IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

201 **CWP-28737-2013**
Date of Decision: 27.10.2022

MUKHTIYAR SINGH

... Petitioner

VERSUS

DAKSHIN HARYANA BIJLI VITRAN NIGAM LTD. & ORS.

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

****

Present: Mr. Tara Chand Dhanwal, Advocate
for the petitioner.

Mr. Pardeep Singh Poonia, Advocate
for respondentes No.1 to 4.

None for respondents No.5 to 7.

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VINOD S. BHARDWAJ, J. (ORAL)

The instant petition has been filed under Articles 226/227 of the Constitution of India, 1950 for seeking issuance of a writ in the nature of Certiorari for quashing of the following:

i) Checking Reports dated 30.03.2012, 31.07.2012 and 09.11.2013 (Annexures P-1, P-22 and P-23 respectively), and;

ii) Notices dated 02.04.2012 (Annexures P-14 and P-15).

2. The question which arises in the present petition is as regards the power of the distribution licensee to claim civil damages in an offence alleged under Section 135 of the Electricity Act, 2003 (hereinafter referred to as

"Electricity Act") wherein a consumer has been acquitted by the Special Court.

3. Briefly summarized, the facts of the present case are that the petitioner, who is a consumer of the respondent-distribution licensee, claims to be regularly paying his electricity dues without any default. It is averred that the premise of the petitioner were checked by the employees of respondent-department on 30.03.2012. During the said inspection, the meters of the petitioner alongwith respondents No.5 to 7 were also removed due to less load. It is averred that respondent No.5-Dilbagh Singh was already a defaulter of the respondent-department and there was an outstanding bill of Rs.7658/- against him before the date of checking. An amount of Rs. 4000/- was deposited by him on 03.04.2013 and his electricity connection was restored without seeking deposit of the entire amount of arrears. Similary, respondent No.6-Ram Jagat was also a defaulter of the department with an outstanding of Rs. 9796/- against him. Even his electricity connection was restored after deposit of Rs.4000/- instead of the entire arrears. Likewise, even in the case of respondent No.7-Brij Lal the electricity supply was restored without any pre-deposit and on a ground that the meter had been sent to M & P Lab and the supply could not be disconnected without it being a declaration of theft. Information was sought by the petitioner about the circumstances the electricity of the respondents was restored and not that of petitioner. It was intimated that the electricity supply to the said respondents had been restored by compounding the checking reports whereas the report from M & P Lab for respondent No.7 had not been received till 01.10.2013.

4. The petitioner was issued a notice with respect to the checking report dated 30.03.2012 (Annexure P-1) on 02.04.2012, however, the same was received on 30.04.2012 i.e. after 27 days. Resultantly, the petitioner could

not move any such application/deposit for seeking restoration of supply as was done by the private respondents. The petitioner, however, claims to have submitted an application on 08.08.2012 for seeking restoration of the meter connection at par with respondents No.5 to 7. However, no action was taken thereupon. The submission of an application seeking information under the Right to Information Act rather agitated the respondents and two more checking reports dated 31.07.2012 and 09.11.2013 were prepared against him only to harass. Additionally, a criminal complaint under Section 135(1)(a) of the Electricity Act was also instituted where the petitioner had been summoned by the Special Court under the Electricity Act. It was averred that the complaint against the petitioner had been instituted only because of the petitioner raising voice against the arbitrary action of the respondents in accepting compounding charges at their whims.

5. Written reply on behalf of the respondents had been filed wherein it was averred that the premises of the petitioner alongwith private respondents were inspected and the meters installed therein were removed on account of theft of electricity. In the case of the petitioner, the meter seal was found to be tempered with and connected load was found to be 0.630 kilowatt as against the sanctioned load of 02 kilowatt. A notice to deposit Rs. 20,000/- as loss caused to the Nigam and a sum of Rs. 8,000/- towards composition fee was served upon the petitioner. The same was, however, not deposited by the petitioner. Supply of electricity to respondent No.5-Dilbagh Singh & respondent No.6 Ram Jagat was restored after a deposit of the penalty amount on account of the theft committed by them. In the case of respondent No.7 Brij Lal, it was only a suspected case of theft and supply could not be disconnected on a mere suspicion. The checking report disclosed tampering of the seals as well as the circuit for which a sum of Rs. 28,843/- was demanded

from him and the same was also duly deposited by him. Hence, the case of the petitioner was not at par with the respondents No.5 to 7. The petitioner was found using direct supply of electricity with the help of 2/CPVC vide checking report LL-1-12/20 dated 31.07.2012 and the assessed theft amount has not paid by him. Upon checking, he was found using direct supply and an FIR was also lodged against him where he was granted pre-arrest bail. Details of the checking report have been given in the reply. The same are not being extracted for brevity.

6. No rejoinder controverting the said aspects was filed by the petitioner and as such, the stand adopted by the respondent-department in written statement remained uncontroverted.

7. Learned counsel for the petitioner argued that the respondent-Department had instituted a complaint under Section 135 of the Electricity Act on the basis of checking report dated 30.03.2012 and that the petitioner had faced criminal proceedings before the Court of Special Judge, Bhiwani. The respondent-Department, however, failed to establish the charges against the petitioner. Resultantly, the petitioner was acquitted by the Court of Special Judge, Bhiwani vide judgment dated 31.10.2015 passed in case No.07 of 2012/2015.

8. Counsel for the petitioner contends that since the respondent-department failed to establish charge against the petitioner, hence, the demand notices did not survive any further and are liable to be set aside/withdrawn.

9. The aforesaid factual position is not disputed by the learned counsel appearing on behalf of the respondent-Department/ distribution licensee. However, he contends that the mere acquittal would not exonerate the petitioner of the civil liability under the Scheme of the Electricity Act, 2003.

10. The respondent-distribution licensee would nonetheless be entitled to seek enforcement of the civil liability. Reliance was placed by him on the provisions of Section 135 (1)(a) of the Electricity Act, 2003.

11. I have heard learned counsel appearing on behalf of respective parties and have gone through the relevant provisions. The relevant statutory provision that are necessary for appreciation of the present controversy read thus:

> ***"INVESTIGATION AND ENFORCEMENT***
>
> ***Section 126: (Assessment): --***
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> *(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.*
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> *(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.*
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> *(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.*
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> *(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).

Section 127. (Appeal to Appellate Authority):-

(1) Any person aggrieved by the final order made under section 126 may, within thirty days of the said order, prefer an appeal in such form, verified in such manner and be accompanied by such fee as may be specified by the State Commission, to an appellate authority as may be prescribed.

(2) No appeal against an order of assessment under sub-section (1) shall be entertained unless an amount equal to [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.

OFFENCES AND PENALTIES

Section 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 imprisonment for a term not less than six months, but which may extend to five years and with fine not less than six times the financial gain on account of such theft of electricity:

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

Provided also that if it is proved that any artificial means or means not 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.

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Section 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.

SPECIAL COURTS

Section 153. (Constitution of Special Courts): -

(1) The State Government may, for the purposes of providing speedy trial of offences referred to in 1[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 sub- section (1).

Section 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 139."*
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> *(Emphasis supplied)*

12. A reading of the above shows that Section 135 (1)(a) of the Electricity Act mandates disconnection of electricity supply to a consumer upon detection of theft of electricity and Section 135 (1A) contemplates restoration of such electricity supply on deposit or payment of the assessed amount or electricity charges in accordance of the provisions of this Act without prejudice to the obligation of the department to lodge the criminal complaint. Hence, the aforesaid statutory provision under Section 135 (1A) is one in furtherance to providing the electricity supply to the consumer and to not deny him the electricity, which has been recognized as part of Article 21 of the Constitution of India, without prejudice to its rights to prosecute for commission of the offence.

13. The provision is thus an exception to disconnecting the electricity supply in an occurrence of theft of electricity. The deposit of the above assessed amount for reconnection by the consumer would not *ipso facto* amount to admission of the guilt or admission of the civil liability. The aforesaid view is fortified by the scheme of the Electricity Act. Section 154 deals with the procedure and powers of the "Special Court". Section 155 (5) and (6) read with the explanation clearly establishes that the "civil liability" against the consumer for the loss or damage on account of theft of electricity, at the rate specified thereunder, shall be determined by the Special Court and has to be recovered as if decree of Civil Court. It is further prescribed that in case the civil liability determined finally by the Special Court is less than the

amount deposited by the consumer [invariably in terms of proviso of Section 135(1A), the excess amount deposited by him shall be refunded by the licesee within 15 days together with interest at the prevailing RBI prime lending rate. The explanation provides that "Civil Liability" shall mean the loss or damage incurred by the Board or Licensee due to commission of offence referred to in Section 135 to 139. Hence, determination of all loss or damage has been brought within the ambit of the Special Court while adjudicating the complaint instituted before it under Section 135 of the Electricity Act. The scheme of the Electricity Act provides for a separate assessment of Civil Liability in a case relating to Unauthorized Use of Electricity under Section 126 and 127 of the Electricity Act. In relation to a case theft, an appeal may be preferred under Section 156 of the Electricity Act. Hence, separate procedure for determination of Civil Liability and separate appellate procedure for both forms of cases has been prescribed.

14. The issue has also been examined by this Court in the matter of "***Satyabir Goyal versus Dakshin Haryana Bijli Vitran Nigam and others***" passed in a batch of writ petitions in ***CWP-4016 of 2014*** **decided on 14.10.2015** wherein it was observed as under:-

> *"16. 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.*

17. 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 Subclause (1) to the Court for trial under the Act.

(4) Notwithstanding anything contained in Subclauses (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."

18. The Haryana State Electricity Board, Haryana Vidyut Prasaran Nigam and Dakshin Haryana Bijli Vitran Nigam from time to time have issued various instructions, the same have been compiled in the Sales Manual by DHBVN. The relevant instructions as contained in Sales Manual, Fifth Edition - 2013, read as under: -

"SECTION – VIII

THEFT AND UN-AUTHORISED USE OF ENERGY INSTRUCTION NO. 8.1

A. Instructions for dealing the cases of theft of Electricity under Electricity Act-2003, Electricity (Amendment) Act, 2003 and Electricity (Amendment) Act, 2007: (SC 43/2007):

(I) THEFT OF ELECTRICITY (Section-135 of the Electricity Act-2003)

A person shall be guilty of an act of theft of electricity, if ***he 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 authorized (where the meter/ metering equipments are tampered or there is bi-passing of meter).

So as to abstract or consume or use electricity.

It was clarified vide SC 9/2009 that whoever, dishonestly uses electricity for the purpose other than usage was authorized shall be treated as theft of energy under section 135 (c) of Electricity (Amendment) Act-2007 and where the usage is not dishonestly the same shall be treated as un authorized use of electricity under section 126 of Electricity (Amendment) Act-2007. For illustration, in case a consumer is found using supply other than the purpose for which he is authorized and higher tariff is applicable for the purpose for which supply is being used, the case shall be treated as a case of theft of energy but where supply is being used for which lower tariff is applicable, shall be treated as case of un authorized use of supply.

The following further, clarifications have been issued by the CE/Commercial DHBVN, Hisar vide SI 5/2010 and SC 29/2011 in the matter.

1. All the cases defined as theft of electricity under section-135 of the Act excepting cases covered under sub-clause (e) (use of electricity for the purpose other than the purpose for which the usage of electricity was authorized) and corroborated with the evidences are to be considered as a case of theft of electricity and dealt with accordingly.

2. The cases as illustrated in sub clause-5 of clause-(II) (SC43/2007) are to be considered as cases of "Suspected Theft of Electricity" and be dealt as per procedure specified under sub clause-12 (B) of clause-(II). (SC 43/07)

3. The cases of use of electricity for the purpose other than the purpose for which the usage of electricity was authorized in the non-residential areas and where more than 5% of the sanctioned load is found used for the purpose other than the purpose for which the usage of electricity was authorized shall be considered as case of theft of energy and shall be dealt accordingly. However, where meter working is found ok, the assessment of the units consumed shall not be worked out but the units as recorded by the meter shall be taken in account for the assessment purpose.

In the cases where load upto 5% of the sanctioned load is found being used for the purpose other than the purpose for which usage of the electricity was authorized shall, in the first instance, dealt as a case of 'Unauthorized Use of Electricity" and the consumer shall be advised to have a separate connection for the same, failing which the case shall be treated as a case of theft of energy and action shall be taken accordingly.

4. In the cases of change of category from DS to other categories detected in the residential areas, where a small portion of the residential building (load upto the extent of 5% of connected load) is being used for other purpose, then the assessment for 'unauthorized use' i.e. for change of category from DS to other categories, will be made on pro-data basis of energy consumed in the concerned portion of the house and not for the entire residential building. On detection, the consumer shall also be advised to obtain a separate admissible categories connection for *the said portion of the house failing which the case shall be treated as a case of theft of energy and action shall be taken accordingly. However, where the working of the meter is not found within the permissible limit or the meter is found tampered, the assessment of quantity in units shall be made under clause-III (d) of ibid circular. (SC 43/2007).*

5. It is further clarified that where a residential building is rented out (wholly or partly) and the rented portion is being used for residential purpose only like by students or working employees etc., or otherwise is admissible under the Schedule of Tariff for Domestic Supply, it will be treated as a case of DS category only. However, building being exclusively used as Guest House/Hostel though located in residential areas shall be treated as a case of use of electricity for the purpose other than the purpose for which the usage of electricity was authorized under clause 135(e) of the Act and further action shall be taken accordingly.

6. In the cases of "Suspected Theft of Electricity" and/or the cases of "Unauthorized use of Electricity" made under Section-126 of the Electricity Act, 2003; the procedure as laid down regarding serving of provisional assessment, allowing the consumer for filling of objections against the provisional assessment, affording opportunity of hearing and passing of final order by the assessing officer will be strictly followed. Any infringement of this procedure will render the assessment liable to be set aside by the courts.

7. No case of theft of electricity or unauthorized use of supply shall be made for the unauthorized extension of load only (excepting on un-metered Agriculture tubewell connection) as the penalty for the un-authorized extension of load is being imposed in such case. However, the usage of the electricity for the premises or the areas other than *those for which the supply of electricity was authorized shall be considered as a case of "unauthorized Use of Electricity" and shall be dealt accordingly. Again, the assessment of units shall not be made in such cases in case the meter working is found within the permissible limit and the supply is being used only through the meter. It was further clarified vide SC 29/2011 that provided further, where unauthorized usage is of domestic category and supply is being used for NDS purpose, but due to slab system in domestic tariff, higher tariff (weighted average rate per unit) is being paid by the consumers then in case assessed amount of units under domestic category at applicable rates (including fixed charges / MMC, FSA, M.Tax, ED) on the entire consumption of the last 12 months comes out to be more than the assessed amount of same units for same period under NDS category, then penalty be charged under section 126 of the Electricity Act-2003 instead of Section - 135.*

f) For the sake of clarification of the above definition of theft of electricity in Electricity (Amendment), Act-2007, following acts shall be covered under the above definition.

(1) By causing hole in the meter/MCB

(2) Flat rate tube well consumer unauthorizedly extends his connected load.

(3) Any disconnected consumer connects his disconnected connection.

(4) By loosening the glass of meter

(5) By external use of magnet/high voltage/high frequency devices or some other method

(6) By tampering/breaking the push fit type MCB/ MSMCB/terminal plate seal

(7) Means of dishonest abstraction of energy exist at site like additional circuit, change in gear ratio, changing of coil etc.

(8) By providing cut in the incoming PVC/Wire within the premises of the consumer and by tapping PVC of another person in case of relocated meters.

(9) If seals provided on meter/metering cubical/CT/PT Chamber are found missing / broken / fake/ tampered provided data bears it out.

(10) Where the person uses energy through meter not approved by the Nigam; or

(11) Further all the acts of tampering of metering system, dishonest abstraction, whether suspected or direct, leading to pilferage of energy supposed to be not accounted in the energy meter shall be covered under ambit of these instructions.

However, the above list is not exhaustive and is given only for the sake of clarification and may contain other acts also.

Provided further that if it is proved that any artificial means or means not authorized by Board or Licensee or supplier, as the case may be, exists for abstraction, consumption or use of electricity by him, it shall be presumed until the contrary is proved, that any abstraction, consumption or use of electricity has been dishonestly caused by such person.

(II) Procedure for Inspection of Premises, Detection of theft of Electricity, framing a case for Theft of Electricity.

1. The officers authorized to inspect various services / premises (referred to Authorized Inspecting Officers (AIO)) of the licensee or the supplier, as the case may be for the purposes of detection of theft of electricity shall be those who are authorized by the State Government under section-135 (2) of the Electricity Act-2003. The following officers have been authorized as per Haryana Govt.

Gazette Notification No. 1/12/2003-1 Power dated 9 th December 2003.

Type of connection	***Officers/officials authorized to enter the premises for the inspection of the installation***
1	*2*
Domestic	*(i) Assistant Foreman (AFM) (authorized by concerned SE 'OP) (ii) Junior Engineer (Field)/M&P (iii) JE, Vigilance.*
Non-Domestic	
Agriculture	
L.T. Industrial Policy	
H.T. Inudstrial Supply/Bulk Supply/Public Lighting and rest of the categories	*(i) Sub-Divisional Officer (SDO) 'OP' (ii) Assistant Engineer (Vigilance)/M & P*

Note: *- The senior officers in column –2 are also authorized to conduct inspection for the purpose mentioned therein.*

2. All the inspections undertaken by the authorized officers shall be in accordance with section 135 (2), (3) and (4) of the Electricity Act-2003 relating to entry search and seizure at the time of inspection. The authorized inspecting officer may : -

(a) enter, inspect, break open and search, seize any place or premises in which he has reason to believe that electricity has been or is being, used for unauthorized use of electricity/ theft of electricity.

(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/ theft of electricity.

(c) Examine or seize any book of account or documents which in his opinion shall be useful for or relevant to, any proceedings in respect of theft of energy and allow the person from whose custody such books of account or documents are seized to make copies thereof or take extracts there from in his presence.

Any 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 place or domestic premises shall be carried out between sunset and sunrise except in presence of adult male member occupying such premises The provisions of the Code of Criminal Procedure, 1973 (20 of 1974), relating to search and seizure shall apply , as far as may be , to searches and seizure under this act.

3. The authorized inspecting officer (AIO), suo moto or on receipt of reliable information regarding commitment of any offence of theft/tampering/dishonest abstraction of energy shall promptly conduct inspection of consumer's premises along with the officers / officials / policeman / force, accompanying the authorized inspecting officer (s). If any consumer obstructs or prevents the authorized inspecting officer from entering and inspecting the premises at any time to which supply is being afforded or where the electrical installation or equipment belonging to the Nigam or to the consumer is situated in such premises and the inspecting officer has reason to believe that the consumer has been / is currently / indulging in Theft of Electricity, the officer authorized to disconnect the supply may forthwith disconnect the service. The Nigam may keep such supply disconnected till the consumer offers due facilities for inspection. If such inspection reveals nothing to indicate Theft of Electricity, the Nigam may then cause *supply to be restored. The Nigam shall not be responsible for any losses or inconvenience caused to the consumer on account of such disconnection of Service.*

4. After complete inspection of the premises, the inspecting team shall prepare a report giving details such as details of connected load at site, Account No., owner/occupier condition of seals, working of meter and mention any irregularity noticed such as, artificial means adopted for dishonest abstraction of energy/ theft of electricity/ tampering of meter/seals etc. The report shall clearly indicate whether conclusive evidence, substantiating the fact that energy was being dishonestly abstracted, was found or not. The details of such evidence should be recorded in the report and it should be clearly brought out whether the case is being framed for theft of Electricity, tampering of meter, tampering of seals, etc. and how the alleged act was facilitating the theft of energy.

5. No case for dishonest abstraction or theft of electricity shall be framed only on account of seal(s) on the meter and/or meter cubicle is missing or tampered or fake or breakage of glass window or existence of hole in meter, loose glass, cut in the incoming PVC Cable or any act, where the evidence is not available at site etc. and are referred to as "suspected theft cases" unless corroborated by consumption pattern of consumer, valid tamper information and such other evidence which may substantiate that theft of energy was being actually committed. This analysis shall be done by the concerned assessing officer as per due procedure specified therein in clause-12 (B).

6. The authorized AFM and JEs and other raiding parties of operation wing shall have to undertake the inspection of the premises on the basis of some reliable source of information regarding dishonest abstraction of electricity *by the consumer, any information relating to tampering of meter or any conclusion drawn from consumption or load survey data of the consumer. The applicable basis for the checking shall be recorded in the checking book to be maintained by concerned authorized inspecting officer.*

7. The concerned JEs/AFMs shall obtain prior written permission from the concerned SDO 'OP' before raiding and inspecting any suspected premises.

8. The inspecting/raiding party shall compulsory fill up the checking report indicating Account No. site conditions, connected load, members of raiding party etc. For the purpose, the concerned SDO 'OP' shall issue the LL-1 forms to the authorized AFM/JEs. The copy of letters issued by SE 'OP' for authorization of AFMs for checking shall be kept in the case file of the theft case for the purpose of trial in the Court/Police.

9. The inspecting officers/officials shall take along themselves the digital camera /video or any other recording device preferably having the facility with date and time stamp for recording the complete events during the checking of premises. While inspecting and checking the premises, the raiding party or the inspecting team shall record the whole event after reaching the premises and up to leaving the premises through video camera/digital camera. The Authorized Inspecting Officer shall keep one CD with him and hand over one CD to Assessing Officer.

10. The evidence of dishonest abstraction or artificial means should be photographed and seized and taken into custody and memorandum of seizure should be prepared at the spot.

The ways for seizure of property to be followed is mentioned as below:-

a. The seized property should be packed in a cloth parcel and checking officer should affix impression of his named seal. The same parcel should be signed by the checking officer and its team members including the consumer present at the time of such inspection. The seal should be retained by the checking officer and be handed over to the Store Keeper / JE concerned.

b. The video recording if, any done at the site of inspection should be copied into CD and packed in cloth as per procedure mentioned in Sr. No. 1.

c. In case of meters, the Lab in-charge of M&P should open the parcel by breaking minimum seals affixed on the parcel. After checking the meter should be sealed in the same parcel by affixing his seal impression over the sealing wax. The in-charge should give a note in his report regarding breaking and affixing of seal.
d. The meter so packed be checked and tested at M&P Lab as per Nigam instructions without any delay.

e. AIO of the inspection team concerned should ascertain as to who is the actual user of electricity in case of power theft as mentioned in LL-I before sending it to Police Station on concerned for lodging of FIR.

11. The signature of the consumer or his representative and other persons on the site, if available, should be taken on the checking report and memorandum of seizure should be prepared at the spot. In case of refusal by consumer, it should be recorded in the checking report and the same should be pasted at a conspicuous place in/outside the premises and a photograph be taken. Further, the copies of checking report and memorandum of seizure be sent through registered post to the consumer.

12. The functioning of the inspecting team shall be regulated as under: -

(A) In case of Theft (Where the evidence of theft or tampering of meter or any other act leading to pilferage of energy is available at site): -

a) On complete checking, the AIO shall immediately submit all papers, checking report, memorandum of seizure and other relevant details to the concerned assessing officer for issuing the order of assessment by the licensee indicating the amount assessed (loss suffered) by the licensee for the theft of electricity.

b) Within 2 working days of the checking of premises, the authorized assessing officer of the Nigam as per clause (II)(13), shall issue the order intimating assessment by the licensee to the consumer as per the provisions of clause-III under proper receipt (Annexure-I). In case of refusal by the consumer or his/her representative to either accept or give a receipt, a copy must be pasted at a conspicuous place in/outside the premises in the presence of two witnesses. Simultaneously, the order shall be sent to the consumer under registered post.

c) Disconnection: *- Whenever a case of theft of electricity by a consumer is detected at the time of inspection by invoking provisions contained in Section-135 (IA), the service of the consumer shall be disconnected forthwith by the designated officer concerned and entry in this regard shall be made in Inspection report served to the consumer. For the purpose of disconnection, following officers of the Nigam are authorized as per provisions of Electricity (Amendment) Act-2007, pending notification of the same by HERC under Electricity (Amendment), Act, 2007.*

Type of connection	***Officers/officials authorized for disconnection of consumer service***
1	*2*
Domestic	*AGM/SDO 'OP*

Non-Domestic	*-do-*
Agriculture	*-do-*
L.T. Industrial Supply	*-do-*
H.T. Industrial Supply/Bulk Supply/Public Lighting and rest of the categories	*DGM/Xen 'OP'*

Note: - The officer in higher rank shall also be authorized for the disconnection.

(d) Reconnection: *- The supply of the consumer shall be restored by the licensee or supplier, as the case may be within 48 hours of the deposit of 100% amount of assessed amount. In case of default, the consumer is liable to pay the interest at the prevailing Reserve Bank of India prime lending rate for the period of default. The above reconnection shall be without prejudice to the obligation to lodge the complaint to the Police & Court i.e. for all the cases of theft of electricity under section-135; the complaint is to be filed either in police station having jurisdiction over the area or in the special court notified by the Govt. of Haryana vide notification dated 22th September, 2010 wherein the Courts of Senior-Most Additional District & Session Judge, Additional District & Session Judge-II & Additional District & Session Judge-III at each District Head Quarters in the State of Haryana, have been designated as Special Courts under Section-153 of the Electricity Act-2003 for the offence under Section-135 to 139 of the Electricity Act-2003.*

(e) *Lodging of Complaint: (SI 7/2013):*

i) SDO 'Operation' shall ensure to provide copy of assessment to respective SHO I&P police station within 12 hours of detection of theft and local field staff i.e. JE, FM, AFM, LM, ALM accompanying during checking with Vigilance Team shall be responsible for providing copy of

LL1 and copy of assessment to the respective SHO I&P Police Station within 12 hours for lodging Complaint/DDR, in case if he fails to provide the same in time disciplinary action shall be initiated against him.

ii) In case of checking's done by Operation staff, concerned SDO 'Operation' shall be responsible for providing copy of LL1 and copy of Assessment to the respective SHO I&P Police Station within12 hours for lodging/DDR, in case if he fails to provide the same, disciplinary action shall be initiated against him.

iii) SHO I&P Police Station shall insure that compliant DDR must be lodged within 24 hours of theft Detection as per Indian Electricity Act 2003 in co-ordinate with concerned SDO 'Operation'.

iv) SHO I&P Police Station shall ensure that either realization of assessed amount or FIR registration shall be done within 48 hours.

The provisions of Electricity (Amendment) Act-2007 are reproduced here under: -

"151A. For the purpose of investigation or 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. 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".

"151. 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 in the Section-153 shall be competent to take cognizance of an offence without accused committed to it for trial."

Further, in view of the above provisions, the authorized officer may also file the complaint to the special court in case the Police does not lodge the FIR. (SI 6/2009) Format of filing complaint to court is at Annexure-V.

It is mandatory to lodge complaint in the nearby Police station within 24 hours after disconnection of connection on detection of theft of energy. In case the consumer comes forward for depositing the compounding offence amount, the necessary compounding amount shall be got deposited and written communication shall be sent to SHO (as per format attached as Annexure-VIII) for not instituting any proceeding against the consumer in criminal court as per provision of Section 152(2&3) of EA, 2003. (SC 54/2007).

(f) Provided that the service of a person who is not a consumer of the Nigam shall not be restored and the payment of amount of assessment made by him shall not entitle such person to be a consumer of Nigam on such payment.

(B) In the case of suspected theft (broken/tampered/ fake seals of meter and / or metering cubicle / cut in incoming PVC Cable or any other instance where evidence is not available at site)

(a) In the cases of suspected theft, the inspection team shall not disconnect the supply and shall restore the supply through a new meter of appropriate rating after sealing the original metering equipments at site by Johnson's paper seals,. After inspection, the authorized inspecting officer shall prepare a checking report giving details such as connected load / MDI, conditions of seals, working of

meter and mention other irregularities noticed during checking. If needed, AIO shall remove the meter and put it in a properly sealed cardboard box in presence of consumer or his representative which shall be duly signed by checking team and consumer. Seizure memo would also be prepared. The AIO shall record the particulars of the same in the report before sealing and taking the meter / seals/ metering equipments for testing in M&T lab as per clause (d) or any other agency. The report must be signed by each member of the joint team.

(b) The consumer shall be served within 2 working days a notice (Annexure-II) signed by senior most officer of the inspecting team at the site as to why the case of theft of electricity should not be framed against him/her. The notice should clearly state the time, date and place at which the reply has to be submitted and the name of the designated officer to whom it should be addressed. The notice must be handed over to the consumer or his/her representative at site immediately under proper receipt. In case of refusal by the consumer or his/her representative to either accept or give a receipt, a copy of each must be pasted at a conspicuous place in/outside the premises. Simultaneously, the joint report and the notice shall be sent to the consumer under Registered Post. The designated officer for the above purpose shall be SE 'OP' for the CT/PT meters and XEN 'OP' for Whole Current Meter.

The consumer is at liberty to represent to the designated officer within 3 days from the date of receipt of notice.

(c) Within 4 working days from the date of submission of consumers' reply, if made within prescribed period, the designated officer shall give a personal hearing to the consumer, if request in this regard has been received from consumer. After due consideration of the matter, the

designated officer shall pass a detailed order within 15 days from the date of personal hearing or receipt of reply, as the case may be (Annexure-III) as to whether the case of suspected theft of Electricity is established or not. The order shall contain the brief of inspection report, submissions made by consumer in his written reply and during personal hearing and reasons for acceptance or rejections of the same and the amount of assessment, period of assessment as per clause-III.

(d) Testing of meter / seals /metering equipment: - In cases of suspected Theft of Electricity through tampering of meters or metering equipments or seals, the meter / metering equipments shall be taken out from the premises in a sealed box duly witnessed by the consumer, for requisite testing in the M&T laboratories. The designated officer shall issue a letter to the consumer at least one week in advance, informing him about the date of meter testing, and requesting him to attend the same. If the consumer is not present during the testing on the scheduled date, the testing shall be carried out in the presence of the two officers of the Nigam not connected with the inspection

(e) Further, in case of suspected theft of electricity, if consumption pattern for last one year is reasonably uniform and is not less than 75% of the assessed consumption as per clause-III, no further proceedings shall be taken and the decision shall be communicated to the consumer under proper receipt within 3 working days and connection shall be restored through original meter.

(f) Where it is established that there is a case of theft of Electricity, then the procedure as prescribed under Clause- (II)(12)(A)(c to g) shall be followed.

*13. **Assessing Officer:** -The following officers are authorized for making assessment for the cases of theft of electricity as per Haryana Govt. Gazette Notification No. 1/12/2003-1 Power dated 9th December 2003: (SI 24/2010):*

Type of connection	***Officers authorized to make assessment.***
1	*2*
Domestic	*Concerned SDO (OP)*
Non-Domestic	*Concerned SDO (OP)*
Agriculture	*Concerned SDO (OP)*
L.T. Industrial Supply	*Concerned SDO (OP)*
H.T. Industrial Supply and all other categories having connected load above 50kw	*Concerned XEN 'Operations'*

***Note:-** The officer in higher rank shall also be authorized for making the assessment.*

***(III) Assessment for Theft of Electricity:** - 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 theft of electricity, he shall assess the electricity charges payable by such consumer or occupier of the premises.*

*(a) **Period of Assessment:** - The period of assessment shall be taken as a period of 12 months immediately preceding the date of inspection or from the date of release of connection or date of last checking by M&P wing whichever is less or entire period of theft, if it is determined.*

(b) ***Computation of Assessed amount:** -The assessment of quantity in units for the theft of electricity made under* *clause – (III) (d)) and for the period under clause –(III) (a) shall be charged at a rate equal to two times tariff applicable for the relevant category of consumers, after deducting the consumption recorded by the meter during such period of assessment.*

(c) If a person is found indulging in all or more than one act of theft of electricity, the assessment in respect of each such act shall be separately made for every such theft of electricity.

(d) ***Method for assessment of quantity in units for theft of electricity:*** *-Quantity of units consumed per month (except AP supply) shall be worked out as under: -*

For LT Supply:- KW x LF x h x D

For HT Supply:- MD x LF x H X D

Where,

KW	*Connected load actually found at the time of inspection/checking in kilowatts or the sanctioned load or maximum load recorded during last 12 months, whichever is higher.* *[In case the load survey confirms the abnormal increase in the MDI due to magnetic field then the abnormal demand recorded under the influence of magnet may not be considered. However, maximum capacity of individual transformer may be considered]*
LF	*Load Factor*
H	*Number of working hours per day.*
D	*Number of days per month.*
MD	*Maximum demand in KW. For this purpose the highest of the following shall be taken as maximum demand.* *(a) Sanctioned Contracted demand of the consumer.* *(b) The highest maximum demand recorded during preceding 12 months of inspection.* *Note:- Load/Demand in KVA be converted into KW*

	by multiplying with the standard power factor (0.9)

Load Factor, Nos. of hours and No. of days to compute the quantity of units as mentioned above shall be taken as mentioned below:-

Category of consumers	***Load factor***	***Feeder wise No. of working hours per day Rural Urban***	***No. of days/per month***	
1	*2*	*3*	*4*	
Domestic Supply	*25%*	*8*	*16*	*30*
Non-Domestic Supply				
For General	*80%*	*8*	*12*	*25*
For Restaurants, hotels and petrol pump, Cinemas	*80%*	*10*	*16*	*30*
For Nursing Home and Hospitals with indoor nursing facilities, shopping malls.	*80%*	*14*	*20*	*30*
L.T. Industrial supply				
Having load up to 20 kw	*80%*	*8*	*16*	*25*
Having load above 20 kw	*80%*	*8*	*20*	*25*
Bulk supply (ON LT)	*50%*	*12*	*20*	*30*
Bulk supply (ON HT)	*80%*	*12*	*20*	*30*
Public Lighting	*100%*	*10*	*10*	*30*
HT Industrial supply continuous				
Process Industry	*80%*	*8*	*20*	*30*
General Industry	*80%*	*8*	*12*	*25*

(i) In case of Ice factory, Ice candy, Cold Storage and Plastic Industry with load up to 20 KW, number of working hours per day on Urban Feeder shall be taken as 20 hrs.

(ii) Rural feeder for the purposes of above shall be considered as a feeder where supply is given on restricted basis for meeting demand for agriculture in rural area."

19. There is no provision in the Act in respect of assessment in cases of theft of electricity. However, Haryana Electricity Regulatory Commission exercising the powers provided in the Act has enacted Haryana Electricity Regulatory Commission (Electricity Supply Code) Regulations, 2004 and issued instructions. So far as the present case is concerned, Section-VIII (page 188) of Sales Manual (5 th edition 2013) deals with the theft and unauthorized use of electricity. Instruction No.8.1(A)(I) deals with the theft of electricity. Instruction 8.1(A)(II) deals with procedure for inspection of premises, detection of theft of electricity and framing a case for theft of electricity. 8.1(A)(III) deals with assessment for theft of electricity. Under Instruction 8.5, vide notification dated 22.09.2010 Special Courts under Section 153 of the Act have been constituted. Courts of Additional District and Sessions Judge at District Headquarters have been empowered to deal with matters covered under theft of electricity. As per Instruction 8.1(A)(II) (12)(A), the petitioner was required to be served with a notice within two working days and afforded opportunity to file reply and consumer may represent within three days and within four days of submission of consumer's reply, Designated Officer shall pass a detailed order after giving personal hearing or on examination of reply and detailed order shall be passed within 15 days of personal hearing or receipt of reply, as the case may be. If the consumer is indulging in theft, the assessment in respect of each act shall be separately made in terms of Instruction 8.1 (A)(III)(c) (page 197 of Sales Manual). In case the amount is deposited the connection shall be restored and unpaid amount of assessment shall be *recovered as arrears of electricity consumption charges under the Haryana Govt. Electricity Undertaking (Dues Recovery) Act, 1970. The compounding is permitted under the Instructions.*

20. The Instructions issued under the Sales Manual make complete distinction in respect of unauthorized use of electricity and theft of electricity. The Instructions of the Sales Manual provide complete scheme for assessment of civil liability as referred to in the foregoing paragraphs, specifically under Instruction 8.1(A)(III) (page 197 of the Sales Manual). Since there are specific provisions in the Act and procedure for calculation, the Special Court is competent to determine the liability which is like a civil Court decree.

21. In the light of above discussion, in the present case, petitioner was committing theft of electricity by way of direct supply. 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. As per Instruction 8.1(A)(II)(13) at page 196 onwards of the Sales Manual, Assessing Officers have been designated who are authorised to make assessment. SDO (OP) concerned in case of domestic, non-domestic, Agricultural and LT Industrial Supply is the authorised person to make assessment and in cases of H.T. Industrial supply and all other categories above 50KW, concerned XEN (OP) is authorised to assess. The assessment shall be made as per Instruction 8.1A(III)(d). As such the consumer can be penalised under Section 135 of the Act and civil liability can be assessed under Section 154 of the Act read with Instructions 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 have indulged in offence committed under the provisions of Section 135 of the Act but the respondents have not proceeded against him in consonance with the provisions of the Act. The petitioner has opted for compounding in view of Section 152 of the Act and Instruction

> *8.1A (VI). It is admitted fact on record that petitioner was drawing electricity directly from the main line of the respondents and his case prima facie falls under the definition of "theft".*

15. It is thus been clearly held that determination of civil liability in cases of theft of energy can only be done by the Special Court.

16. Having failed to establish its charge, the respondents distribution licensee cannot, thereafter, still claim that they would nonetheless be entitled to seek enforcement of civil liability as no such provision has been prescribed under the Electricity Act. Counsel for the respondents also could not draw attention to any other statutory provisions which entitled the distribution licensee to seek recovery of loss/damages despite having failed to establish such loss or damage in its prosecution launched before the Special Court. No such power can exercised by the respondent-authorities if the same has not been provided for under the Act. It is well settled that Electricity Act is a complete code in itself and the respondent-licensee cannot demand or claim any tariff, fee, charge, levy, penalty or cess etc. as has not been approved or determined under the statue and the procedure prescribed thereunder. The respondent-department cannot claim that *de hors* no power with the authority other than the Special Court to determine the civil liability in a case of theft of energy, it shall still have a subsisting right to claim recovery of its loss. The respondents having failed to establish their allegations and charge against the consumer before the Special Court leads to only one inference i.e. that no loss was occasioned or caused by the Consumer. When the charge of the respondents was that the Consumer was indulging in theft of electricity and they failed to prove the same, they cannot thereafter, be permitted to contend that even though there is no theft of energy, yet, there is a loss that has occasioned. No such presumption is provided for under the statutory scheme

and in the absence of any power it cannot exercise such jurisdiction despite having failed to prove its charge. The respondents cannot be now permitted to re-open the entire controversy by equating it to the proceedings under Section 126 of the Electricity Act i.e. the unauthorized use of electricity. The same would amount to incarcerating a consumer for the second time despite having been exonerated by a Special Court. The Electricity Act does not intend put the consumer on any lower pedestal than the licensee himself. The consumer cannot be made to prove his innocence before multiple agencies on multiple occasions.

17. In view of the above, I am of the view that the submissions advanced by the counsel appearing on behalf of the respondent does not have any statutory backing or force and thus deserves to be discarded.

18. In view of the above, it would be necessary to refer to the prayer made in the petition. Insofar as the other three notices are concerned, learned counsel for the petitioner contends that the said notices already stand settled with the respondent-Department and that there is no subsisting grievance of the petitioner with respect to the aforesaid three notices. He, accordingly, does not press the present petition qua the other three remaining notices and confines the prayer to the report dated 30.03.2020.

19. In view of the above, the present petition stands disposed of as not pressed qua the notices/checking reports dated 31.07.2012 (Annexure P-22), 09.11.2013 (Annexure P-23) and 02.04.2012 (Annexures P-14 and P-15).

20. The petition deserves to be allowed insofar as the checking report dated 30.03.2020 (Annexure P-1) is concerned. The said checking report has no further force of law in view of the acquittal of the petitioner vide judgment dated 31.10.2015 passed by the Special Court, Bhiwani in complaint under

Section 135 of the Electricity Act, 2003 and non-determination of any civil liability by the Special Court. The petition is accordingly partly allowed to the said extent.

(VINOD S. BHARDWAJ)
JUDGE

OCTOBER 27, 2022
Rajender/vishal sharma

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No