**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**Reserved On : 30.09.2024
CWP-12825-2016(O&M)
Date of decision: 15.10.2024**

Ishwar Singh

...Petitioner

VERSUS

Dakshin Haryana Bijli Vitran Nigam Limited (DHBVNL), Hisar and others

...Respondents

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

Present :- Dr. (Mr.) Surya Parkash, Advocate (through V.C.) and
Ms. S.K. Gill, Advocate (present in the Court)
for the petitioner.

Mr. Vipul Sharma, Advocate for the respondents.

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VINOD S. BHARDWAJ, J.

1. The effect of compounding under Section 152 of the Electricity Act, 2003 on the right of consumer to dispute the assessment in a case under Section 135 (1-A) of the Electricity Act, 2003 is an issue which comes up for consideration before this Court.

2. Challenge in the present petition is to the memo bearing no. 1867 dated 07.02.2014 **(Annexure P-14)** whereby demand of Rs. 8,84,671/- was raised against theft of electricity. A further challenge is also raised to the memo bearing no. 1868 dated 07.02.2014 **(Annexure P-15)** whereby a demand of Rs. 1,80,000/-raised for compounding of offence alongwith the permanent disconnection order dated 30.06.2014 **(Annexure P-20)**.

<u>Facts:-</u> (Petitioner)

3. Petitioner is running a factory under the name and style of M/s Luxmi Tyres in Narwana, District Jind. An electricity connection has been provided to the petitioner by the respondent distribution licensee vide account no G-1789-SP. On 18.09.2013, a sparking is claimed to have taken place in the electricity meter installed at the petitioner's factory premises about which he informed respondent no. 4 i.e. SDO, DHBVNL, Narwana, Dist. Jind vide letter dated 18.09.2013**(Annexure P-1)** and requested for checking of the same.

4. It is further averred the meter of the petitioner got burnt on 28.10.2013 and vide application dated 28.10.2013 **(Annexure P-2)** he requested respondent no. 4 to check the same and change the meter. The employees of the respondent distribution licensee visited the premises of the petitioner on 29.10.2013and since the meter was burnt, the lineman i.e. Sulekh Raj started a direct electricity supply by circumventing the meter.

5. Petitioner claims to have approached the office of respondent distribution licensee for installation of new meter at his factory premises and deposited Rs. 3100/- against the receipt no. 285 on 22.11.2013 **(Annexure P-4)**. On deposit of the said charge by the petitioner Meter Change Order of the even date was prepared **(Annexure P-5).**

6. On 27.11.2013, a team of the respondent distribution licensee raided the premises of the petitioner and inspected the electric meter and made a case of theft of electricity on the ground that during checking, the

supply was found to be direct and by circumventing the meter and a checking report was prepared **(Annexure P-6)**.

7. On 28.11.2013, employees of the respondent distribution licensee again visited the premises of the petitioner and checked electric load. Another checking report was prepared in which the electric load was shown to be 10.057 KW against the sanctioned load of 17.546 KW **(Annexure P-7)**.

8. Order of assessment for offence of theft of electricity was issued vide memo no. 1525 dated 05.12.2013 **(Annexure P-8)** by the officials of the respondent distribution licensee whereby the petitioner was directed to deposit amount of Rs. 8,84,671/- and memo no. 1526 dated 05.12.2013 **(Annexure P-9)** for compounding of the offence of theft of electricity was also issued calling upon the petitioner to deposit an amount of Rs. 2,00,000/- qua the same.

9. Petitioner filed an appeal against the abovesaid order of assessment before respondent no. 2 i.e. Executive Engineer (Operation), DHBVNL, Narwana, Dist. Jind on 10.12.2013. On 13.01.2014 **(Annexure P-10)** vide memo no. SPL-I respondent no. 4 withdrew the above notices issued for theft of electricity and compounding of the same. Thereafter the meter of the petitioner was also replaced. An average consumption bill was issued to the petitioner and subsequent bills were issued on the basis of actual consumption.

10. However, respondent no. 4 again issued a letter to the petitioner on 07.02.2014 vide memo no. 1866 **(Annexure P-13)** whereby it was informed to him that the earlier letter bearing memo no. SPL-I

dated 13.01.2014 withdrawing the memo dated 05.12.2023 was withdrawn. The same was done without giving any opportunity of hearing or conveying any reason to the petitioner.

11. Respondent no. 4 again issued an order of assessment for theft of electricity vide memo no. 1867 dated 07.02.2014 **(Annexure P-14)** giving reference to the checking conducted on 27.11.2013 and asked the petitioner to deposit an amount of Rs. 8,84,671/- for theft of electricity and vide memo no. 1868 **(Annexure P-15)** dated 07.02.2014 directed the petitioner to deposit Rs. 1,80,000/- for compounding the offence.

12. Aggrieved against the action of the respondents, the petitioner instituted Civil Suit before the Civil Judge, Narwana challenging the Checking Report. Vide order 20.02.2014 **(Annexure P-16)** the Civil Judge directed that the Appellate authority should grant reasonable opportunity of hearing to the petitioner and to consider the matter afresh and further directed the petitioner to pay full compounding charges.

13. In compliance of the above order, petitioner deposited the compounding charges of Rs. 1,80,000/- vide receipt no. 080731 on 10.03.2014 **(Annexure P-18)**. However, even after depositing of the compounding charges the respondent distribution licensee issued bill no. 138 dated 09.04.2014 **(Annexure P-19)** for Rs. 9,62,874/- which included the penalty amount and later on respondent no.4 issued Permanent Disconnection Order on 30.06.2014 **(Annexure P-20)**.

14. Aggrieved thereof, the present petition has been filed.

Reply:

15. The respondent-Distribution Licensee filed its reply wherein it was averred that the lineman never released any direct connection and that the same was undertaken by the petitioner himself at his own level. A routine checking was done when theft of electricity was detected in the presence of an employee namely Satpal, who locked the premises and ran away on detection of theft of electricity. The same was duly mentioned in the checking report dated 27.11.2013. The memo Nos.1525 and 1526 dated 05.12.2013 were issued but they were mistakenly withdrawn by the Executive Engineer (Op.), Dakshin Haryana Bijli Vitran Nigam Limited through memo No. SPL-I dated 13.01.2014. A revised memo for the same was issued on detection of mistake and instruction from the office of Chief General Manager (Commercial) dated 08.01.2014. It is also stated that an interim order was initially passed in favour of the petitioner against which an appeal was filed. The order of status quo was set aside in appeal. On remand, the Civil Judge (Jr. Divn.), Narwana directing petitioner to deposit 5% amount but petitioner withdrew the Civil Suit on 18.07.2016. Relevant averments in the reply read thus:

> ***"11. That the contents of Para no. 11 are a matter of record, however, it is pertinent to mention here that the raid was conducted in the presence of the authorized person of the petitioner named Sh. Satpal which was verified in by the neighbours present there. Moreover, when the case of electricity theft was made out said Sh. Satpal locked the premises and ran away. The said fact has been mentioned***

in the checking report dated 27.11.2013, which is attached as Annexure R-4.

12. That the contents of Para no. 12 are wrong and hence denied. It is worthwhile to mention here that burning of meter doesn't give any one a right to make a direct connection of electricity bypassing the meter. The said Memos no. 1525 and 1526 raising a demand of Rs. 8,84,671/- (towards penalty) and Rs. 1,80,000/- (towards compounding) were issued after following the due procedure and providing reasonable opportunity to the petitioner to give explanations for the same.

13. That the contents of Para no. 13 are a matter of record. The said memo no 1525 and 1526 were mistakenly withdrawn by Executive Engineer (Operation) Div. DHBVN, Narwana through Memo no SPI-I dated 13.01.2014. The revised demand of Rs. 8,84,671/ was made on 07.02.2014 vide Memo no. 1867 when the instructions were received from the office of the Chief General Manager (Commercial) vide Endst No. Ch-2/SE/C/318-J dt 08.01.2014. In the said Memo noting was made the Chief General Manager (Commercial) that the "Return in Original with the direction that Nigam instruction regarding theft of energy are very clear, therefore action be taken accordingly." And subsequently Deputy General Manager (Operation) Div.

DHBVN, Narwana vide Memo no. CH-130/AB-20 dated 06.02.2014 directed to take immediate action in order to prevent loss of revenue to Nigam The copies of said Memos dated 08.01.2014 & 06.02.2014 are attached herewith as Annexure-R-5 and R-6 respectively.

14. That the contents of Para no. 14 are a matter of record. It is pertinent to mention here that the average bills for the period of 01.11.2013 to 30.11.2013 and 30.11.2013 to 30.12.2013 were issued to the petitioner pending the inquiry regarding the alleged theft of electricity by the petitioner. The said inquiry/clarification was made after the memo no 1525 and 1526 were mistakenly withdrawn by Executive Engineer (Operation) Div. DHBVN, Narwana through Memo no SPI-I dated 13.01.2014. The revised demand of Rs. 8,84,671/ was made on 07.02.2014 vide Memo no. 1867 when the instructions were received from the office of the Chief General Manager (Commercial) vide Endst No. Ch-2/SE/C/318-J dt. 08.01.2014. In the said Memo noting was made the Chief General Manager (Commercial) that the "Return in Original with the direction that Nigam instruction regarding theft of energy are very clear, therefore action be taken accordingly." And subsequently Deputy General Manager (Operation) Div. DHBVN, Narwana vide Memo no. CH-130/AB-20 dated 06.02.2014

directed to take immediate action in order to prevent loss of revenue to Nigam.

15. That the contents of Para no. 15 are denied to the extent that the petitioner was not given any opportunity of hearing. The said Memo no 1866 dated 07.02.2014 was issued after getting the clarifications and instructions from the Chief General Manager (Commercial) regarding the alleged theft of electricity. The petitioner was well versed with case as his premises were raided by vigilance team in his presence and the load was also checked in his presence and he was not able to give any satisfactory reason for his bypassing the meter. Moreover he had earlier made his representation before the Executive Engineer (Operation) Div. DHBVN, Narwana, which was duly given entertained by the authorities.

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22. That the contents of para no 22 are correct. It is pertinent to mention here that the petitioner filed a suit for declaration before Civil Judge (Jr. Div.) Narwana and order for status quo was issued, and electricity was not to be disconnected for non- payment of the disputed amount. Nigam filed an appeal against this order before the Court of District Judge, Jind and the appellate court disposed of the appeal with the remarks that "Learned lower court has not disposed of the injunction application on merits" and sent

back the case file to the lower court for deciding the injunction application on merits.

23. That the contents of Para No. 23 are wrong and hence denied. It is after the order of the Learned Court of Civil Judge (Jr. Div.), Narwana which directed the petitioner to deposit 50% amount of the penalty that the petitioner decided to withdraw his case. Subsequently the suit before the lower court was withdrawn on 18.07.2016. A copy of the said order for allowing withdrawal of the suit is annexed herewith as Annexure R-8. The petitioner even after being acquainted with the procedure chose to bypass the law as set herein and approached this Hon'ble Court directly, instead of going to the courts specially setup for this procedure.".

16. Even though the above reply was filed in the year 2019 but no replication disputing or denying the averments of the respondent-Distribution Licensee was filed. The reply and its averments thus remained uncontroverted.

Arguments by the Petitioner: -

17. Learned counsel for the petitioner contends that he is being penalized for no fault and despite following all the rules and regulations of the electricity department. He states that the petitioner has been vigilant and compliant in making payments against the electricity bills and it was the defective meter that led to the start of ordeal leading him to knock at the door of this court.

18. He vehemently contends that the electricity meter was faulty and as soon as spark erupted in the meter and deficiency was detected, the petitioner immediately informed the respondents for getting the same checked and changed, but no action was taken by them. On 28.10.2013, when the meter block got burnt, the petitioner again immediately informed the respondents and on 29.10.2013. The employees of the respondent distribution licensee which included one lineman Sulekh Raj among them visited the premises of the petitioner and when they were unable to restore electricity through the defective meter, it was circumvented by them and direct supply of electricity was provided at the petitioner's premises for the time being till the meter gets replaced or restored.

19. He further submits that as per the Sales Circular No. U/27/2013 dated 24.06.2013 issued by the Chief General Manager/Commercial, UHBVN, Panchkula, the defective meter was required to be replaced within 7 days of checking and a burnt meter was to be replaced within 24 hours of payment of charges by the consumer. In cases of burnt meter, during the defect period, the consumer is to be billed provisionally on the basis of average consumption of the past six months. He further contends that it is common practice with the respondents that when the meter becomes defective or is burnt, they make the supply direct and issue average consumption bill during the period when the meter was not replaced. He states that since the respondents were not having the new meter for replacement within 24 hours, the officials made the electricity supply directly by circumventing the meter.

20. He contends that when the petitioner did not get any intimation from the respondents, he visited their office on 22.11.2013 and also deposited the meter change cost of Rs. 3100/-. However, rather than changing the meter of the petitioner the respondent distribution licensee decided to take out shoddy investigation implicating the petitioner for no fault of his and conducted checking at the premises of the petitioner on 27.11.2013 and made a case of theft of electricity since the electricity to the premises was being supplied directly, he contends that the same was done by the employees of the respondent distribution licensee itself and the petitioner was not at fault.

21. Learned Counsel for the petitioner further states that a demand of Rs. 8,84,671/- and compounding fee of Rs. 2,00,000/- was issued by respondent no. 4 for theft of electricity vide memo dated 05.12.2013 which such demand was challenged by the petitioner before the appellate authority and as soon as the same was challenged, respondent no. 4 withdrew the memo dated 05.12.2013. He contends that the said action of withdrawal is to be clearly construed that the case of theft of electricity was an implanted one.

22. It is further argued that as soon as the petitioner thought of his ordeal to have ended but to his dismay the order of withdrawal passed by respondent no. 4 was again withdrawn by him and impugned notices dated 7.02.2014 for payment of Rs. 8,84,671/- and compounding fee of Rs. 1,80,000/- was again asked from the petitioner for theft of electricity. He vehemently contends that once the earlier notices issued for theft of electricity and compounding of the same was withdrawn, the respondents

could not have again issued the same without granting an opportunity of hearing to the petitioner.

23. That against the impugned notices the petitioner approached the civil court which was pleased to pass an order dated 20.02.2014 of maintaining status quo ante qua the supply of electricity and further directed the petitioner to pay full compounding charges which was duly complied by the petitioner. However this did not stop the respondents and they in violation of the stay orders issued bill amounting to Rs. 9,62,874/- which included the penalty amount and the same was disputed by the petitioner against which in a high-handed manner and in total disregard of the law and regulations in place, the respondent authority issued permanent disconnection order on 30.06.2014.

24. He contends that the case against the petitioner is an implanted one and the respondent authorities have acted in a high handed; arbitrary and illegal manner by wrongfully fastening the liability on the petitioner. The liability of defective meter is being passed along as a theft of electricity case and it was the employees of the respondent distribution licensee who circumvented the meter and provided direct supply of electricity in the premises of the petitioner and he was nowhere at fault.

25. No other argument or judgment has been referred by the petitioner.

Arguments by the Respondents: -

26. Learned Counsel appearing on behalf of the respondents contends that Reply by way of affidavit of Sh. Amit Kumar, SDO 'OP' S/Divn., DHBVN, Narwana has been filed on behalf of all the

respondents whereby all the arguments and contentions raised by the petitioner in the present petition has been thwarted and negated. He states that before going into the merits of the case at the outset he would like to mention that in compliance of the order dated 27.06.2016 passed by this court the officials of the respondent distribution licensee visited the premises of the petitioner for restoration of electricity but the same was refused by the petitioner.

27. He vehemently contends that it was the petitioner himself who started the direct supply of electricity by circumventing meter into his premises and not the officials as claimed by him and that there is no such norm or practice prevalent in the electricity department whereby the meter is circumvented and direct supply is made.

28. He further contends that the reliance of the petitioner on the Sales Circular No. U/27/2013 dated 24.06.2013 issued by the Chief General Manager/Commercial, UHBVN, Panchkula, is misplaced as the said circular is applicable on UHBVN and not on the respondents i.e. DHBVN. He also contends that nowhere in the said circular it is mentioned that if meter is burnt then the supply is to be made directly.

29. He contends that the petitioner is trying to take benefit of his own wrong and is falsely presenting the present case to be of implantation, rather, the raiding team which checked the premises of the petitioner was on routine checking when they found and detected the illegality committed by the petitioner and hence reported the matter. He contends that the argument of the petitioner that the checking was conducted in his absence is also wrong as the raid was conducted in the

presence of the Authorised representative of the petitioner one Mr. Satpal which was also verified by the neighbours and the said Authorised representative ran away by locking the premises when the case of electricity theft was made out which is also mentioned in the checking report dated 27.11.2013.

30. He further contends that the argument of the petitioner with regard to withdrawal of first issued memo demanding charges for theft of electricity and compounding of the same proves his innocence is highly misplaced as the said memo issued was withdrawn due to miscommunication and mistake between the authorities and later on when all the facts and records of the case were put before the authorities it was decided that action be initiated as per DHBVN Sale Instruction No. 24/2010 for theft of electricity.

31. He further contends that the petitioner has not brought in complete facts of the case and has not come with clean hands as he has nowhere disclosed that when the Civil Court asked for deposit of 50% penalty amount, he chose to withdraw and is projecting as if the earlier interim order of the court is final order. The appeal of the department against the interim order was allowed. He contends that once the compounding charges are paid by the party accused of theft of electricity to save themselves from the criminal liability, then the presumption in law operates against them. He cannot thereafter allege that no theft of electricity had taken place.

32. He contends that it was not the respondents who are at faultor can be blamed for the callous attitude of the petitioner. Moreover, the

petitioners cannot be allowed to blow hot and cold at the same time The petitioner should have availed remedy given under the electricity act and the fact that he has bypassed the said provision shows his malafide.

33. No other argument or judgment has been referred by the respondent.

<u>Consideration: -</u>

34. I have heard the learned counsel for the respective parties gone through the documents available on record and facts of the case with their able assistance.

35. The undisputed facts which are established are that there was a direct supply of electricity to the premises of the petitioner against which assessment demand under Section 135(1-A) of the Electricity Act, 2003 and compounding charges under Section 152 of the Electricity Act, 2003 were conveyed. The withdrawal of the demand under a mistake by the Executive Engineer and re-issuance thereof also remain undisputed. Even though counsel had argued that an appeal had been preferred against the assessment on which the demand was withdrawn but the said argument does not seem to hold good, not only for denial of the same, but also for the reason that the Electricity Act, 2003 did not provide any remedy of appeal against an assessed demand under Section 135 (1-A) of the Electricity Act, 2003. The only remedy is determination of civil liability by the Special Court under Section 154 of the Electricity Act, 2003.

36. It is also not in dispute that the petitioner withdrew his civil suit and deposited the compounding charges under Section 152 of the

Electricity Act, 2003 as a result whereof the criminal proceedings were never initiated.

37. In the said background, the core question which arises for consideration is whether a consumer can dispute a factum of theft of electricity once he has deposited the compounding charges and as to whether a disputed factual aspect can be accepted solely on the basis of oral claim. The effect of compounding and whether it act as a waiver against disputing the offence thus needs to be determined by this Court.

38. The facts of the present case and arguments advanced by the parties portrays a picture of "your word vs my word". The counsel for the petitioner on the one hand contends that the direct supply of electricity into the premises by circumventing the meter was done by the employees of the respondent distribution licensee and he is being made a scapegoat, while the counsel for the respondents, on the other hand disputes the fact by negating the same and contesting that the same was done by the petitioner himself and now he is trying to assign the wrong upon the employees of the respondent distribution licensee to save his own skin.

39. The arguments advanced by counsel for the petitioner with regards to the case being one of implantation and there being normal practice of directly providing electricity supply to the premises in case meter being not replaced within 24 hours and the applicability of Sales Circular No. U/27/2013 dated 24.06.2013 are all denied by the respondents in their written statement filed on 17.08.2019 asserting that the circular is not applicable to the respondents and that there is no normal practice of direct supply of electricity by circumventing of meter and

checking being conducted in the presence of Authorized representative of the petitioner who ran away as soon as the case of theft was made out. No replication to the said reply has been filed by the petitioner denying the same despite the reply being filed in the year 2019 nor any document has been adduced controverting the stand of the respondents.

40. The petitioner undisputedly opted for Compounding of offence under section 152 of the Electricity Act, 2003 and deposited the compounding amount of Rs.1,80,000/- with the respondent distribution licensee.

41. In the Concise Oxford Dictionary in Law, the meaning for the word "compound" is given as: "(a) condone a liability or offence in exchange for money etc., (b) forbear from prosecuting (a felony) from private motives, and Law come to terms with a person, for foregoing a claim etc., for an offence". For the expression "compounding" in Ramanathan Aiyar's Law Lexicon, the following meaning is given: 'Arranging, coming to terms; condone for money; arranging with the creditor to his satisfaction'. For the expression "compounding felony of offence", the meaning given is "Compounding an offence is defined to be" the offence of taking a reward for forbearing to prosecute a felony; as where the party robbed takes his goods again or other amends upon an agreement not to prosecute." In other words, it means an agreement with the criminal not to prosecute him. It is also equally well settled that if a person opts for compounding of an offence or irregularity it means accepting the acquiescence or irregularity committed or the violation of the statutory provision, and by compounding the offence, the person who

is seeking permission or is permitted to compound, admits and does not dispute the irregularity or violation. The reason behind seeking such a compounding cannot be gone into when there is no challenge to the compounding itself.

42. The decision to seek compounding is thus presumed in law to be voluntary and wilful. The petitioner has chosen to accept and to act upon the compounding but is seeking to escape the civil liability. Ordinarily, a compounding is only an escape from prosecution (in a criminal matter) and is not an exemption from civil liability, which is an independent enforceable right of the distribution licensee.

43. The scheme of the Electricity Act, 2003 envisages different grievances Redressal forums for different type of disputes. Where a dispute raised by the consumer is w.r.t. any levy/demand or tariff, the remedy as per statute, is prescribed under Section 42(5) and 42(7) of the Electricity Act, 2003. Where the dispute is about an unauthorised use, the remedy is to be pursued as per Sections 126 and 127 of the Electricity Act, 2003. In the case of theft, the assessed demand is technically a claim under Section 135 (1-A) of the Electricity Act, 2003 which only is a pre-deposit to be made in case the consumer wants a restoration of the electricity supply. The civil liability is required to be determined by the Special Courts under Section 154 of the Electricity Act, 2003. In the event of pre-deposit exceeding the assessed civil liability by the Special Court, the excess amount has to be refunded alongwith interest. The said liability was to be determined only in an event a consumer disputes and contests the element and allegations of theft. Having opted to seek

compounding, he agrees not to dispute or contest the allegation/charge levelled against him. In such a case scenario, there is no occasion to deny payment of assessed demand by denying the allegation of theft.

44. It would also be necessary to refer to the above referred provisions of the Electricity Act, 2003:-

"**<u>Section 42</u>**

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(5) Every distribution licensee shall, within six months from the appointed date or date of grant of licence, whichever is earlier, establish a forum for redressal of grievances of the consumers in accordance with the guidelines as may be specified by the State Commission.

(6) Any consumer, who is aggrieved by non-redressal of his grievances under sub-section (5), may make a representation for the redressal of his grievance to an authority to be known as Ombudsman to be appointed or designated by the State Commission.

(7) The Ombudsman shall settle the grievance of the consumer within such time and in such manner as may be specified by the State Commission.

Section 126: (Assessment):

(1) If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection

of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorized use of electricity, he shall provisionally assess to the best of his judgement the electricity charges payable by such person or by any other person benefited by such use.

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

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

(4) Any person served with the order of provisional assessment, may, accept such assessment and deposit the assessed amount with the licensee within seven days of service of such provisional assessment order upon him:

[2][***]

[3][(5) If the assessing officer reaches to the conclusion that unauthorised use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorized use of electricity has taken place and if, however, the period during which such unauthorised use of electricity has taken place cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection.]

(6) The assessment under this section shall be made at a rate equal to [1][twice] the tariff rates applicable for the relevant category of services specified in sub-section (5).

Explanation.- For the purposes of this section,-

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

(b) "unauthorised use of electricity" means the usage of electricity –

(i) by any artificial means; or

(ii) by a means not authorised by the concerned person or authority or licensee; or

(iii) through a tampered meter; or

[2][(iv) for the purpose other than for which the usage of electricity was authorised; or

(v) for the premises or areas other than those for which the supply of electricity was authorized."]

Section 127. (Appeal to Appellate Authority):

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

(2) No appeal against an order of assessment under sub-section (1) shall be entertained unless an amount equal to 3[half of the assessed amount] is deposited in cash or by way of bank draft with the licensee and documentary evidence of such deposit has been enclosed along with the appeal.

(3) The appellate authority referred to in sub-section (1) shall dispose of the appeal after hearing the parties and pass appropriate order and send copy of the order to the assessing officer and the appellant.

(4) The order of the appellate authority referred to in sub-section (1) passed under sub-section (3) shall be final.

(5) No appeal shall lie to the appellate authority referred to in sub-section (1) against the final order made with

the consent of the parties. (6) When a person defaults in making payment of assessed amount, he, in addition to the assessed amount shall be liable to pay, on the expiry of thirty days from the date of order of assessment, an amount of interest at the rate of sixteen per cent, per annum compounded every six months.

"***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, or***

d) ***uses electricity through a tampered meter; or***

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

so as to abstract or consume or use electricity shall be punishable with imprisonment for a term which may extend to three years or with fine or with both:

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) <u>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</u>:

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.]

Section 152. (Compounding of offences): ---

(1) Notwithstanding anything contained in the Code of Criminal Procedure 1973 (2 of 1974), 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.

<u>Section 154. (Procedure and power of Special Court):</u> ---

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence punishable under [2sections 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.

xxxx

(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) <u>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</u>

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."

45. Evidently, as per the statutory scheme, the determination of civil liability is incidental to proceedings in the criminal case and once the consumer seeks compounding of the criminal offence, he closes the dispute alongwith his right to deny or dispute the charge of theft.

46. The present case about disputing the liability is not on a ground that the demand suffers from some error of a factor or calculation but instead, is based on denial of the occurrence of theft. The said aspect, in my opinion cannot now be re-agitated as the compounding by the petitioner is not by an act of fraud or coercion but is rather a voluntary act.

47. Compounding of a criminal case does not automatically discharge civil liability arising from the same incident. There has to be a separate specific settlement for the same. The scheme of the Electricity Act, 2003 treats Section 126 and Section 135 on distinct and separate footing and even both proceedings may run parallely. While determination of civil liability under Section 126 of the Electricity Act, 2003 is done by the departmental authority, the determination of civil liability is done by an independent authority i.e. the Special Court. The same is undertaken in exercise of jurisdiction in proceedings under Section 154 of the Electricity Act, 2003. The determination of civil liability is integrally dependent on the determination of criminal liability. Further, an assessment under Section 126 of the Electricity Act, 2003 is excluded from the purview of Section 154 of the Electricity Act, 2003. The deposit demanded under Section 135 (1-A) (proviso) of the Electricity Act, 2003 uses the expression "**assessed amount**" whereas Section 126 of the Electricity Act, 2003 takes of "**assessment of the electricity charges payable"**. The expression "**assessment of the electricity charges**" is absent in the assessed amount under Section 135 (1-A) (proviso) and Section 154 (6) of the Electricity Act, 2003 talks of refund of the "**amount deposited**", which is the assessed amount under

Section 135 (1-A) (proviso), as compared to civil liability determined under Section 154(5) of the Electricity Act, 2003 read with the explanation. Thus, there are multiple points of differences' in both the demands.

48. The entitlement of a refund thus can only be ordered by a Special Court under Section 154 (6) of the Electricity Act, 2003, following determination of civil liability. The statutory provisions not being under challenge, they need to be interpreted harmoniously. Since, the statutory scheme pre-supposes initiation and institution of criminal proceedings, as an essential pre-condition for determination of civil liability, it also perceives that where a person seeks compounding of the theft charge, he does not dispute the allegations and hence would be deemed to have waived of seeking determination of civil liability by the Special Court. Since there is no power vested in the licensee to determine the civil liability, on occurrence of a theft, hence, the same remains undetermined and the assessed amount under Section 135 (1-A) (proviso) of the Electricity Act, 2003, on payment, vests a right with the consumer to seek restoration. Hence, interests of both parties get protected and the matter need not be adjudicated any further.

49. The position in law is also well settled that compounding of an offence does not necessarily erase the civil liability. Unless there is an agreement to the contrary, the licensee/utility may still pursue enforcement of its civil rights. Compounding thus reduces the legal consequences but may not exonerate of all the liabilities. The erosion of civil liability, on compounding, thus has to be express.

50. In addition to the substantive statutory provisions above, Clause 7 of the Electricity Supply Code also deals with theft of electricity and provides the procedure to be followed in the case of theft of electricity in Clause 7.2. Some of the relevant Clauses read thus:-

> "7.2.15 In case on inspection of the premises sufficient evidence is found to establish that any artificial means or means not authorized by the 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 abstraction, consumption or use of electricity has been dishonestly caused by such consumer.
>
> 7.2.16 Whether the seizure under Regulation 7.2.12 results in disconnection of supply to the consumer or not, the licensee or supplier, as the case may be, upon detection of such theft of electricity, immediately disconnect the supply from a point further away from the connection point as per Section 135 sub-clause (1A) of the Act to ensure that the consumer does not reconnect the supply and further theft does not take place.
>
> Provided that the supply shall be disconnected under the order of an officer of the rank higher than the rank of authorized officer who carried out the

inspection and such officer shall not be below the rank of SDO.

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7.6 Compounding of offence:

7.6.1 In case it is a first offence under Section 135 of the Act, then the person may request the officer authorized by the State Government under Section 152 of the Act, for compounding of offence in the prescribed format. The authorized officer shall hear the person and the assessing officer or his authorized representative and thereafter, after orders from such authorized officer, the amount for compounding of offence shall be deposited by the person with the State in the same manner as prescribed for depositing the fines imposed by the courts.

The charges for compounding of the offence shall be as mentioned under Section 152 of the Act or as specified by the State Government.

7.6.2 A person can also deposit the amount of compounding even after an FIR/complaint has been lodged against him for the first offence, after getting approval from the authorized officer under Section 152 of the Act. In such eventuality, the authorized officer (under section 152) should accept the amount of compounding and intimate the same to the concerned police station and court regarding compounding of offence under Section-152 of the Act.

7.6.3 On payment of the sum of money in accordance with Regulations 7.6.1 & 7.6.2, 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.

7.6.4 The acceptance of the sum of money for compounding of offence in accordance with Regulations 7.6.1 & 7.6.2 by the Appropriate Government or an officer empowered in this behalf shall be deemed an acquittal within the meaning of section 300 of the Code of Criminal Procedure, 1973 (2 of 1974).".

51. Similarly, Section VIII of the Electricity Supply Instruction Manual (Sales Manual) also deals with theft/unauthorized use of electricity. A detailed procedure to be followed on detection of theft of electricity is also provided therein. Clause 8 (13) deals with assessment and procedure. Relevant clauses of the same reads thus:-

"8.13 (IV)** **<u>Amount of assessment recoverable as arrear of electricity Consumption Charges</u>: The amount due from the person as a result of the proceedings under these clauses shall be deemed to be arrears of electricity consumption

charges, which shall be recoverable along with interest at the prevailing Reserve Bank of India prime lending rate for the period of default under Haryana Govt. Electricity Undertaking (Dues recovery) Act-1970.

(V) <u>Levy of Assessment Charges</u>: - Levy of compensation charges under these clauses shall be without prejudice to the Nigam's right to take any other action provided in these clauses or in the Electricity Act-2003 or any other law governing the supply of electricity to the consumers.

(VI) Compounding of Offence: - Along with the order of assessment the consumer shall also be given the offer for compounding of offence as per the provisions of Section-152 of the EA-2003 to absolve him from the criminal liabilities as per the format attached as Annexure-VI. The concerned SDO 'Operation' is authorized as per Haryana Govt. Gazette Notification No. 1/12/2003-1 Power dated 9th December 2003 for accepting the amount of compounding as per the following rates for various categories given in Section-152 of EA-2003.

Name 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. Industrial Service	*20,000 per KVA of contract demand*
2. Commercial Service	*10,000 per KW*
3. Agricultural Service	*2000 per BHP*

4. Other Services	***4000 per KW***

The amount of compounding received from the consumers shall be kept in separate account, which shall be passed on to the State Govt. However, the compounding of offence is allowed only once for the offence of theft of electricity.

The acceptance of offer of compounding by the consumer who is ready to compound offence of theft of energy shall be taken in the format attached as Annexure-VII."

52. It is evident that levy of assessment is without prejudice to the right of the utility to take any other action as per the Act. The Clause relating to compounding specifically deals with absolving from criminal liability only and not from any other liability. Hence, only a limited right is created in favour of a consumer against criminal proceedings and all other demands remain intact. The legislature thus did not intend to vest any further concession, hence, no further indulgence can be claimed.

53. It is further apparent that on depositing of compounding fee, if the person is arrested, he shall be set at liberty and proceedings shall not be continued in any criminal Court and it is a deemed acquittal under Section 300 Cr.P.C. (as it was). Section 152 of the Electricity Act, 2003 does not extend any other benefit or exemption. Such deemed acquittal of a criminal charge cannot be deemed as assessment of "**Zero Civil Liability**" under Section 154(5) of the Electricity Act, 2003 and rendering the utility liable to refund the entire assessed amount under Section 135 (1-A) of the Electricity Act, 2003. It rather leads to an inference that the

consumer never wanted his criminal and civil liability to be determined and intended the entire dispute to be closed.

54. I am also fortified in my above view since the statute required determination of civil liability by the Special Court only, hence, once he gives up initiation of proceedings before Special Court, the official of the Utility cannot be conferred with a power to determine the civil liability or to examine the same.

55. The statutory scheme converges the power to determine civil liability, with the Special Court alongwith determining a Criminal Liability. The same is integrally connected to the same proceeding. The consumer, having opted not to subject himself to the said proceeding, would not be entitled to seek a segregation of the cause and to try them independently by treating the same as independent and distinct. Power on a Court is conferred by the statute and has to be exercised in the manner prescribed. It is presumed in law that the petitioner was fully aware of the legislative scheme and statutory provision and having opted to close the issue, the entire dispute gets closed and he would be deemed to have accepted all the terms; liabilities as well as obligations that are enforceable against him.

56. Any other interpretation is likely to be contrary to the intent of the legislature. The compounding charges being nominal, every person would then be inclined to commit theft of energy and claim himself spotless and go scot-free by paying compounding charges alone, which are lower than the penalty for unauthorised use of electricity itself. It cannot be perceived that the legislative intent was to promote theft of

electricity to avoid payment of bill or not to indemnify the utility for the electricity consumed. It would amount to giving premium to a violator and promote breach of law, which no statute can ever be intended or interpreted to promote.

57. The present writ petition is dismissed accordingly.

(VINOD S. BHARDWAJ)
JUDGE

15.10.2024
Mangal Singh

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