

W.A.(MD)No.122 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 04.07.2025

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MR.JUSTICE K.RAJASEKAR**

**W.A.(MD)No.122 of 2023
and
C.M.P.(MD)No.1559 of 2023**

K.Dominic

... Appellant

Vs.

1.The Assistant Executive Engineer,
Tamil Nadu Electricity Board,
Tuticorin Electricity Distribution
Circle Town (North), Tuticorin.

2.The Superintendent Engineer,
Tamil Nadu Electricity Board,
Tuticorin Electricity Distribution
Circle Town (North),
Tuticorin.

... Respondents

Prayer : Writ Appeal filed under Clause XV of Letters Patent, to allow the writ appeal by setting aside the order passed in W.P.(MD)No.9324 of 2010 dated 23.12.2022 on the file of this Court.



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For Appellant : Mr.C.S.Krishnamoorthy
for Mr.P.Thiyagarajan.

For Respondents : Mr.Deenadhayalan, Standing counsel.

JUDGMENT
(By G.R.SWAMINATHAN, J.)

Heard both sides.

2.The appellant is a consumer of electricity. He has been enjoying LTCT service connection. On 22.06.2010, the appellant's place of business was inspected by Anti-Power Theft Squad. The appellant was found to have indulged in unauthorized use of electricity. Thereupon, a sum of Rs.5,10,000/- was paid by the appellant towards compounding charges. This was followed by issuance of provisional assessment order calling upon the appellant to pay a further sum of Rs.26,28,891/-. Challenging the same, the appellant filed WP(MD)No.9324 of 2010. The writ petition was dismissed by the learned Single Judge vide order 23.12.2022 in the following terms:-

“6. The petitioner is running an ice factory at Tuticorin and has also availed an electric service connection with a load of 99HP (85HP). The flying squad from the respondent department made surprise inspection in petitioner's ice factory on 13.07.2012 and found there was a theft of energy as contemplated under



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section 135(1). The offence of theft of electricity is compoundable under section 152 of Electricity Act, 2003 and this petitioner, by paying a sum of Rs.5,10,000/- on the date of inspection has compounded the offence. Thereafter the first respondent has also raised a demand for a sum of Rs.26,28,891/- under Section 126 of the Act. This, according to the petitioner, is a civil liability which can be enforced only through a Special Civil Court which is competent to try the offences under the Act.

7. If the assessing officer, on an inspection of any place, comes to the conclusion that such person is indulging in unauthorized use of electricity, he shall provisionally assess to the best of his judgment the electricity charges payable by such person or by any other person under Section 126 of the Act. The department in this case has taken a specific stand that the impugned order is only a provisional order under Section 126 of the Act. The assessment made under Section 126 of the Act has nothing to do with Sections 135 and 152 of the Act. The compounding of offence by paying a sum of Rs.5,10,000/- by the petitioner for the offence committed by him under Section 135 has nothing to do with the assessment made by the assessing officer under Section 126 of the Act. The petitioner is having a right of submitting his objection to this provisional assessment as per Section 126(3) of the Act and the assessing officer, after affording reasonable opportunity of hearing to the petitioner, shall pass final order of assessment. Therefore, there is no reason to interfere with this impugned order at this stage, since it is only a provisional assessment made by the assessing officer for which



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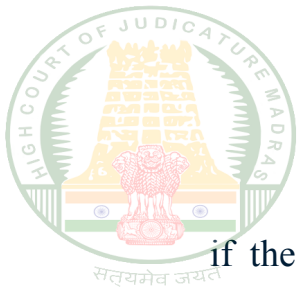
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this petitioner has a right of objection and right of personal hearing before the assessing officer.

8. Therefore, this writ petition is dismissed with a liberty to the petitioner to raise his objection and the assessing officer shall decide the further course of action by following the procedure contemplated under Clause 23(AA) of the Tamil Nadu Electricity Supply Code, 2004. In this case the petitioner has already deposited a sum of Rs.10,00,000/- pursuant to the interim order passed by this Court and therefore the assessing officer shall proceed with final order without insisting for any further deposit of amount. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed."

Aggrieved by the same, this writ appeal has been filed.

3.The learned counsel for the appellant contended that when once the compounding charges have been paid, it would amount to deemed acquittal and that therefore, the question of fastening further civil liability on the appellant would not arise at all. In this regard, the counsel for the appellant placed heavy reliance on the decision of the Hon'ble Delhi High Court reported in **2014 SCC OnLine Del 7113 (B.S.E.S. Rajdhani Power Ltd. v. Jagat Ram)**. The Delhi High Court had held that civil liability would follow the determination of offence and



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if the consumer stands acquitted, civil liability cannot be fastened on

him. The learned counsel for the appellant called upon us to follow the said decision and allow this writ appeal as prayed for.

4.Per contra, the learned standing counsel for TANGEDCO submitted that the order of the learned Single Judge is well reasoned and that it does not call for interference.

5.We carefully considered the rival contentions and went through the materials on record. Quite a few questions of law have been projected for consideration. They are as follows :

- a) Whether payment of compounding fees by the assessee amounts to admission of guilt?
- b) Whether having collected the compounding fee, the authority can fasten civil liability on the assessee under Section 126 of the Electricity Act, 2003 ?
- c) Whether an assessee has any scope to contest the proceedings under Section 126 of the Electricity Act after payment of compounding fee ?
- d) What is the interplay between Section 126 and 154(5) of the Act in the matter of quantifying the civil liability of the assessee ?



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6.The relevant provisions are extracted as under :

“126.Assessment.— (1) If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in 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 licensee within seven days of service of such provisional assessment order upon him:

[(5) If the assessing officer reaches to the conclusion that unauthorised use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorised use of electricity has taken place and if, however,



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the period during which such unauthorised use of electricity has taken place cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection.]

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

Explanation.—For the purposes of this section, —

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

(b) “unauthorised use of electricity” means the usage of electricity—

(i) by any artificial means; or

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

(iii) through a tampered meter; or

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

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

“151. Cognizance of offences.—No court shall take cognizance of an offence punishable under this Act except upon a complaint in writing made by the Appropriate Government or Appropriate Commission or any of their officer authorised by them or a Chief Electrical Inspector or an Electrical Inspector



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or licensee or the generating company, as the case may be, for this purpose:

[Provided that the court may also take cognizance of an offence punishable under this Act upon a report of a police officer filed under section 173 of the Code of Criminal Procedure, 1973 (2 of 1974): Provided further that a special court constituted under section 153 shall be competent to take cognizance of an offence without the accused being committed to it for trial.]”

“[151A. Power of police to investigate.—For the purposes of investigation of an offence punishable under this Act, the police officer shall have all the powers as provided in Chapter XII of the Code of Criminal Procedure, 1973 (2 of 1974).

151B. Certain offences to be cognizable and non-bailable.—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence punishable under sections 135 to 140 or section 150 shall be cognizable and non-bailable.]”

“152.Compounding of offences.-

1.Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the Appropriate Government or any officer authorised 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

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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	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 shall be deemed to amount to an acquittal within the meaning of section 300 of the Code of Criminal Procedure, 1973 (2 of 1974).

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



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7.The Hon'ble Supreme Court in the decision reported in **(2012) 2**

SCC 108 (Southern Electricity Supply Co. of Orissa Ltd. v. Sri Seetaram Rice Mill) and **(2020) 18 SCC 588 (West Bengal State Electricity Board vs. Orion Metal Pvt Ltd.)** has comprehensively dealt with the statutory scheme. From a careful reading of the said decisions, one can cull out the following propositions :

a) Section 135 of the Act deals with theft of electricity and lays down the penalty that can be imposed for such theft. It involves mens rea. Section 126 of the 2003 Act does not speak of any criminal intendment and is primarily an action and remedy available under the civil law.

b) When there is unauthorised use of energy, whether it amounts to theft or not, action can be taken under Section 126 of the Act.

c)Where the allegation is of unauthorised of energy amounting to theft, the assessment proceedings under Section 126(1) of the Act can proceed parallely with criminal prosecution before the Special Court under Section 154 of the Act.

d)The acquittal of the assessee by the Special Court by itself will not have any bearing on the assessment proceedings under Section 126 of the Act.



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e) Where the Special Court determines the civil liability of the assessee under Section 154(5) of the Act, the excess amount if any paid by the assessee following the determination of his liability under Section 126(1) of the Act will have to be refunded.

8.It is true that by virtue of Section 152(3) of the Act, when an assessee gets the offence compounded, he is deemed to have been acquitted. But this deeming acquittal is meant to confer immunity on the offender only against prosecution. Dealing with a similar contention of compounding of an offence under the Entertainment Tax Act and the consequential action for suspension of cinema licence by the competent authority under the Tamil Nadu Cinema Regulation Act, 1955, a Hon'ble Division Bench of this Court in ***Sri. Kamatchi Theatre, by its licensee K. Ramakrishnan vs. The District Collector, Madurai*** reported in 2000-2-L.W. 255 held as follows:

“50...the expression composition or compounding of offence or irregularity means accepting the acquiescence or irregularity committed or the violation of the statutory provision, and by compounding the offence, the person who is permitted to compound, admits the irregularity or



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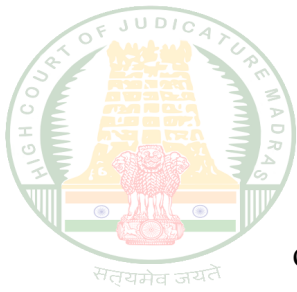
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violation. It may be for ever so many reasons, or it may be to avoid embarrassment or the situation, to purchase peace. By mere compounding, such an individual is not exonerated, nor a blank shield or protection cover is thrown against him for the commission or omissions for which compounding is permissible under law. Therefore, it follows when once the licensee compounds the offence under Section 15 of the Act, it would mean that the licensee had committed or is reasonably suspected of having committed an offence and on his application, is permitted to compound the offence. In other words, it is a clear verdict by confession to avoid penal consequences.”

Section 15 of the Entertainment Tax Act (*supra*) is in pari materia to Section 154 of the Electricity Act, 2003.

9.A learned Judge of this Court in the decision reported in 2013 SCC OnLine Mad 3520 (*Fiem Industries Ltd. v. Tamil Nadu Generation and Distribution Corporation Ltd.*,) held as follows :

“56. ...Once the consumer decides to compound the offence, there is no question of contending that the compounding of the offence was under protest, because compounding under protest is not recognized in law. An offence cannot be permitted to be compounded under protest. If the



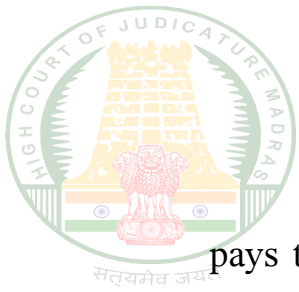
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consumer protests, then it is for the authorised officer to record such protest and lodge a complaint to the police station, having jurisdiction. If the consumer accepts the guilt of offence unequivocally, by compounding, the consumer can avoid prosecution. When there is payment of compounding fee, under protest, law does not restrict the powers of the authorised officer to launch prosecution. In a given case, to avoid prosecution, the consumer may come forward to remit the compounding fee, under protest and there is always a possibility to avoid fine, or imprisonment on conviction, by the Court of competent criminal jurisdiction.

60..If there is a case of compounding, then the Consumer should not be permitted to canvass on the correctness of the finding of guilt or on the ground that he was compelled to compound under protest. Once option is exercised by the consumer to compound the offence, there is no question of retracting the same.”

10.However, a Division Bench of this Court in **WA No.649 of 2020 dated 15.09.2023 (The Assistant Executive Engineer vs. V.Rajagopalan)** had declined to endorse the ratio that an act of compounding cannot be retracted. We also take judicial notice of the fact that in almost all cases, the assessee is under the impression that if he



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pays the compounding fee, the issue will be given a quietus. He may also resort to compounding under threat of immediate arrest. Many a time the person in whose name the service connection stands will not be available on the spot. The manager or occupier signs the mahazar and pays the compounding fee and the service holder is made to hold the baby. That is why, the Hon'ble Division Bench had taken the view that under certain circumstances, the assessee must be allowed to retract. But in such circumstances, the field will be once again be opened. The assessee must be ready to face the consequences of prosecution. We however hold that such a retraction must be made at the earliest opportunity. We answer the first issue by holding that having paid the compounding fee, the assessee cannot plead in the assessment proceedings under Section 126 of the Act that there was no unauthorised use of electricity. To this extent, his defence stands foreclosed.

11. Section 126(5) of the Act states that after the assessing officer concludes that there was unauthorised use of electricity, the assessment shall be made for the entire period during which such unauthorised use of electricity has taken place. If this period cannot be ascertained, it shall

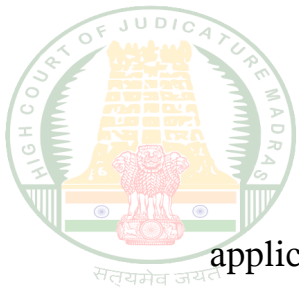


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be limited to twelve months immediately preceding the date of inspection. The assessee can plead and prove that the unauthorised use of electricity has taken place only for a lesser period and not for the period alleged by the assessing officer. The scope of defence is limited to this aspect.

12. One of us (GRSJ) in the decision reported in **2018 SCC OnLine Mad 12718 (A. Abdul Masjit v Assistant Executive Engineer)** held that before making provisional assessment, the assessment officer must put the assessee on notice. He must set out the period during which the unauthorised use of electricity has taken place. Failure to do so would amount to violation of the statutory mandate set out in Section 126(5) of the Electricity Act.

13. In ***Southern Electricity Supply Co. of Orissa Ltd. v. Sri Seetaram Rice Mill***, the Hon'ble Supreme Court evolved the rule of practical interpretation. An interpretation which upon application of the provisions at the ground reality, would frustrate the very law should not be accepted against the common sense view which will further such



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application. Since compounding is often done under coercive circumstances, Section 152 of the Act must be held to be applicable only where an offence has already been registered. It is only an offence that is and can be compounded. Part XIV of the Electricity Act catalogues the offences punishable under the Act. The authorised officer can file a private complaint before the Special Court. The offences are cognizable and non-bailable. The police have been conferred the power to investigate the offences under the Electricity Act and file final report under Section 173 of Cr.Pc (corresponding to Section 193 of BNSS). Thus, unless under Section 151A of the Electricity Act, an offence is registered, the question of compounding may not arise. Sub-section (2) of Section 152 states that on payment of the compounding fee, the **person in custody** in connection with that offence shall be set at liberty. This again presupposes registration of a case. More than anything else, sub-section (3) of Section 152 states that once an offence is compounded, it shall be deemed to amount to an acquittal. An acquittal is the culmination of the process whereby the criminal law is set in motion. It is the registration of the offence that sets the criminal law in motion. There is a saying in Tamil that a picture can be drawn only if there is a wall in



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the first place. Likewise, there can be an acquittal only when there is an offence in the first place. An act or omission that is punishable by law is an offence. It is only the registration of the act or omission that makes it into an offence for the purpose of compounding. We, therefore, hold that the authorised officer may accept compounding fee from the assessee only following the registration of a police case in exercise of their power under Section 151A and 151B or filing of complaint by the authorised officer under Section 151 of the Act.

14. In the case on hand, the appellant by paying the compounding charges had admitted his guilt. He never retracted. Once the guilt stands admitted, consequences will have to follow. Reliance on the decision of the Delhi High Court is misplaced. The Hon'ble Delhi High Court was concerned with the power of the Special Court to fasten civil liability after acquitting the consumer. The case of the appellant never went before the Special Court at all. The matter lay within the realm of the assessing officer. That apart, a co-ordinate Division Bench of this Court in ***M/s.Emkay Alloys (P Ltd v. The Executive Engineer (WA Nos.1808 and 1811 of 2009 dated 08.04.2019)*** did not follow the dictum laid down



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in ***B.S.E.S. Rajdhani Power Ltd. v. Jagat Ram.*** On the other hand, it

expressly rejected the contention that in the event of the offence being compounded, there should not be any determination of the civil liability either by the Special Court or by the authorities concerned. We must however place on record that this decision has been put to challenge before the Hon'ble Supreme Court in Special Leave to Appeal(C) No. 12541/2019. The matter is still pending.

15.The appellant had approached the court at the provisional assessment stage itself. Since the period during which the unauthorized use of electricity has taken place has not been specified, the appellant can very well urge this point before the assessing officer. The assessing officer would be obliged to take this aspect into account while passing final order. The assessing officer shall give personal hearing to the appellant and final order shall be passed on merits and in accordance with law within a period of the six months from the date of receipt of a copy of this judgment. The appellant is presently enjoying service connection and it shall not disconnected till the final order is passed.



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16. Leaving open the other contentions of the appellant, this writ

appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(G.R.S. J.) & (K.R.S. J.)
04.07.2025

NCC : Yes/No
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