10.1996 to conduct a surprise inspection. The officers remained in the industry premises till late in the night about 11.00 p.m. and thereafter, they have proceeded to file a F.I.R. against the petitioner alleging theft of energy. However, none of the Directors or officers of the company were intimated the course of action resorted to by the Board and the criminal action was followed by issuance of show cause notice by the 3rd respondent dated 05.10.1996 calling upon the petitioner to explain as to why he should not be charged with theft of energy for an amount totaling a sum of Rs.10,81,57,104. The show cause notice was issued slapping such a huge liability on the petitioner, however, without any particulars and did not even state the means allegedly adopted by the petitioner in committing the alleged theft of energy.

4. Thereafter, the vague show cause notice was challenged by the petitioner in W.P.No.14812 of 1996 before this Court and this Court initially stayed the show cause notice subject to the condition that the petitioner shall pay a sum of Rs.50 lakhs to the Board. Subsequently, the Writ Petition was allowed vide order dated 08.10.2001 and this Court directed the 1st respondent to issue a fresh show cause notice within a period of three weeks from the date of order and consider the objections, if any, submitted by the petitioner therein and hold an enquiry and thereafter, pass a speaking order and the liberty is also granted to the petitioner to file an appeal.

5. Subsequently, in pursuant to the order of this Court, an enquiry was conducted by the 3rd respondent and during enquiry, the petitioner pleaded that he was innocent of the charges levelled against it and substantiated its case by producing unimpeachable documents including production records verified by the excise department as well as the records showing the consumption and specific energy consumption from the commencement of the unit i.e. 1995 till its closure in September 1998. However, the 3rd respondent proceeded to mechanically confirm the allegations contained in the show cause notice and issued the assessment order dated 19.01.2002, thereby confirming the penalty.

6. Aggrieved by the said order, the petitioner has preferred an appeal before the 2nd respondent, but the 2nd respondent has refused to entertain the appeal unless the petitioner deposited 40% of the assessed amount as a pre-condition. As against the arbitrary insistence of pre-deposit, the petitioner has filed a Writ Petition before this Court in W.P.No.9779 of 2002 and this Court vide its order dated 11.08.2003 was pleased to direct the 2nd respondent to consider the appeal without insisting on pre-deposit with a further direction to the 2nd respondent to

keep in abeyance the order that may be passed after giving opportunity to the petitioner and subject to the order that may be passed by the BIFR. Further, the petitioner also took a serious objection before the 2nd respondent in the manner of computation of compensation by invoking clause 17.12 of the terms and conditions of supply of electricity. The very invocation of the said clause was not only inappropriate, but was clearly unreasonable and grossly disproportionate. Further, the 2nd respondent without considering the objection made by the petitioner, it has proceeded to reject each and everyone of the contentions raised by the petitioner and had merely cut and pasted from the show cause notice as against each of the contentions raised by the petitioner and by affirming the quantum of penalty indicated against the petitioner. As against the appellate authority order, the present Writ Petition has been filed by the petitioner.

7. Mr. Rahul Balaji, learned counsel appearing for the petitioner would submit that though the theft of electricity was identified and adjudicated by the Electricity Board under the old Act. As per the Old Electricity Act, 1910 (hereinafter called as 'Old Act'), the governing provisions as against the petitioner is Sec.39 and 48 of old Act and Sec.39 of the Old Act relates to Theft of energy and Sec. 48 relates to the compensation arrived by the Electricity Board. However, in the present case, the petitioner has not compounded the offence and he has chosen to agitate the matter before the criminal court of law. While pending criminal case, the extra levy was assessed under Sec.48 of the Old Act. Subsequently, in the year 2003, the Old Act was repealed by the Repealing Act, 2003 (hereinafter called as 'New Act') and the new Act came into force on 10.06.2003. As per the new Act, the governing provisions are in so far as theft of electricity is Sec.135 and 154. As per Sec.185 of the Repealing Act, whatever the action taken under the Old Act, it will continue in so far as it is not inconsistent with the new Act. As per Sec.154 (5) of the new Act, when the theft of electricity is identified, the competent authority has to lodge the prosecution before the Special Court constituted under the New Act. While the Special Court deciding the criminal case, it is also empowered to decide the civil liability. Hence, as per the above provision, only the Special Court has to determine the criminal liability as well as the civil liability. If any criminal case ended in acquittal, whatever the amount deposited before the authority under Sec.135, the excess amount has to be refunded to the consumer. In the present case, the criminal case was ended in acquittal and the Special Court did not arrive any civil liability as against the petitioner. Hence, the impugned assessment would be automatically closed in the event of the acquittal of the Special Court. Once the Act is repealed, whatever the action

taken by the authority under the Old Act, it will not continue and it is for the authority to recommend the civil liability along with criminal case pending before the Special Court. In support of his contentions, the learned counsel appearing for the petitioner relied upon the following decisions for the consideration of this Court :-

(i) This Court in the case of Hi-Tech Mineral Industries Covai (P) Ltd. & Others Vs. TNERC & Others reported in (2010) 3 MLJ 697 has held in the following paragraphs as follows :-

"67. In the present case, when the authority, who is statutorily notified to detect the energy theft or tampering of the power supply, arrives at a satisfaction that theft has taken place, can disconnect the power supply forthwith. At the stage of commission of offence, no accused can ask for notice or pre-hearing, which will make the purpose of legislation meaningless. There is obligation for them to lodge a complaint within 24 hours in a police station and also to make an assessment of the amounts to be paid by the consumer. There is further direction to restore the power supply if the amounts are deposited.

68. When the matter will be heard by a Special Court, the consumer will be entitled to have a full-fledged trial. Apart from the outcome of the trial for the criminal offence, the very same court is also empowered to fix the civil liability of the consumer, who is accused of offence of energy theft. Therefore, the consumer need not run to some other court for the determination of his civil liability. If the court comes to a conclusion, that there is no civil liability or civil liability is less than the amount already paid, then the Board is under obligation to refund the excess amount together with interest at the prevailing rate fixed from time to time by the Reserve Bank of India from the date of deposit till date of payment. Therefore, an innocent consumer is fully safeguarded by the mechanism provided under the Act."

(ii) Further, this Court in the case of B.T.Kokila Vs. Chairman, TNEB & Ors. reported in (2011) SCC Online Mad 2672 has held in the following paragraph as follows :-

"20. It is seen from Section 154 that the Special Court is primarily a criminal court, as it is conferred with the power to try the offences punishable under Sections 135 to 140 and 150 of the Electricity Act, 2003 by virtue of sub-sections (1) to (4) of Section 154. Despite being a Criminal Court, which is vested with the powers

(i) to try the offences;

(ii) to punish the guilty; and

(iii) to even tender pardon, the Special Court is also vested with the powers under sub-sections (5) and (6) to determine the civil liability of a person accused of theft of energy.

The fact that the Special Court is treated only as a Criminal Court is made clear by Section 155, which declares the Special Court to be "a Court of Session". Consequently, the judgments rendered by the Special Court are only subject to appellate and revisional jurisdiction of this Court under Section 156, in a manner similar to those prescribed by Chapters 29 and 30 of the Code of Criminal Procedure."

(iii) The Hon'ble Supreme Court in the case of Executive Engineer, Southern Electricity Supply Company of Orissa Limited Vs. Seetaram Rice Mill, reported in (2012) 2 SCC 108 has held in the following paragraphs as follows :-

"39. In order to explain these expressions, it will be necessary for us to refer to certain other provisions and the Regulations as well. These expressions have to be understood and given meaning with reference to their background and are incapable of being fairly understood, if examined in isolation. It is always appropriate to examine the words of a statute in their correct perspective and with reference to relevant statutory provisions. The expression "unauthorised use of electricity" on its plain reading means use of electricity in a manner not authorised by the licensee of the Board. "Authorisation" refers to the permission of the licensee to use of electricity, subject to the terms and conditions for such use and the law governing the subject.

41. The "unauthorised use of electricity" means the usage of electricity by the means and for the reasons stated in sub-clauses (i) to (v) of clause (b) of the Explanation to Section 126 of the 2003 Act. Some of the illustratively stated circumstances of "unauthorised use" in the section

cannot be construed as exhaustive. The "unauthorised use of electricity" would mean what is stated under that Explanation, as well as such other unauthorised user, which is squarely in violation of the abovementioned statutory or contractual provisions.

43. In M.C. Mehta v. Union of India [(2006) 3 SCC 399] this Court held that if the misuse was in violation of the permission, approval or sanction or in contravention of any conditions, subject to which the said permission/approval has been granted in terms of Section 30 of the DDA Act, then it will be "unauthorised use". We have primarily referred to this case to support the reasoning that "unauthorised development" is one which is contrary to a master plan or zonal development plan as was the case under the DDA Act. Just as the right to develop a property is controlled by the restrictions of law as well as the terms and conditions of the permission granted for that purpose, the use of electricity is similarly controlled by the statutory provisions and the terms and conditions on which such permission is granted to use the electricity.

61. Unauthorised use of electricity cannot be restricted to the stated clauses under 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. "Unauthorised 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. It is difficult to restrict this expression and limit its application by the categories stated in the Explanation. 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."

(iv) The Division Bench of this Court vide its order dated 08.04.2019 in W.A.Nos.1808 and 1811 of 2009, in the case of Emkay Alloys (P) Ltd., Vs. Executive Engineer, TNEB and others has held as follows :-

"3. For the sake of brevity, the facts are being taken from W.A.No.1808 of 2009, which runs as follows:

i) The Appellant-Industry (hereinafter referred to as the 'Appellant') was inspected by the Officers of the Respondent and though the electronic meter had recorded the correct consumption, it was alleged by the Inspecting Officials that the meter was stopped by using the magnet bar and they concluded that there was a theft of energy and illegal abstraction of electricity, amounting to an offence under Section 39 (1) and 44 (1)(aa) and 44(1)(c) of the Indian Electricity Act, 1910 and Rule 138 of Indian Electricity Rules, 1956;

ii) It was further stated that a Police complaint was lodged on 04.07.2003 in this regard, for which, a case in Crime No.114 of 2003 came to be registered under Section 39(1) and 44(1)(c) of the Indian Electricity Act, 1910. Subsequent thereto, the First Respondent issued a show cause notice to the Appellant without any enclosures and directed the Appellant to attend the enquiry on or before 29.07.2003 before the Second Respondent.

iii) However, to the utter shock and surprise of the Appellant, an Assessment Order was passed on 30.07.2003 without conducting any enquiry, calling upon the Appellant to pay a sum of Rs.17,00,28,124/-, against which, the Appellant had filed a Writ Petition in 23010 of 2003 and the said Writ Petition was allowed by this Court with a direction to the Appellant to remit Rs.30,00,000/- to the Electricity Board, with further direction to the Second Respondent to re-consider the matter afresh.

iv) It was the grievance of the Appellant that on 23.12.2003, the Second Respondent had once again confirmed the amount showing in the earlier show cause notice without allowing the Appellant to cross examine any of the witnesses. Aggrieved by the Act of the Second Respondent, the Appellant had filed yet another Writ Petition in W.P.2078 of 2004, challenging the order dated 23.12.2003 on various ground. During admission of the Writ Petition, interim stay was granted by directing the Appellant to pay Rs.10,00,000/- to the respondent within six weeks and the interim order was duly complied with.

v) It was submitted by the Appellant that since the alleged offence was detected after introduction of the new Central Act 36 of 2003, namely, Electricity Act, 2003 (in short the 'Act, 2003'), the Appellant had sought to apply the Act, 2003, by filing additional grounds to the Writ Petition. Later on, 11.04.2004, a revised Charge Sheet was filed in C.C.No.28 of 2004 on the file of the learned Judicial

Magistrate No.1, Gobichettipalayam. However, consequent to constitution of Special Court designated by the State Government, this Court had directed the learned Judicial Magistrate No.1, Gobichettipalayam to transfer the case to the file of the learned Principal District Judge, Erode, pursuant to which, the same was renumbered as in S.C.No.111 of 2009, with further direction to dispose of the matter within three months.

vi) It was further submitted that on 28.10.2009, though final judgment was passed in the Criminal case, acquitting the Appellant and other accused from the case, W.P.No.2078 of 2004 was dismissed by this Court without proper appraisal of the facts of the case, against which the present Writ Appeal has been filed;

vii) The order passed in W.P.No.2078 of 2004 has been challenged in the Writ Appeal on the ground that it was dismissed along with W.P.No.6968 of 2008, in which the validity of Section 135(1A) Regulation 19A and 23(AA) of the Tamil Nadu Electricity Supply Code 2004 was under challenge, whereas the authority of the Electricity Board to proceed with the assessment after filing of charge sheet was questioned. The order of the learned Single Judge was further assailed inter alia stating that after the Act, 2003, the authorities have no power to assess any loss under the repealed Acts or Rules and Regulations framed thereunder.

9. Learned Senior Counsel for the Petitioners has further submitted that in terms of Section 152 of the Act, which is the non-obstante clause and vests power in the appropriate Government or an Officer authorised by it to compound an offence, the compounding of an offence under sub-section (1) will be allowed only once for any person or consumer and it cannot be accepted that a Special Court can determine the civil liability against a consumer or a person in terms of money for theft of energy irrespective of there being a deemed acquittal of such consumer as a result of the compounding of the offence under Section 152(3) of the Act. He has also pointed out that the determination of civil liability has to necessarily be preceded by a positive determination of the commission of the offence and such determination is not at all possible in the case of acquittal on the basis of the compounding of the offence under Section 152 of the Act in consonance with Section 154 of the Act.

12. Thus, learned Senior Counsel for the Petitioners have concluded their arguments firstly

stating that once a Special Court is constituted for trying the offence relating to Electricity Offences, such as theft of energy, etc., subsequent assessment made by the authorities under Section 126 of the Act is not valid in the eye of law. Secondly, there should not be any determination of civil liability by the Special Court in the event of the offence being compounded. Therefore, on these grounds, the assessment and extra levy on theft of energy have no legs to stand and these matters warrant interference by this Court."

8. Per contra, Mr.S.K.Rameshuwar, learned standing counsel appearing for the respondents Board would submit that the theft of electricity was identified in the year 1996 and after identifying the theft, the competent authority registered a criminal case under Sec. 39 of the Old Act. Simultaneously, in order to recover the loss, the show cause notice was issued against the petitioner and the petitioner has successfully dragging on the proceedings, ultimately, the matter was remanded back to the authorities for fresh assessment. Accordingly, the original authority as well as the appellate authority after giving sufficient opportunity assessed the extra levy charges and till date, except a sum of Rs.50 lakhs, no amount is deposited even though the assessment order was passed against the petitioner in the year 1996. Accordingly, he prayed to pass appropriate orders.

9. The learned standing counsel appearing for the respondents Board further submitted that in so far as the applicable provisions for theft of electricity in respect of the petitioner's industry is as per Sec.39 and 48 of the old Act, and a similar provision also available in the new Act is under Sec.126 and 135 of the New Act. Both the provisions are consistent and the same is not inconsistent and if it is consistent under Sec.185 of the New Act, it will continue as if it is not repealed. So, in view of the above, apart from launching the criminal prosecution against the petitioner, the authority has power to recover the civil liability under the Old Act. In support of his contentions, the learned counsel has referred the decision reported in (2003) 5 SCC 226 and the relevant portion of the judgment in paragraph 13 reads as follows :-

"13. Shri Gopal Subramaniam has also submitted that after the inspection had been done on 27.08.1999, an F.I.R. had been lodged against the petitioner on the same day by Shri Om Prakash, Assistant Executive Engineer at the police station and a criminal case was registered under Sections 39/44 of the Indian Electricity Act. This case was investigated and

thereafter, a final report was submitted, which was accepted by the Magistrate concerned and as a result of this order, the petitioner stands exonerated from the charge of theft of electricity and no compensatory bill could be issued by taking recourse to clause 16.9 of the tariff. Shri V.R.Reddy, learned Senior Counsel for the Electricity Board had submitted that before accepting the final report, the learned Magistrate had issued notice to Shri Om Prakash, Assistant Executive Engineer, but the said notice was not served upon him as he was transferred from Patna on account of his allocation to Jharkhand State and as such no representation could be made on behalf of the Electricity Board against the final report. Subsequently, an application has been moved on behalf of the Electricity Board before the Magistrate concerned for recall of the order by which final report was accepted. In our opinion, the mere acceptance of final report by the Magistrate cannot amount to a finding by the criminal court that theft of electricity was not committed. The accused was not even summoned, no charge was framed nor was any evidence recorded. In such a situation, it cannot be held that the criminal court has recorded any finding to the effect that the petitioner has not committed theft of electricity. That apart, the purpose of a trial under Sections 39/44 of the Indian Electricity Act is entirely different and the object is to punish and sentence the person, who is alleged to have committed the offence. The trial of an accused in a criminal case can have no bearing in the matter of assessment made in accordance with the tariff of the value of electricity dishonestly abstracted or consumed. Therefore, the contention raised on the basis of alleged acceptance of the final report in the criminal case has absolutely no merit."

10. The learned standing counsel has further relied upon the unreported decision of the Division Bench of this Court in batch of cases in W.A.Nos.1808, 1811 of 2009, W.P.Nos.29882 of 2004 and 3013 of 2014 and W.P.No.(MD) Nos.2360 and 2361 of 2008, and the relevant portion of the order reads as follows:

"38. The yet another contention raised by the Petitioners that there should not be any determination of civil liability either by the Special Court or by the Authorities concerned, in the event of the offence being compounded, has no legs to stand. As long as the Act does not stipulate that when there is a compounding of the offence, the Civil Liability will also come to a standstill, it cannot be said in the

air that no proceedings under Section 126 can be initiated nor notice be issued.

39. A bare reading of Section 154 (5) of the Act, 2003 in conjunction with the explanation to the provision goes to show that the said provision enables the Special Court to determine the civil liability in terms of money in case guilt is established, is for theft of energy after full fledged trial. If the accused is acquitted, Civil Court has no jurisdiction to decide/foist civil liability and in that event the Board will have to fall back upon Section 126 of the Act, 2003. For the sake of brevity, Section 154 is extracted hereunder: "Section 154. (Procedure and power of Special http://www.judis.nic.in Court):

(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.

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 139.

41. This Bench, while dealing with an issue falling under the purview of Electricity Act in the case of M/s.Sri Radhakrishna Multiple Industries (P) Ltd., Madurai vs. The Tamil Nadu Electricity Regulatory Commission, Chennai [W.P.No.14924 of 2008] decided on 26.03.2019, has made a passing remark that the Special Court has the power to prosecute under Section 135 of the Act, 2003 and proceed further with http://www.judis.nic.in regard to determination of civil liability, in case it comes to the conclusion that offence is made out by the accused. Further, it went on to add that in the event of acquittal from the criminal case, it will not preclude the Electricity Board from invoking Section 126 of the Act, 2003. "

11. I have considered the submissions of both sides with the issue raised in this Writ Petition, which are required to be considered. In the present case, one of the issues raised is whether the proceedings initiated under the Old Act could be continued after the New Act coming into force and another issue is whether the respondents are entitled to claim the impugned

demand even after the acquittal of the Special Court formed under the New Act.

12. On perusal of the entire records, it is an undisputed fact in the present case is that the criminal case registered as against the petitioner is ended in acquittal by giving benefit of doubt in favour of the petitioner and it is also an admitted fact that the assessment proceedings was initiated immediately after the theft. Accordingly, a show cause notice was issued on 05.10.1996 and the original authority has passed the assessment order as against the petitioner on 29.01.2002 imposing penalty to the tune of Rs.10,81,57,104/- and as against that order, he has preferred an appeal before the appellate authority as per the direction of this Court. The appellate authority on 19.04.2004 confirmed the order passed by original authority after deducting the conditional amount of Rs.50 lakhs and directed the petitioner to pay the remaining balance amount of Rs.10,31,57,104/-.

13. The first issue is relating to the validity of the continuance of the proceedings initiated under the Old Act. For better appreciation, it would be relevant to extract the entire provisions of Old Act as well as New Act as follows :-

OLD ACT	NEW ACT
Sec.39. Theft of energy.--Whoever dishonestly abstract, consumes or uses any energy shall be punishable with imprisonment for a term, which may extend to three years, or with fine which shall not be less than one thousand rupees, or with both and if it is proved that any artificial means or means not authorised by the licensee exist for the abstraction, consumption or use of energy by the consumer, it shall be presumed, until the contrary is proved, that any abstraction, consumption or use of energy has been dishonestly caused by such consumer.	Sec. 126. Assessment - (1) if on inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorised use of electricity, he shall provisionally assess to the best of his judgment the electricity charges payable by such person or by any other person benefited by such use.

OLD ACT	NEW ACT
Sec.48. Penalties not to affect others liabilities.--- The penalties imposed by [Section 39 or Sections 40 to 47] (both inclusive) shall being in addition to, and not in derogation of, any liability in respect of the payment of compensation or, in the case of a licensee, the revocation of his license, which the offender may have incurred.	Sec. 127. Appeal to appellate authority - (1) Any person aggrieved by the final order made under Sec.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. Sec.135 (1-A) 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. Sec.154 Procedure and power of Special Court.---(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. Sec. 185. Repeal and saving (1) Save as otherwise provided in this Act, the Indian Electricity Act, 1910 (9 of 1910), the Electricity (Supply) Act, 1948 (54 of 1948) and the Electricity

OLD ACT	NEW ACT
	Regulatory Commissions Act,1998 (14 of 1998) are hereby repealed. (2) Notwithstanding such repeal :- (a) anything done or any action taken or purported to have been done or taken including any rule, notification, inspection, order or notice made or issued or any appointment, confirmation or declaration made or any license, permission, authorisation or exemption granted or any document or instrument executed or any direction given under the repealed laws shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act.

14. On perusal of the above provisions clearly bring outs that Sec.39 is the theft of electricity under the Old Act and the same was continued as in the present New Act as Sec.135 and there is no much difference in the language employed in the above said section. Further, both the penal sections viz., Sec.39 and Sec.135 is similar in nature and there is no inconsistence.

15. Further, apart from lodging the criminal case under the Old Act, the trial will be conducted in the regular court and however, the Special Court was created under Sec.154 of the New Act. In the present case, the criminal case, which was registered under the Old Act, is transferred to the Special Court and the Special Court proceeded the trial as per the New Act and the same came to be ended in acquittal.

16. The learned counsel appearing for the petitioner has vehemently contended that the Special Court acquitted the

accused, however, the Special Court did not determine the civil liability against the petitioner and the said Sec.154(5) is in clear terms that if the amount is determined by the Civil Court, the amount can be recovered as if it is a decree of the Civil Court. When such being the position, the impugned demand automatically goes and the authority has no right to claim the amount, if the case is ended in acquittal. However, on perusal of Sec.185 (2) (a) of the Repealing Act makes it clear that anything done or any action taken or purported to have been done under the repealed laws shall, in so far as it is not inconsistent with the provisions of this Act, it is deemed to have been done or taken under the corresponding provisions of this Act.

17. In similar set of circumstances, ultimately, the very same issue was raised before the Division Bench of this Court in a batch of Writ Petitions that the acquittal of the criminal case will not be a bar for continuance of civil liability in so far as it is not inconsistent with the provisions of this Act and the relevant paragraphs of the order reads as follows :-

7. It was also stated in the counter affidavit that though the Appellant was acquitted of the criminal offence, such acquittal will not be a bar for continuation of the civil liability, insofar as the case of the Appellant is concerned. Wrong mentioning of the provisions will not vitiate the proceedings, as the root of the matter was related to the commission of theft of energy and it was mandatory for the respondents to make good the loss caused by the Appellant. Therefore, it was pleaded in the counter that the Writ Appeal is liable to be dismissed.

8. Learned Senior Counsel for the Petitioners has vehemently submitted that once the Criminal Court has acquitted a person, it will have a bearing on the Authorities, who decided the issue under Section 126 of the Act, 2003 and no notice can be issued under Section 126 of the Act, as the person has been honorably acquitted. In support of his submission, he has relied upon a judgment of this Court in the case of Shaik Kasim vs. Superintendent of Post Offices, Chingleput Dn. and another, reported in 1965 (1) MLJ 197, wherein it was held as follows:

"8...Thirdly, where the acquittal is substantially on merits, on identical facts and charges it will not be proper for a disciplinary Tribunal to record a finding of guilt, and to punish thereon. This is a basic principle of jurisprudence and I cannot see that it makes any difference that the departmental authority acts before the criminal proceeding, or

after it. The court, in exercise of the jurisdiction under Art. 226 of the Constitution, would be justified in striking down the action based on such findings as not in consonance with principles of natural justice. Otherwise, grave anomalies might follow, as stressed by Rajamannar C.J., and Venkatarama Aiyar J., in 1952-1 Mad LJ 35 : AIR 1952 Madras 853."

12. Thus, learned Senior Counsel for the Petitioners have concluded their arguments firstly stating that once a Special Court is constituted for trying the offence relating to Electricity Offences, such as theft of energy, etc., subsequent assessment made by the authorities under Section 126 of the Act is not valid in the eye of law. Secondly, there should not be any determination of civil liability by the Special Court in the event of the offence being compounded. Therefore, on these grounds, the assessment and extra levy on theft of energy have no legs to stand and these matters warrant interference by this Court.

13. Repelling the above submissions, learned Advocate General appearing for the Official Respondents has strenuously contended that though the old Act, viz., the Indian Electricity Act, 1910, the Electricity (Supply) Act, 1948 and the Electricity Regulatory Commission Act, 1998 were repealed, there is a Saving provision provided in the New Act, viz., Section 185 of the Electricity Act, 2003, which reads as under:

"185. Repeal and saving

(1) Save as otherwise provided in this Act, the Indian Electricity Act, 1910, the Electricity (Supply) Act, 1948 and the Electricity Regulatory Commissions Act, 1998 are hereby repealed.

(2) Notwithstanding such repeal, -

(a) anything done or any action taken or purported to have been done or taken including any rule, notification, inspection, order or notice made or issued or any appointment, confirmation or declaration made or any licence, permission, authorisation or exemption granted or any document or instrument executed or any direction given under the repealed laws shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act.

(b) the provisions contained in sections 12 to 18 of the Indian Electricity Act, 1910 and rules made thereunder shall have

effect until the rules under section 67 to 69 of this Act are made;.

(c) Indian Electricity Rules, 1956 made under section 37 of the Indian Electricity Act, 1910 as it stood before such repeal shall continue to be in force till the regulations under section 53 of this Act are made.

(d) all rules made under sub-section (1) of section 69 of the Electricity (Supply) Act, 1948 shall continue to have effect until such rules are rescinded or modified, as the case may be;

(e) all directives issued, before the commencement of this Act, by a State Government under the enactments specified in the Schedule shall continue to apply for the period for which such directions were issued by the State Government."

(3) The provisions of the enactments specified in the Schedule, not inconsistent with the provisions of this Act, shall apply to the States in which such enactments are applicable.

(4) The Central Government may, as and when considered necessary, by notification, amend the Schedule.

(5) Save as otherwise provided in sub-section (2), the mention of particular matters in that section, shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897, with regard to the effect of repeals."

Thus, it was stated that the contention put forth by the Petitioners that the action taken under the Old Act cannot be sustained, cannot be accepted as the above provision clearly states that any provision contained in the repealed Act or any action taken thereunder is valid, unless it is inconsistent with the provisions of the Act, 2003.

14. It was further argued that Sections 126 and 135 of the Act operate on two different fields, as Section 126 deals with monetary liability, whereas the other Section involves criminal liability. In support of his stand, he has quoted the judgment of the Hon'ble Supreme Court in the case Maharashtra State Electricity Distribution Company Ltd., vs. Appellate Authority and another, reported in (2018) 3 SCC 608, wherein it was held as follows:

"16. In the scheme of the Act, we find that Section 126 of the Act deals with assessment of electricity charges payable by such person (consumer) for unauthorized use of electricity whereas Section 135 deals with the cases of theft of electricity. In other words, once the Board detects the case of

unauthorized use of electricity by any consumer, in such event, the Board gets a cause of action to proceed against such person/consumer under Section 126 or/and 135 under the Act. Both Sections 126 and 135 are independent in all respects and provide different kind of liability and consequences. One involves monetary liability (Section 126) whereas the other involves criminal liability (Section 135). The Board is, therefore, at liberty to take recourse to the provisions of Section 126 or/and 135 of the Act against such person/consumer as provided therein in accordance with law.

17. In these circumstances, if the Board initiates any action against any person/consumer, then such action must be brought to its logical end in accordance with the procedure prescribed under the Act after affording an opportunity to such person/consumer.

18. In view of the foregoing discussion and subject to the observations, we find no merit in the appeals, which fail and are accordingly dismissed. As a consequence to the dismissal of the appeals, the authorities are directed to comply with the directions of the High Court and pass consequential order under Section 126 of the Act in accordance with law in the case of consumers (respondents) within three months from the date of this order."

15. The learned Advocate General has also referred to yet another judgment of the Hon'ble Supreme Court in the case of Executive Engineer vs. Sri Seetaram Rice Mill, reported in (2012) 2 SCC 108, wherein the scope of Sections 126 and 135 of the Act have been discussed in extenso and the relevant paragraphs runs thus:

"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.

30. Therefore, there is a clear distinction between the cases that would fall under Section

126 of the 2003 Act on the one hand and Section 135 of the 2003 Act on the other. There is no commonality between them in law. They operate in different and distinct fields. The assessing officer has been vested with the powers to pass provisional and final order of assessment in cases of unauthorized use of electricity and cases of consumption of electricity beyond contracted load will squarely fall under such power. The legislative intention is to cover the cases of malpractices and unauthorized use of electricity and then theft which is governed by the provisions of Section 135 of the 2003 Act.

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

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

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

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

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

(iv) The order of provisional assessment to be served upon the person concerned in the manner prescribed, giving him an opportunity to file objections, if any, against the provisional assessment.

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

(vi) The person, upon whom the provisional order of assessment is served, is at liberty to

pay the said amount within seven days of the receipt of such order and where he files such objections, final order of assessment shall be passed, against which such person has a right of appeal under Section 127 of the 2003 Act within the prescribed period of limitation.

Assessment and Computation

37. Wherever the assessing officer arrives at the conclusion that unauthorized 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 such period cannot be ascertained, it shall be limited to a - period of 12 months immediately preceding the date of inspection and the assessment shall be made at the rate equal to twice the tariff applicable for the relevant category of service specified under these provisions. This computation has to be taken in terms of Sections 126(5), 126(6) and 127 of the 2003 Act. The complete procedure is provided under these sections. Right from the initiation of the proceedings till preferring of an appeal against the final order of assessment and termination thereof, as such, it is a complete code in itself.

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

39. In order to explain these expressions, it will be necessary for us to refer to certain other provisions and the Regulations-as well. These expressions have to be understood and given meaning with reference to their background and are incapable of being fairly understood, if examined in isolation. It is always appropriate to examine the words of a statute in their correct perspective and with reference to relevant statutory provisions. The expression 'unauthorized use of electricity' on its plain reading means use of electricity in a manner not authorized by the licensee of the Board. 'Authorization' refers to the permission of the licensee to use of

electricity', subject to the terms and conditions for such use and the law governing the subject.

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

20. The main contention canvassed by the Petitioners was that the Central Act, 2003 came into existence with effect from 10.06.2003 and when there is an acquittal in a proceeding under Section 135 of the Act, 2003, no proceedings can be initiated under Section 126 of the Act, 2003 subsequently that deals with Investigation and Enforcement by the Officials of the Electricity Board. It was further stated that the powers are exclusively vested with the Special Court in case of theft of energy and the civil liability can be foisted only by the said Court, as the order of the Criminal Court acquitting the accused will be binding on the Electricity Board. The authorities, who are equivalent to the rank of Judicial Officers of the Special Court cannot proceed departmentally to determine the amount under Section 126 of Act, 2003. Even though the Criminal Case in S.C.No.111 of 2009 on the file of the learned Principal Sessions Judge, Erode had ended in acquittal and later on, affirmed by the Hon'ble High Court in CrI.R.C.No.46 of 2010, yet, the same will not absolve the Petitioner from the civil liability in regard to the payment of dues under the Electricity Act for alleged act of illegal consumption of energy so far as the provisional assessment stands, as per decision Rias Ahmad V. U.P.Power Corporation Limited, AIR 2010 Allahabad 115.

27. In effect, only based on the observation of the Trial Court in S.C.No.111 of 2009 at Paragraph No.26, wherein the evidence of P.W.1 was referred to, etc., it is the submission of the learned Senior Counsel for the Appellant that when once the theft of electricity / electricity stolen under Section 135(1) (b) of the Act and when the Trial Court had resultantly acquitted the accused 1 to 6 in Criminal Case, then no assessment can be made for the purported

theft of electricity by the Electricity Authorities and the assessment so made and the final orders in this regard are otiose and futile one.

28. It was also stated that Section 185 of the Act, 2003 cannot come to the rescue of the Electricity Board, as the action has been initiated only after the Act, 2003 came into existence and no proceedings initiated under the Old provisions / Repealed Act cannot be continued. Further, the Board cannot initiate proceedings under Clause 8.01 and 8.02 of the Terms and Conditions of Supply of Electricity (Electricity Supply Act 1948) with regard to theft of energy, as those clauses are no longer in vogue, as on the date of initiation of proceedings, the Old Act got repealed and the Act, 2003 had come into force. Clause 8.01 and 8.02 Clause 8.01 and 8.02 of the Terms and Conditions of Supply of Electricity (Electricity Supply Act 1948) in the repealed Act reads as follows:

8.00 Theft of Energy and Extra Levy:

8.01 Any consumer who dishonestly abstracts or uses energy shall be deemed to have committed theft within the theft within the meaning of Indian Electricity Act, 1910 as amended by the Tamil Nadu Government and the Indian Penal Code and the existence of artificial means for such abstractions shall be prima facie evidence of such dishonest abstraction. Illegal restoration of supply to a disconnected service connection will fail under this category.

8.02 Extra levy for theft of energy by tampering of meters / meter seals will be made at the rates given below:-

- (a) for a period of twelve months; or
- (b) for a period from the date of prior inspection if any by the APTS or MRT wing to the date of detection; or
- (c) for a period from the date of replacement of meter to the date of detection; or
- (d) for a period from the date of service connection to the date of detection whichever period of the above is less.

For other cases of theft of energy, the extra levy will be made for a period of twelve months or from the date of service connection to the date of detection whichever period is less at the same rates given below.]

- (i) For Energy:-

(a) Low Tension Service Connection:- Highest Low Tension tariff rate x 3, The charges arrived at will be rounded off to the next higher rupee.

(b) High Tension Service Connection:- Highest High Tension Tariff rate x 4.

The charges arrived at will be rounded off to the next higher rupee.

(ii) For maximum demand: (In High Tension Service Connection):-

Highest High Tension tariff rate for maximum demand x 4. Extra levy for illegal restoration of supply to a disconnected service connection will be made for a period of twelve months immediately preceding the date of detection of the violation or for the period from the date of disconnection of the service connection to the date of detection of the illegal restoration, whichever period is less, at the rates given above..."

30. As a matter of fact, the assessment proceedings under the Old Act for the action that had occurred, when the Old Act was in force to continue as per decision in E.E. (Distribution), TNEB V. S.J.Gayas, 2008 (2) MLJ 812 (Mad).

31. It is to be pointed out that in the decision of the Hon'ble Supreme Court in Syed Askari Hadi Ali Augustine Imam and another vs. State (Delhi Administration) and another, reported in (2009) 5 SCC 528, at paragraph 25, it is observed as under:

"25. It is, however, significant to notice that the decision of this Court in M/s Karam Chand Ganga Prasad & anr. etc. vs. Union of India & ors. [(1970) 3 SCC 694], wherein it was categorically held that the decisions of the civil courts will be binding on the criminal courts but the converse is not true, was overruled, stating:

"33. Hence, the observation made by this Court in V.M. Shah case that the finding recorded by the criminal court stands superseded by the finding recorded by the civil court is not correct enunciation of law. Further, the general observations made in Karam Chand case are in context of the facts of the case stated above. The Court was not required to consider the earlier decision of the Constitution Bench in M.S. Sheriff case as well as Sections 40 to 43 of the Evidence Act."

32. Also, in the decision Motising Chhagasing Vaghela vs. S.D.Meha, AIR 1966 Gujarat 233, wherein it

is observed as follows:

"Where an officer decides to hold a departmental enquiry, all that he does is to start a proceeding for the purpose of satisfying himself as to whether, in fact, the delinquent is guilty of any misconduct or delinquency which requires to be dealt with in the interest of public administration. When holding such an enquiry, he is not at all concerned, nor is it his object to undertake the decision of the question as to whether the findings recorded by the criminal Court were right or wrong. His object is only to enquire into the question as to whether the delinquent is guilty of a misconduct or a delinquency and the mere fact that he is likely to reach a conclusion different from that recorded by the criminal Court cannot bring him within the ambit of the law of contempt of Court. The two proceedings, the departmental and the criminal, are entirely different in nature, they operate in different fields and they have different objectives. So also the degree of proof which is necessary to record an order of conviction is different from the degree of proof which is necessary to record the commission of a delinquency. The holding of a departmental enquiry after an order of acquittal has been recorded by the High Court does not constitute a contempt of the High Court or that any principle of law becomes offended when a departmental enquiry follows an order of acquittal in favour of a public servant by a criminal Court."

33. The next argument of the Petitioners, that the Special Court alone has got jurisdiction to determine the civil liability and the Authorities cannot make any assessment under Section 126 of the Act, 2003 and impose levy on theft of energy, is a vexatious one, on account of the reason that after acquittal by the Special Court under Section 135 of the Act, there is no hurdle or preclusion for the Department to initiate action under Section 126 of the Act, 2003 for determination of civil liability, as both Sections 126 and 135 of the Act, 2003 stand on different footing and are independent to each other."

18. Further, the very same issue was already settled by this Court in the case of J.M.D.Alloys Ltd. Vs. Bihar State Electricity Board and others, reported in (2003) 5 SCC 226 and the relevant portion of the Judgment is extracted hereunder :-

"13. Shri Gopal Subramaniam has also submitted that

after the inspection had been done on 27.08.1999, an F.I.R. had been lodged against the petitioner on the same day by Shri Om Prakash, Assistant Executive Engineer at the police station and a criminal case was registered under Sections 39/44 of the Indian Electricity Act. This case was investigated and thereafter, a final report was submitted, which was accepted by the Magistrate concerned and as a result of this order, the petitioner stands exonerated from the charge of theft of electricity and no compensatory bill could be issued by taking recourse to clause 16.9 of the tariff. Shri V.R.Reddy, learned Senior Counsel for the Electricity Board had submitted that before accepting the final report, the learned Magistrate had issued notice to Shri Om Prakash, Assistant Executive Engineer, but the said notice was not served upon him as he was transferred from Patna on account of his allocation to Jharkhand State and as such no representation could be made on behalf of the Electricity Board against the final report. Subsequently, an application has been moved on behalf of the Electricity Board before the Magistrate concerned for recall of the order by which final report was accepted. In our opinion, the mere acceptance of final report by the Magistrate cannot amount to a finding by the criminal court that theft of electricity was not committed. The accused was not even summoned, no charge was framed nor was any evidence recorded. In such a situation, it cannot be held that the criminal court has recorded any finding to the effect that the petitioner has not committed theft of electricity. That apart, the purpose of a trial under Sections 39/44 of the Indian Electricity Act is entirely different and the object is to punish and sentence the person, who is alleged to have committed the offence. The trial of an accused in a criminal case can have no bearing in the matter of assessment made in accordance with the tariff of the value of electricity dishonestly abstracted or consumed. Therefore, the contention raised on the basis of alleged acceptance of the final report in the criminal case has absolutely no merit."

19. It is settled law that the interpretation of statutory provision as to the issue in respect of civil liability, whether as it would render the provision ineffectively. Further, if any action is taken under the Old Act, it is not inconsistent with the New Act, then it shall be deemed to have been demanded under the New Act, in other words, to put up conversal, if the ban is taken under the Old Act is consistent with the new Act, then the

provision will apply. Similarly, in the present case, for theft of electricity already the respondent Board initiated the criminal proceedings against the petitioner for revenue loss, and they have invoked the similar provision available in the present Act under Sec.126 for recovery. The above cited decision is clearly discussed elaborately and rendered finding that even if the criminal case ended in acquittal, the respondents Board is entitled to recover the civil liability under Sec.126 of the Act. Further, the Hon'ble Apex Court has held that whatever the provisions under the Old Act will continue.

20. On perusal of decisions referred by the Standing Counsel appearing for the respondents Board, the Hon'ble Apex Court in the case of J.M.D. Alloys Ltd. Vs. Bihar State Electricity Board and others reported in (2003) 5 SCC 226, makes it clear that the purpose of trial under Sec.39/44 of Indian Electricity Act is entirely different and the object is to punish and sentence the person, who is alleged to have committed the offence. The trial of an accused in a criminal case can have no bearing in the matter of assessment made in accordance with the tariff of the value of electricity dishonestly abstracted or consumed. Further, the Hon'ble Apex Court has held that for the requirement of criminal case, the prosecution is made beyond reasonable doubt. Whereas, the civil liability is only a preponderance of probabilities and both the criminal liability and civil liability are completely different from each other.

21. On further perusal of the decision of the Division Bench of this Court in clear terms has clearly referred Sec.154(5) of the Act and held that the said provision enables the Special Court to determine the civil liability in terms of money, in case, the guilt is established, is for theft of energy after full-fledged trial. If the Special Court has acquits, the Civil Court has no jurisdiction to decide/foist civil liability and in that event, the Board will have to fall back upon Sec.126 of the Act, 2003. Further, the Division Bench of this Court has held that Civil Court is a clear firm indicator of the legislative intent and clearly exhibits that the determination of the civil liability by Special Court by itself will not be a decree passed by the Civil Court and it is only by fiction of law that such a liability would be recovered as if it were a decree of Civil Court. However, the Division Bench after referring the decision in the case of M/s.Sri Radhakrishna Multiple Industries (P) Ltd., Madurai Vs. The Tamil Nadu Electricity Regulatory Commission, Chennai in W.P.No.14924 of 2008 clearly held that even the criminal case ended in acquittal, it will not preclude the Electricity Board from invoking Sec.126 of the Act, 2003. In the present case, the respondents Board under the Old Act registered a criminal case under Sec.39 of the Act and simultaneously initiated the assessment proceedings by invoking Sec.48 of the

Old Act and the same provision is available in the new Act i.e. Sec.126 and 135 of the Act. Hence, as the provisions are not inconsistent as per Sec.185 of the Act, it will continue under the new Act. Therefore, I do not find any substance in the argument made by the learned counsel appearing for the petitioner. Accordingly, the Writ Petition stands dismissed. However, considering the huge arrears of amount, the petitioner is directed to pay the amount as demanded in the impugned notice dated 19.04.2004 after adjusting the amount already paid if any without BPSC and penalty within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Writ Petition Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

rpp

To

1. The Chairman,
Tamil Nadu Electricity Board,
800, Anna Salai, Chennai-600 002.
2. The Chief Engineer/Distribution Circle,
Tamil Nadu Electricity Board, Vellore.
3. The Superintending Engineer,
Tamil Nadu Electricity Board,
Kanchi Electricity Distribution Circle,
Anna Maaligai, Oli Mohammedpet,
Kanchipuram-2.
4. The Executive Engineer/O & M North,
Tamil Nadu Electricity Board,
Kanchipuram.

+1cc to Mr.Rahul Balaji, Advocate, S.R.No.65186

+1cc to Mr.S.K.Rameshuwar, Advocate, S.R.No.65337

W.P.24541 of 2004

and

W.P.M.P.29828 of 2004

NRJK(CO)

CS/01/10/2019