

In the High Court at Calcutta
Constitutional Writ Jurisdiction

Appellate Side

The Hon'ble Justice Sabyasachi Bhattacharyya

W.P.A. No. 6237 of 2022

Md. Abdul Matin
Vs.
The West Bengal State Electricity
Distribution Company Limited & others

With

W.P.A. No. 10861 of 2022

Sunil Das
Vs.
The West Bengal State Electricity
Distribution Company Limited & others

With

W.P.A. No. 6112 of 2022

Azad Ali and others
Vs.
The West Bengal State Electricity
Distribution Company Limited & others

With

W.P.A. No. 7548 of 2022

Gurucharan Ojha
Vs.
The West Bengal State Electricity
Distribution Company Limited & others

With

W.P.A. No. 7652 of 2022

Md. Azharuddin @ Azheruddin
Vs.
The West Bengal State Electricity
Distribution Company Limited & others

For the petitioners in all the matters	:	Mr. Ashok Gupta, Mr. Sailesh Kumar Gupta
For the State in WPA No.6112 of 2022	:	Mr. Amit Prokash Lahiri, Mr. Shuvro Prokash Lahiri
For the State in WPA No.6237 of 2022	:	Ms. Jyotsna Roy Mukherjee
For the State in WPA No.7652 of 2022	:	Mr. Bibek Jyoti Basu, Mr. Debanjan Chatterjee
For the Union of India	:	Mr. Dhiraj Kr. Trivedi, Mr. Ravi Ranjan Kumar
For the WBSEDCL in WPA No.6237 of 2022, WPA No.10861 of 2022, WPA No. 6112 of 2022 and WPA No.7584 of 2022	:	Mr. Srijan Nayak, Mrs. Rituparna Maitra
For the WBSEDCL in WPA No.7652 of 2022	:	Mr. Srijan Nayak, Mr. Sujit Sankar Koley
For the CESC Limited	:	Mr. Om Narayan Rai, Mr. Debanjan Mukherji
Hearing concluded on	:	16.02.2023
Judgment on	:	18.04.2023

Sabyasachi Bhattacharyya, J:-

1. The writ petitioners in all the matters have challenged the vires of Sections 126 and 135 of the Electricity Act, 2003 (hereinafter referred to as “the 2003 Act”).

- 2.** Learned counsel for the petitioners cite several judgments, which will be discussed presently. It is argued that Section 126 (1) provides for a mere 'provisional' assessment which, however, is conclusive as to the allegation of theft of electricity against the accused, without granting the accused person any opportunity of hearing. Such serious allegation, which is a stigma and has far-reaching criminal consequences against the accused person as well, is thus examined and decided by the same person who gave the report. There is no trial before a competent judicial forum, with due opportunity of leading evidence and cross-examination being given to the accused. Thus, it is argued, the said section is violative of Articles 19 and 21 of the Constitution of India and is, thus, ultra vires the Constitution.
- 3.** Such assessment, both at the provisional and the final stage, are done by the Assessing Officer, who is generally an employee of the distribution licensee. It is the same officer who submits a report, on inspection, as to the unauthorised use of electricity by the consumer or person concerned and thereafter assesses the amount chargeable as electricity dues. Again, the same officer hears the person concerned and arrives at the final assessment. Thus, it is argued, the Assessing Officer, who is an employee of the licensee, acts as the judge, jury and executioner. The final order is a merely mechanical reiteration of the provisional order of assessment, without any independent application of mind or examination worth the name.
- 4.** Although labelled as assessment 'orders', no reasons are given by the assessing officer who, in any event, is an agent of the licensee and is

not a competent judicial officer. Assessment 'bills' are sent by the licensee which, under no stretch of imagination, qualify as 'orders' as contemplated in Section 126, thus rendering the entire process an eye-wash. The 'reasons', if any, are mere pretence of reasons - a mechanical rubber-stamp exercise without consideration of relevant documents and evidence.

5. The appeal provided under Section 127 of the 2003 Act against the final order, it is argued by the petitioners, is a farce, since the accused person does not have proper opportunity to represent his case before the first forum.
6. Moreover, the pre-condition of deposit of 50 per cent of the total assessed account, which may be exorbitant and arbitrary, for preferring an appeal under Section 127 renders the said remedy illusory.
7. Learned counsel for the petitioner next argues that Section 135 of the 2003 Act provides for criminal proceedings before a Special Court. However, the definition of 'theft' in the said section and that of 'unauthorised use' in Section 126 overlap largely, particularly insofar as the allegation of tampering of meter is concerned. As a consequence, the licensees can pick and choose to enforce different penal consequences against persons accused of the same or similar offences at their own sweet whims. The consequences range between payment of huge sums of money and disconnection of electricity, as well as imprisonment and/or fine.

8. Hence, it is argued, Section 135, which provides for the harsher punishment, ought to be struck down as ultra vires.
9. Learned counsel for the petitioners cites several judgments, including *Executive Engineer, Southern Electricity Company of Orissa Limited (SOUTHCO) and another Vs. Sri Seetaram Rice Mill*, reported at (2012) 2 SCC 108, *Laxmi Chand and others Vs. Gram Panchyat, Kararia and others*, reported at AIR 1996 SC 523, etc., to argue that the extraordinary jurisdiction of the High Court under Article 226 of the Constitution can be exercised in appropriate cases despite availability of an alternative remedy. *Whirlpool Corporation's* judgment reported at (1998) 8 SCC 1 is also referred in such context along with *Calcutta Discount Co. Ltd. Vs. Income Tax Officer, Companies District I Calcutta and another*, reported at AIR 1961 SC 372.
10. Learned counsel cites *Kotak Mahindra Bank Limited Vs. A. Balakrishnan and another*, reported at (2022) 9 SCC 186, for contending that a judgment on different material facts gives rise to different and distinct principles of law. In the Gujarat Division Bench judgment cited by the CESC Limited, it is argued that theft or pilferage of electricity was not an issue.
11. *Escorts Ltd. Vs. Commissioner of Central Excise, Delhi-II*, reported at (2004) 8 SCC 335, also held in similar lines.
12. Learned counsel for the petitioner then cites *Suraj Mall Mohta and Co. Vs. A.V. VisvanathaSastri and another*, reported at AIR 1954 SC 545 to argue that as per Article 14 of the Constitution, in its application to legal proceedings, everyone should be assured the same rules of

evidence and mode of procedure. Such principle is reiterated by placing reliance on *Chandra Bhavan Boarding and Lodging Bangalore Vs. State of Mysore and another*, reported at AIR 1970 SC 2042, *K.S. Rashid Vs. Income Tax Officer*, reported at AIR 1964 SC 1190, *Shree Meenakshi Mills Ltd., Madurai Vs. Sri A.V. Visvanatha Sastri and another*, reported at AIR 1955 SC 13 and *P.N. Kaushal and others Vs. Union of India and others*, reported at AIR 1978 SC 1457.

13. Hence, it is submitted that Section 135(1) of the 2003 Act is ultra-vires, as Article 19(1)(g) of the Constitution is violated due to unbridled power being conferred on the licensee-Authority to invoke the provisions of Section 126 or the provisions of Section 135 of the 2003 Act in cases of theft and/or pilferage of electricity as also unauthorised use of electricity, depending upon the “colour of the hair” of the consumer.
14. *Sri Seetaram Rice Mill's case (supra)* is cited to show that Sections 126 and 135 are distinct and different provisions operating in different fields and having no common premise in law. Hence, Section 126 and 127 of the 2003 Act constitute a complete code in themselves, as assessment made thereunder does not fall under Section 135 of the 2003 Act. Section 126 would be applicable only to cases where there is no theft of electricity.
15. Learned counsel for the petitioner cites *Bhagwandas Tiwari Vs. State of M.P. and others*, reported at AIR 2011 MP 71, to argue that civil liability determined by the Special Court is dependent upon the criminal liability. Only upon the order of assessment being finally

passed and served upon the consumer, the consumer is expected to pay the charges.

16. Next citing an unreported judgment of a co-ordinate Bench of this Court in *Gouri Sankar Roy Vs. South Bengal State Transport*, learned counsel reiterates such proposition. It was held therein that recovery of dues purely on account of theft has to be made by taking recourse to the provision of Section 154 of the 2003 Act but, if the provisional assessment order was for the pre-theft period, the recovery would be under Section 126.
17. Learned counsel for the petitioner, placing reliance on the judgment of *M/s. J.T.G. Alloys vs. Punjab State Power Corporation*, argues that cases of theft falling under the ambit of Section 135 do not have any applicability of Section 126.
18. In *Kerala State Electricity Board Vs. Thomas Joseph*, passed on December 12, 2022, the Supreme Court again reiterated that Section 126 is intended to cover situations other than those specifically covered under Section 135 of the 2003 Act.
19. Learned counsel for the petitioner next cites *Anita Kushwaha Vs. Pushap Sudan*, reported at *AIR 2016 SC 3506*, a Constitution Bench judgment of the Supreme Court, which held that access to justice has been recognized to be a part of the right to life in India and in all civilised societies around the globe. Learned counsel submits that right to life guaranteed under Article 21, as well as Article 14 of the Constitution, which ensures equality before law and equal protection of law, are violated by the provisions-in-question. The consumers'

right to access civil courts is deprived by Section 126 of the 2003 Act, which infringes the said fundamental rights. The decisions cited by the WBSEDCL, it is argued, are *ex facie per incuriam* in view of the Three-Judge bench decision of the Supreme Court in *Kotak Mahindra Bank Limited (supra)*, read with *Sri Seetaram Rice Mill's case*.

20. It is submitted that the Apex Court, in *Orion Metal (P) Ltd. (supra)*, has “misconstrued” and/or “misread” the ratio of law laid down in *Sri Seetaram Rice Mill's case*. Regarding *per incuriam* decisions, the petitioners cite *Secretary to Government of Kerala, Irrigation Department and others Vs. James Varghese and others*, reported at 2022 SCC OnLine SC 545. It is submitted that the principle of *Audi Alteram Partem* has been violated by the provisions-in-question.
21. Learned counsel further places reliance on several judgments in the context of Article 14 of the Constitution.
22. Citing AIR 1990 SC 882 [*Municipal Corporation of Delhi Vs. Ajanta Iron and Steel Company (Private) Limited*], it is argued by the petitioner that the allegation of theft cannot be assumed to be correct without full-fledged trial on the issue. In the judgment reported at (2011) 8 SCC 695 [*Oriental Bank of Commerce and another Vs. R.K. Uppal*], it was observed by the Supreme Court that a quasi-judicial authority is expected to apply its judicial mind to the issues involved, which is not possible if the assessing officer envisaged under Section 126 can also be an employee of the licensee.
23. By relying on a Division Bench judgment of this Court reported at (2011) 4 CHN 204 [*W.B. State Electricity Distribution Company Limited*

Vs. Jadaupur Tea Co. Ltd.], it is submitted that the complainant cannot be the prosecutor and the judge at the same time. In this context, *BhajanLal, Chief Minister, Haryana Vs. M/s. Jindal Strips Limited and others*, reported at (1994) 6 SCC 19, is referred to. If exorbitant amounts are assessed under Section 126, the right of appeal under Section 127 of the 2003 Act becomes illusory since fifty per cent of the exorbitant amount then has to be deposited as pre-condition for preferring the appeal.

24. The petitioners next cite *Mardia Chemicals Ltd. and others Vs. Union of India and others*, reported at (2004) 4 SCC 311, where it was held that the deposit of seventy-five per cent of the claim as pre-condition for preferring an appeal under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 was oppressive, onerous and arbitrary. It is submitted that, similarly, the pre-condition of deposit of fifty per cent of the assessed amount as pre-condition for preferring an appeal under Section 127 of the 2003 Act, coupled with the fact that Section 145 of the 2003 Act deprives consumers from approaching civil courts, is equally oppressive.
25. Due to non-application of mind while passing the final order of assessment by the assessing officer without considering the relevant documents and with a pre-disposed mind tantamounts to non-application of mind, which renders the assessment without jurisdiction. In support of such contention, learned counsel cites *Tamilnad Mercantile Bank Shareholders Welfare Association Vs. S.C.*

Sekar and others, reported at (2009) 2 SCC 784 and *Oryx Fisheries (P) Ltd. Vs. Union of India*, reported at (2010) 13 SCC 427.

26. An exercise without jurisdiction is a nullity and does not exist in the eye of law, it is contended. Learned counsel also relies on a co-ordinate Bench judgment in *W.B. State Electricity Distribution Company Limited Vs. Jadavpur Tea Co. Ltd.*, reported at (2011) 4 CHN 204 to argue that the decision of the authority is with a closed mind, as only the amounts suffered by the WBSEDCL are calculated.
27. It is submitted that the assessment orders are made only on the basis of materials known to the authorities, copies of which are not given to the consumer. Hence, the principles of natural justice and fair play are violated as per *Kothari Filaments and another Vs. Commissioner of Customs (Port), Kolkata and others*, reported at (2009) 2 SCC 192.
28. It is submitted that there cannot be any estoppel against the statute and even consent of parties cannot confer jurisdiction on an authority lacking inherent jurisdiction. By placing reliance on *The King Emperor Vs. Khawaja Nazir Ahmed*, reported at AIR 1945 PC 18, it is argued that if a statute permits an authority to act in a particular way, the act must be done in that way or should not be done at all. Here, if the assessing officer comes to the conclusion that he is unable to arrive at any conclusion as to the period of such unauthorised use, the calculations in terms of Section 126(5) are arbitrary and perverse. Articles 21 and 22 of the Constitution, it is argued, demand a fair and just investigation by the investigating officer and a fair trial by the

courts, which is negated in cases of provisional and final orders of assessment under Section 126.

29. The plinth of the State's submission is that where the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by a public authority with an evil eye and an unequal hand so as to make unjust and illegal discrimination between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution.
30. In support of the proposition, learned counsel for the State places reliance on the United States Supreme Court judgment of *Yick Wo v. Hopkins, Sheriff, etc.* [(1886) SCC On Line US SC 188]. On such ground, the petitioners therein were discharged from custody and imprisonment since the US Supreme Court came to the finding that there was discrimination due to hostility to the petitioners' race and nationality.
31. It is argued by the State that there is no such instance of arbitrariness or discrimination in the present cases on the part of the State authorities or the WBSEDCL, for which the State refutes the challenge to the vires of Sections 126 and 135.
32. Learned counsel for the WBSEDCL highlights the necessity of enunciating the new Electricity Act, 2003, which has progressive features and seeks to strike the right balance between economic profitability and public purpose in the context of current realities in the Indian power sector.

33. Learned counsel distinguishes between Part XII of the 2003 Act, which contains provisions for inspection, assessment bill and appeal under Sections 126 and 127 of the Act, and Part XIV, which deals with penalty and punishment and includes Section 135.
34. Under Section 154, Special Courts have been designated to determine criminal as well as civil liabilities.
35. Whereas Section 126 deals with unauthorized use of electricity and civil liabilities, Section 127 provides for appeal against the final assessment upon compliance with principles of Natural Justice.
36. Section 135, on the other hand, deals with criminal liabilities.
37. 'Unauthorised use' of electricity contemplated under Section 126 is of much wider connotation than the limited definition of 'theft' under Section 135, it is submitted, and the standards of proof in deciding the two are distinct. The two operate on separate legal footings and there is no scope of 'pick and choose' by the authorities.
38. It is submitted that the petitioners in all the matters participated in hearing and only thereafter the final assessments were made. Therefore, there has been no violation of any principle of Natural Justice.
39. The WBSEDCL cites *Cal. Electric Supply Corpn. Ltd. and another Vs. Kalavanti Doshi Trust and others*, reported at (2011) 1 CHN 182 for the proposition that if on the date of presentation of the writ petition the remedy of the petitioners was totally barred, the writ court ought not to invoke its jurisdiction under Article 226 of the Constitution of India.

- 40.** It is submitted that in *Sri Seetaram Rice Mill's Case*, which was also followed by a Division Bench of the Punjab and Haryana High Court in *LPA 1900 of 2011*, there is a clear distinction between cases under Section 126 on the one hand and Section 135 on the other. There is no commonality between them in law and they operate in distinct fields.
- 41.** Learned counsel for the WBSEDCL also cites *M/s. Orion Metals (supra)* to argue that all instances of unauthorised use of energy may not amount to theft under Section 135 of the 2003 Act, but theft falls within the definition of unauthorised use of electricity as envisaged in Section 126. It is clear from Section 154 of the Act that a Special Court is designated for such purpose and is empowered to determine criminal proceedings as well as civil liability under Section 154(5). Section 154(6), it is argued, provides for refund in case of excess payment.
- 42.** The validity of Sections 126 and 135 of the 2003 Act came up for consideration before a Division Bench of the Gujarat High Court in *Ranchhod Bhai Vs. Union of India*, where the vires of Sections 126 and 135 was upheld. In *Satish Babubhai Patel* as well, the Division Bench of the Gujarat High Court in another case upheld the validity of Sections 126 and 135 of the 2003 Act.
- 43.** In *Duraisami Vs. Assistant Executive Engineer*, the Madras High Court held that demand made by the licensee in case of a theft of electrical energy, where there is some material remedy, does not render the relevant provisions of the 2003 Act ultravires.

44. Learned Counsel for the WBSEDCL also seeks to distinguish the judgments cited by the petitioners.
45. Although initially not a party to the writ petitions, the CESC Limited, which is also one of the largest distribution companies in West Bengal along with the WBSEDCL and is a stake-holder in the challenge to the vires of Sections 126 and 135 of the 2003 Act, seeks to be heard on the challenge to the vires. Hence, for a complete adjudication on the issue, the CESC is heard.
46. Learned counsel for the CESC submits that the 2003 Act was enacted for the reason of ensuring better regulatory, supervisory and revenue recovery system, as expressed in the objects and reasons of the 2003 Act, for which there was definite concerted effort in preventing unauthorised use of electricity on the one hand and theft on the other. For such proposition, learned counsel relies on *Executive Engineer, Southern Electricity Supply Co. of Orissa Ltd. V. Sri Seetaram Rice Mill*, reported at (2012) 2 SCC 108.
47. By placing reliance on the statement of objects and reasons for enacting the 2003 Act, learned counsel for the CESC stresses that provisions relating to theft of electricity have a revenue focus, which was also spelt out in *WBSEDCL v. Orion Metal (P) Ltd.*, reported at (2020)18 SCC 588.
48. Learned counsel next cites *Satish Babubhai Patel v. Union of India &Ors.*, reported at 2013 SCC OnLine Guj 8680, where the Gujarat High Court upheld the vires of Sections 126 and 135. Hence, it is argued, the issue is no longer *res integra*.

49. Next relying on *Union of India v. Vipin Kumar Jain* [(2005) 9 SCC 579], learned counsel for the CESC contends that there is nothing inherently unconstitutional in permitting the assessing officer, who is an employee of the licensee, to gather information and assess the value of the information himself.
50. Learned counsel then cites *Executive Engineer, Southern Electricity Supply Company of Orissa Limited (SOUTHCO) & Anr. V. Sri Seetaram Rice Mill*, reported at (2012) 2 SCC 108, and *WBSEDCL and Others v. Orion Metal Private Limited and Another* [(2020) 18 SCC 588], to distinguish between Sections 126 and 135 and argues that there is no commonality between them in law. They operate in different and distinct fields and operate parallelly. The argument that Section 135 provides for harsher penalties is not tenable in the eye of law, since proceedings under the two provisions have different scopes.
51. It is further argued that the provisions of Sections 126 and 127 of the 2003 Act constitute between themselves a complete code in itself. Section 126 has a purpose to achieve, that is, to put an implied restriction on unauthorised consumption of electricity.
52. To test the constitutionality of an enactment, the CESC argues that its true nature and character, the area in which it is intended to operate, its purport and intent have to be determined. Moreover, it must be presumed that every statute is constitutionally valid. On these propositions, learned counsel cites *HamdardDawakhana v. Union of India*, reported at AIR 1960 SC 554.

53. Learned counsel contends that the petitioners have challenged the vires of Sections 126 and 135 two decades after the enactment of the 2003 Act, during which period the provisions withstood the test of time. Moreover, the challenge to the vires of the said provisions has already been negated by the Gujarat High Court.
54. Citing *PGF Ltd. V. Union of India*, reported at (2015) 13 SCC 50, it is contended that the Supreme Court noted that on very many occasions a challenge to a provision of law, as to its constitutionality, with a view to thwart the applicability and rigour of those provisions, serves as an escape route from the applicability of those provisions of law and thereby create an impediment for the authorities and the institutions concerned. The Court, while deciding such challenge, should also examine the extent of financial implications by virtue of the operation of the provision vis-à-vis the State and alleged extent of sufferance by the person who seeks to challenge based on the alleged invalidity of the provision with particular reference to the vires.
55. Sections 126 and 135 have been introduced in tune with the will of the people and are aimed at enhancing recovery of lost revenue and minimizing revenue loss.
56. For a complete adjudication on the vires of Sections 126 and 135 in the context of Section 154, the exact content of the said provisions is required to be set out:

“126. Assessment.—(1) *If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in 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.

(2) The order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such manner as may be prescribed.

(3) The person, on whom an order has been served under sub-section (2), shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who shall, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment within thirty days from the date of service of such order of provisional assessment, of the electricity charges payable by such person.

(4) Any person served with the order of provisional assessment may, accept such assessment and deposit the assessed amount with the licence 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 unauthorised 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 the section shall be made at a rate equal to twice the tariff applicable for the relevant category of services specified in sub-section (5).

Explanation.—For the purposes of this section,—

(a) “assessing officer” means an officer of a State Government or Board or licensee, as the case may be, designated as such by the State Government;

(b) “Unauthorised use of electricity” means the usage of electricity—
(i) by any artificial means; or
(ii) by means not authorised by the concerned person or authority or licensee; or
(iii) through a tampered meter; or
(iv) for the purpose other than for which the usage of electricity was authorised; or
(v) for the premises or areas other than those for which the supply of electricity was authorised.

135. Theft of electricity.--*1) Whoever, dishonestly,—*

(a) taps, makes or causes to be made any connection with overhead, underground or underwater 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 destroys as to interfere with the proper or accurate metering of electricity; or

(d) uses electricity through a tampered meter; or

(e) uses electricity for the purpose other than for which the usage of electricity was authorised,

so as to abstract or consume or use electricity shall be punishable with imprisonment for a term which may be 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 authorised 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.

(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 or electricity, immediately disconnect the supply of electricity:

Provided that only such officer of the licensee or supplier, as authorised for the purpose by the Appropriate Commission or any other officer of the

licensee or supplier, as the case may, 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, authorised 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 facilitator or article which has been or is being used for unauthorised 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 of 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.

154. Procedure and power of Special Court.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), 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 140 and section 150 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 (2 of 1974), try the offence referred to in sections 135 to 140 and section 150 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 (2 of 1974), be deemed to have been tendered under section 307 thereof.

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

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

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

- 57.** It is evident from Section 126(1) of the 2003 Act that the provisional assessment is made on the basis of inspection made by the assessing officer, who must be a part of the inspecting team, and it is the conclusion of the assessing officer which is provisionally accepted in respect of unauthorised use of electricity. The provisional assessment is to be "to the best of his judgment".
- 58.** Hence, the best judgment rule is applicable and elaborate reasoning is not required to be given in the provisional assessment order.
- 59.** That apart, the argument of the petitioner that the principles of natural justice are violated cannot be applicable to the provisional assessment stage, since the accused person is served a copy of the

assessment order and has an opportunity under Section 126(3) to file objection and to have a reasonable opportunity of hearing, only after which a final order of assessment is passed.

60. It must be kept in mind that sub-sections (5) and (6) of Section 126 clearly stipulate the exact basis of calculation in the event the period of unauthorised use cannot be ascertained. Hence, some amount of credence has to be given to the judgment of the assessing officer, upon giving opportunity of hearing to the affected person.
61. However, the exercise is not judicial in nature and, as such, the detailed reasons required in, and the rigours of, an order passed by a court of law or judicial tribunal cannot be applied to assessments under Section 126 of the 2003 Act. It cannot be said merely on such premise that the provision is *ultra vires* the Constitution.
62. Insofar as the argument of it being open to the assessing authority, at his sweet will, to clamp Section 126 or Section 135, which have different penal consequences, is also not acceptable, since the two provisions operate in separate fields.
63. The law has been crystallized on the subject, which is evident from the judgments cited by the parties.
64. In *Sri Seetaram Rice Mill's* case, the Supreme Court categorically held that the provisions of Section 126, read with Section 127 of the 2003 Act, are a code in themselves. Right from the initiation of the proceedings by conducting an inspection, to the right to file an appeal before the appellate authority, all matters are squarely covered under the said provisions, which specifically provide the method of

computation of the amount that a consumer would be liable to pay for excessive consumption of the electricity and for the manner of conducting the assessment proceedings. Thus, Section 126 has a purpose to achieve, that is, to put an implied restriction on such unauthorised consumption of electricity. The Supreme Court held that this defined legislative purpose cannot be permitted to be frustrated by interpreting a provision in a manner not intended in law. The principle of purposive interpretation would have to be applied in preference to textual interpretation of the provisions of Section 126.

- 65.** The Supreme Court went on to observe that the objects and reasons for enacting an Act are relevant considerations for the court while applying various principles of interpretation of statutes. In this context, it is argued that the discussion of the Standing Committee of Energy, 2001 was also considered while enacting the 2003 Act, which concluded that there is a need to provide safeguards to check the misuse of powers by unscrupulous elements. The Supreme Court further held that the provisions of Section 126 of the 2003 Act are self-explanatory, intended to cover situations other than the situations specifically covered under Section 135.
- 66.** In *Orion Metal (P) Ltd. (supra)*, it was held by the Supreme Court that the term “unauthorised use of energy” is of wide connotation. There may be cases of unauthorised use, not amounting to theft, namely, exceeding the sanctioned load or using the electricity in the premises where it is not authorised. But at the same time, when there is an allegation of unauthorised use of energy by tampering the meter, such

cases of unauthorised use of energy include ‘theft’ as defined under Section 135 of the Act. The power conferred on authorities for making assessments under Section 126(1) and the power of the Special Court to determine the civil liability under Section 154(5) of the 2003 Act in cases of theft cannot be said to be parallel to each other.

- 67.** The Supreme Court also held in *Orion Metal (P) Ltd. (supra)* that in cases of loss of energy on account of unauthorised use of energy not amounting to theft, it is always open for the authorities to assess the loss of energy by resorting to the power under Section 126(1) of the Act. In cases where the allegation is of unauthorised use of energy amounting to theft, apart from assessing in proceedings under Section 126(1) of the Act, a complaint also can be lodged alleging theft of energy as defined under Section 135(1) of the Act. In such cases, the Special Court is empowered to determine civil liability under Section 154(5) of the Act and on such determination, the excess amount, if any deposited by the petitioner, is to be refunded to the consumer.
- 68.** The Division Bench of the Gujarat High Court in *Ranchhod Bhai Vs. Union of India* dealt with a challenge thrown to the vires of Sections 126 and 135 of the 2003 Act. The scheme of the act was considered and the principle laid down in *Orion Metal (P) Ltd. (supra)* was reiterated. The court considered the issue as to whether legislatures have abdicated their power in favour of execution by delegating such legislative power to private persons and whether a private person has been delegated with the power of administering criminal justice system, for which the relevant provisions of law and the notifications,

resolutions and provisions made thereunder were considered. The Division Bench of the Gujarat High Court held that it cannot be stated that the authorities have been provided with unbridled power, as inspection is made under Section 126 in presence of the user of unauthorised electricity and in presence of other witnesses. Before the final assessment, a provisional assessment order is to be made, opportunity of objection and hearing is to be given to the person and then only the final order is passed, the legality and propriety of which can be challenged in an appeal under Section 127. Foolproof procedure having been laid down under the Act and the Rules framed thereunder, the delegation of such power cannot be held to be arbitrary, the court found.

- 69.** It was also observed that the officer of the licensee or supplier, whoever may be authorised, has not been empowered to take administration of criminal justice in his hands, for which Special Courts have been constituted under Section 153 of the 2003 Act, for trial of such offence under Section 135. The procedure to be adopted by the Special Court has also been prescribed under Section 154, which has also been empowered with the power of the court of sessions under Section 155. Against this decision, it was held, appeal and revision is maintainable before the High Court under Section 156.
- 70.** Thus, the vires of the said Sections were upheld.
- 71.** Another Division Bench of the same (Gujarat) High Court in *Satish Babubhai Patel (supra)* reiterated the proposition laid down in *Ranchhod Bhai's* case. From a reading of the Explanation below

Section 126, it was held that ‘assessing officer’ means an officer of the State Government or the Board or licensee, as the case may be, designated by the State Government. Assessment of electricity charges in case a person indulges in unauthorised use of electricity is not a duty of the legislature and it cannot be said in normal course that there is an ‘abdication’ of power or assessment in conferring the power to the delegate. The question decided was whether the power of assessment has been delegated by the legislature in favour of the licensee including an officer of the licensee. However, it was held to be evident from the Explanation below Section 126 that the ‘assessing officer’ has been defined to be an officer of the State Government or Board or licensee, who is to be designated by the State Government. The Division Bench went on to observe that it is a settled law that the legislature, as a part of its legislative function, can confer powers to make rules and regulations for carrying the enactment into operation and effect. Thus, the vires of Sections 126 and 135 was upheld following *Ranchhod Bhai’s* case.

- 72.** It is trite law, as reiterated in *Kusum Ingots and Alloys Limited (supra)*, that an order passed by any High Court in India on a writ petition questioning the constitutionality of a parliamentary act, whether interim or final, keeping in view Article 226(2), will have effect throughout the territory of India subject, of course, to the applicability of the Act.
- 73.** Hence, in the present case, since two Division Benches of the Gujarat High Court have categorically upheld the constitutionality of Sections

126 and 135 of the 2003 Act, judicial propriety demands that the ratio of the said judgment sought not to be deviated from, following the principle of *Kusum Ingots and Alloys Limited (supra)*.

- 74.** Again, in *Vipan Kumar Jain's* case, while considering similar provisions of the Income Tax Act, 1961, the Supreme Court observed that even though it could be said in a sense that the assessing officer was acting on behalf of the Revenue, nevertheless, there is no presumption of bias in such a situation. It was held there is nothing inherently unconstitutional in permitting the assessing officer to gather the information and to assess the value of the information himself. The Supreme Court held therein that the assessing officer's decision on the basis of material to which he had been witness in the course of the raid is not the final word in the matter, since the assessment order is appealable under the provisions of the statute itself and ultimately by way of judicial review. The question of bias has to be decided on the facts of each case.
- 75.** Such proposition is apt for the present case as well and applies squarely to the case at hand. The same ratio, as laid down by the Supreme Court, is fully applicable with regard to Section 126 assessments as well, vis-à-vis the 2003 Act.
- 76.** As held by a Five-Judge Bench of the Supreme Court in *Hamdard Dawakhana's* case, to ascertain the constitutionality of an enactment on the ground of violation of the Articles in Part III of the Constitution requires an assessments of its true nature and character, including its subject-matter, the area in which it is intended to operate, its purport

and intent. Another principle which was reiterated in the said judgment is that while examining the constitutionality of a statute it must be assumed that the legislature understands and appreciates the need of the people and the laws it enacts are directed to solve problems which are made manifest by experience and the elected representatives assembled in a legislature enact laws which they consider to be reasonable for the purpose for which they are enacted. Presumption, therefore, is in favour of the constitutionality of an enactment.

- 77.** Another perspective, as rightly argued by the CESC Limited, cannot be brushed away in the present case. The petitioners in all the present writ petitions have long exceeded the limitation period for preferring challenge to the final orders of assessment under Section 127 of the 2003 Act and have directly taken recourse to the present writ petitions. In *PDF Limited (supra)*, the Supreme Court aptly held that challenge to the validity of a statute, particularly by unscrupulous litigants raising such challenge only to avoid compliance, is to be taken note of.
- 78.** The law, as crystallised in the above decisions, hold the field and cannot be deviated from.
- 79.** Thus, the challenge of the petitioners to the vires of Section 126 and 135 of the 2003 Act fails on several grounds. Although there is some overlapping between the two Sections with regard to cases of tampering, there is no question of applying double standards for the same offence. In cases where ingredients of theft as well as

unauthorised use of electricity are both satisfied, the authorities can take steps by making assessment orders under Section 126 and proceeding with the criminal trial under Section 135 before the Special Court. The argument that the complainant is the prosecutor as well as the judge does not hold good, since the Special Court designated for such purpose has been empowered with the powers of a Sessions Judge and a full-fledged criminal trial is conducted before arriving at the conclusion that a person is guilty of theft of electricity. Thus, the allegation of theft, having criminal consequences, is not decided at all by any officer of the licensee.

- 80.** Insofar as the provisional assessment under Section 126(1) is concerned, there is no scope of hearing the accused person at that juncture, since the provisional assessment orders are not conclusive. In fact, a right of hearing is given to the consumer and an opportunity is also given for the consumer to file its written objection, prior to assessing the final order. If right of hearing is to be given to the consumer even before the provisional assessment is made, it would unnecessarily prolong an otherwise summary procedure and the expeditious time-line envisaged in the statute shall be defeated.
- 81.** Section 126(5) of the 2003 Act clearly delineates the procedure and method of computation with regard to such assessment, which cannot be said to be *ex facie* absurd or disproportionate.
- 82.** Moreover, the assessing officer shall be an appointee of the State Government, be it an officer of the Government or the licensee. Hence, there is an independent air about the assessing officer, who

does not function merely in the capacity of an employee of the licensee.

- 83.** In fact, the same logic is applicable to several other statutes. Glaring examples are the powers given to an Estate Officer under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and powers conferred on the banks and financial institutions under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.
- 84.** In view of the above discussions, it cannot be said that the assessing officer has unbridled power to exercise according to his whims and fancies in arriving at the final order of assessment. Hence, it is illogical to argue that the final order is merely a farce, requiring the Section itself to be struck down.
- 85.** On the other hand, Section 127 of the 2003 Act provides an independent appellate authority for challenge against the final assessment order. Hence, such orders are not inscrutable by superior forums.
- 86.** Insofar as the fifty per cent mandatory deposit envisaged under Section 127(2) for preferring an appeal is concerned, the same cannot be said to be exorbitant. In fact, such stipulation is squarely inconsonance with the purpose and objects of the 2003 Act, as discussed in *Sri Seetaram Rice Mill's* case.
- 87.** It would be entirely arbitrary for the court to sit in judgment, in a proceeding under Article 226 of the Constitution, over the propriety of the quantum required as pre-deposit for appeal under Section 127.

Certain decisions are best left to the legislature to decide in its own prudence, to maintain a balance of separation of powers, which is the bulwark of the Indian Constitution. The presumption ought to be that since the Legislature, in its wisdom, has fixed a particular amount as pre-requisite for preferring an appeal (which is not *prima facie* astronomically high), the same is backed by reasonable technical research and takes forward the purpose and objects of the statute, one of which is to deter rampant misuse and pilferage of energy, which is a limited commodity.

88. As regards the argument that orders under Section 126 are required to be backed up by reasons, it is well-settled that summary orders in the nature of an order of assessment under Section 126 need not be backed by elaborate reasoning on the same footing as the orders of a judicial forum or a court of law. The bills sent by the licensee are the outcome of orders of provisional and final assessment and, as such, it cannot be said that those are beyond the scope of the contemplation of the 2003 Act. Particularly, it has to be kept in mind that the Supreme Court categorically held in *Sri Seetaram Rice Mill's* case that Sections 126 and 127 are a complete code in themselves.
89. That apart, findings under Section 126 *per se* do not indict a person of theft, which charge has criminal consequences. The assessing officer merely calculates the loss suffered by the licensee for the unauthorized use of electricity. The question, whether the charge of theft has been established, is left for the decision of the Special Court, which holds a full-fledged criminal trial. Thus, there is no scope of

violation of Articles 19 or 21 of the Constitution of India in any manner whatsoever.

90. It is also provided in Section 114 of the Evidence Act that official and judicial acts have a presumption of correctness. Hence, there is no reason for the assessing officer appointed by the State, irrespective of whether he or she is a functionary of the licensee, to be presumed to conduct investigation in an unfair manner. The reasons given in the final order of assessment cannot be labelled as 'rubber stamp reasons' or 'pretence of reasons' as argued by the petitioners on such ground alone. Rather, there is some justification in functionaries of licensees, who are themselves technical personnel holding acumen on the subject, to be entrusted with the task of assessing such loss.
91. The Supreme Court has held time and again that Sections 126 and 135 operate on different footings and both proceedings can run parallelly in cases where there is overlapping between the allegations of theft and unauthorized use of electricity. However, *per se* such inter-play between the Sections cannot render the same ultravires the Constitution of India.
92. Insofar as the judgments cited by the petitioner are concerned, the same do not have any material bearing on the case for the reasons discussed below.
93. The judgment rendered by the Supreme Court in *Kerala State Electricity Board (supra)* deals with the question whether the consumption of electricity by the respondents (consumers) therein in excess of the connected load/contracted load would amount to

unauthorized use of electricity under explanation (b) to Section 126(6) of the 2003 Act.

94. The Supreme Court elaborately discussed the relevant provisions and considered the alleged inconsistency between the rules and regulations and the statute. Such decision, as such, cannot have any material bearing on the present consideration. The petitioner had sought to advance general propositions with regard to violation of Article 14 of the Constitution of India, which are not applicable to the present case at all. In case of *Kerala State Electricity Board (supra)*, the KERC Regulation 153(15) of the 2014 Code, was declared invalid, being inconsistent with Section 126. Such proposition does not render the Section itself unconstitutional, rather, it reiterates the validity of the Section, on the anvil of which the State Regulation was declared to be invalid.
95. Reliance placed by the petitioner on *Sri Seetaram Rice Mill's* case is misplaced, since the same clearly upholds the constitutionality of the sections-in-question.
96. The petitioner has cited several judgments, thereby resorting to unnecessary repetition on the proposition that the writ petition under Article 226 of the Constitution is maintainable in several cases, if the criteria stipulated therein are fulfilled.
97. However, there is nothing on record to indicate that the petitioners' time-barred challenge to their respective final orders of assessment by way of the writ petitions, thereby obliquely bypassing the statutory

remedy of Section 127 of the 2003 Act, has exposed any gross lacunae on the part of the authority fit for interference under Article 226.

98. In *Suraj Mall Mohhta and Co. (supra)* it was held, on the anvil of Article 14 of the Constitution, that the same rule of evidence and mode of procedure should be applied and available to everyone.
99. Such ratio is not attracted to the present case, since no distinction is made between persons between whom Sections 126 and 135 are respectively applicable. The two provisions do not provide mutually exclusive remedies, unlike the Income Tax Act provision discussed in *Suraj Mall (supra)* and *Minakhshi's* case.
100. There is no comparable yardstick between the said judgments and the case at hand, since Sections 126 and 135 operate in different fields, although there are overlapping features insofar as tampering of meter is concerned.
101. *P.N. Kaushal's* case, cited by the petitioner, speaks about unreasonable restrictions on the right to carry on business being violative of Article 19 of the Constitution. In the present case, however, there is nothing unreasonable nor any restriction on business, nor is there any unbridled power conferred on the licensee to invoke either Section 126 or Section 135 according to their whims and fancies. The Sections operate in specific modes as stipulated in the statute and there are several safeguards and checks in functionality of the Sections. Inasmuch as *K.S. Rashid's* case is concerned, the same follows the ratio of *Suraj Mall Mohhta and Co. (supra)* and need not be discussed separately in an elaborate manner.

- 102.** Inasmuch as the Division Bench decision of the Madhya Pradesh High Court is concerned, which was cited by the petitioner, the civil liability contemplated in Section 154 is to be determined by a Special Court and is dependent upon criminal liability being fixed under Section 135 of the 2003 Act. Hence, it cannot be said that the assessment made under Section 126 for unauthorised use operates within the same scope as determination of civil liability for theft under Section 154. The assessment under Section 154 is made not by an officer of the licensee but by a designated Special Court. In fact, the deposit made initially by the consumer is subjected to the final assessment made by the Special Court and the excess amount, if any, is to be refunded to the consumer under Section 154 (6) of the 2003 Act.
- 103.** As regards the proposition that access to justice is a part of the right to life, the said ratio, as reiterated in *Anita Kushwaha (supra)*, is well-settled and is undisputed. However, the petitioners have failed to demonstrate any manner in which access to justice has been curtailed by operation of Sections 126 and 135 of the 2003 Act.
- 104.** The judgments cited on the doctrine of *per incuriam* is entirely irrelevant in the present context, since *Sri Seetaram Rice Mill's* case, relied on by the petitioners to distinguish *Orion Metal (P) Ltd. (supra)*, bolsters the constitutionality of Sections 126 and 135.
- 105.** Particular instances of illegality committed by particular assessing officers in certain cases cannot render the statute itself unconstitutional. It is not the sections-in-question which encourage such unconstitutionality but stray acts of particular officers in certain

cases. Hence, the vires of Sections 126 and 135 cannot be said to be vitiated by such individual instances of illegality, if any. The Division Bench judgment of this Court in *Jadavpur Tea Co. Ltd.(supra)* proceeded on the line that a final order was passed with closed mind. However, the provisional and final orders of assessment under Section 126 need not necessarily be so, since a right of hearing is given to the consumer, including a right to file objection, which is to be considered while passing the final order of assessment.

- 106.** In any event, Section 127 provides a right of appeal against the same. The fifty per cent deposit pre-requisite is not *ex facie* contrary to law. Even appellate courts, under Order XLI Rule 5 (3) (c) of the Code of Civil Procedure, are empowered to direct deposit of security amount as pre-condition for stay. In fact, Order XVI Rule 1 (3) of the Code provides that where the appeal is against a decree for payment of money, the appellant shall deposit the amount disputed in the appeal or furnish security therefor. Again, Order XVI Rule 5 (1) stipulates that an appeal shall not operate as a stay of proceedings under a decree or order appealed from, unless stay order is actually passed. Hence, for all practical purposes, an appeal even under the Civil Procedure Code against a money decree is rendered infructuous unless the full decretal amount is secured. There is no conceivable reason why only fifty per cent shall not be deposited while filing an appeal under Section 127 of the 2003 Act. Individual instances of erroneous assessment cannot be cited to invalidate the provision itself.

- 107.** It is reiterated that the level of reasoning by the assessing officer while passing a final order of assessment cannot be equated with that a court of law and/or a judicial forum, in view of the inherent nature of such exercise, the guidelines for exercise of which are stipulated in Section 126(5) and (6) and by the Regulations formulated by the concerned Regulatory Commissions.
- 108.** Such exercise cannot be said to be *ex facie* orders without authority, which would render them a nullity. The judgments including *Vinay Tiyagi (supra)* cited by the petitioner with regard to fair and proper investigation pertain to criminal proceedings. It is a fundamental principle of criminal jurisprudence, which has been fully honoured in Sections 153 and 154 of the 2003 Act, by designation of Special Courts for adjudication of allegations of criminal offences including theft, as stipulated under Sections 135 to 140 of the 2003 Act, following the full rigour of a criminal trial, and consequential determination of civil liability.
- 109.** Hence, on a comprehensive assessment of the arguments made by the parties in the light of the cited judgments, it is evident that Sections 126 and 135, as held by the Division Benches of the Gujarat High Court, pass the test of constitutionality with flying colours.
- 110.** Insofar as the individual cases of the writ petitioners are concerned, the present writ petitioners have long overshoot the limitation period for preferring challenges under Section 127 of the 2003 Act. Moreover, there is nothing indicated in the impugned assessments which reek of palpable arbitrariness or patent perversity. As such, no

interference under Article 226 is deserved in any of the cases even on merits. Hence, WPA No.6237 of 2022, WPA No.10861 of 2022, WPA No. 6112 of 2022, WPA No.7584 of 2022 and WPA No.7652 of 2022 are dismissed on contest without any order as to costs.

- 111.** Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)