

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11110 OF 2022
ALONGWITH
INTERIM APPLICATION NO.10385 OF 2025
IN
WRIT PETITION NO.11110 OF 2022

Shambhulal Gulab Pal .. Petitioner
Versus
The State of Maharashtra & Ors. .. Respondents

Mr.PremSagar Pal i/b Gajendra Waity for the Petitioner.
Ms.Nikita Jacob a/w Ms.Kinjal Khandelwal i/b KP Law
Associates LLP for Respondent Nos.2 to 6.

CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.
DATE : 17th FEBRUARY, 2026

P.C:-

1 On consideration of the claim of the Petitioner, the Petitioner has raised a challenge to the notice dated 12/01/2022 issued under Section 135 of the Electricity Act, 2003, thereby directing him to deposit a sum of Rs.2,03,600/- and also the compounding amount of Rs.6,000/- or else, a complaint was directed to be registered under Section 135 of the Act of 2003, in the concerned Police Station.

The notice was followed with a determination of the civil liability, reflecting the conn load of 2.92 units for 26 months with the units being determined as 11603 and the provisional liability being assessed as 2,03,600/-.

2 The learned counsel for the Petitioner raised a serious objection to the said notice by submitting that Section 135 of the Act of 2003 is a provision for restoration of the electricity, upon an event of theft alleged to have been occurred, provided that if the licensee or the supplier deposit or make payment of the assessed amount or electricity charges in accordance with the provisions of the Act of 2003 and this would be without prejudice to the obligation to lodge the complaint, the electricity shall be restored within 48 hours of such deposit or payment.

The learned counsel for the Petitioner would invite our attention to Part XII of the Act of 2003, under the caption 'Investigation and Enforcement' which include a provision in form of Section 126, for assessment. According to him, the methodology contemplate order of provisional assessment to be passed and served upon the person in occupation or possession or in charge of the place or premises, and, thereafter, passing of a final assessment order.

Inviting our attention to Sub-section (5) of Section 126, the learned counsel would submit that if the Assessing Officer arrived at a conclusion that unauthorized use of electricity has taken place, assessment shall be made for the entire period during which the use had taken place and if, however, the period during which the use of electricity cannot be ascertained, such period shall be limited to a period of 12 months, immediately preceding the date of inspection.

He would submit that the term 'unauthorized use of electricity' is also defined in the explanation appended to the said Section, which is distinct from theft of electricity as

contemplated in Section 135 of the Act of 2003. It is his specific submission that upon a complaint being filed, it will be the Special Court under Section 154, on obtaining the evidence in regards to the accusations levelled against him, determine the civil liability in terms of money for theft of energy which shall be determined in a manner which is specifically set out in the said Section.

3 The contention on behalf of the Petitioner, therefore, revolve around the fact that without adhering to the said procedure, when an impugned notice was issued, it is simplicitor accompanied with the determination of the assessment of Rs.2,03,600/- without following any procedure.

4 By order dated 09/10/2025, the High Court, by way of interim measure, directed that the Petitioner depositing an amount of Rs.50,000/-, the electricity connection in his residential premises, in the suitable category shall be restored and the said deposit was subjected to a final outcome of the Writ Petition.

We are informed that the Petitioner has deposited the amount and the electricity was restored. We are also informed that though the complaint was made to the Police Station, it is not yet instituted before the Special Court .

5 In the wake of the aforesaid submissions advanced before us, we have called upon the learned counsel representing MSEDCL to ascertain as to what was the

procedure that was followed in computing the amount which was directed to be deposited alongwith the impugned notice which was purportedly issued under Section 135 of the Act of 2003, pursuant to the theft having been alleged to be detected.

In the wake of the arguments advanced by the learned counsel for the Petitioner, she has invoked the relevant provision in the Maharashtra Electricity Regulatory Commission (MERC) (Electricity Supply Code and Standards of Performance of Distribution Licensees including Power Quality), Regulations, 2021, and a specific provision dealing with theft or unauthorized use of electricity and by relying upon the proviso appended to Clause 10.1.2, she would submit that pending adjudication by the appropriate court, the Distribution Licensee or Supplier shall restore the supply of the electricity, within 48 hours of payment of assessed amount, without prejudice to the obligation to lodge the complaint. The Regulation according to us, also specify the manner in which the assessment shall be made and she would rely upon the following provision contained therein :-

“ The assessment shall be made at a rate equal to twice the tariff applicable to the category of services and for the actual period of theft. Where the period of theft cannot be ascertained, it shall be presumed to be Twelve (12) months prior to the date of detection of such dishonest abstraction, consumption or use of electricity.”

In addition, she has also placed before us the Guide Book of the procedure to be followed and actions thereof by various Authorities regarding ‘Theft of electricity’ under Section 135 and ‘Unauthorized use of electricity’ under Section 126 of the Act of 2003. This circular placed before us contain the procedure to be followed and the manner in which the

assessment shall be worked, both under Section 126 in case of 'Unauthorized use of electricity' and under Section 135 pertaining to 'Theft of electricity'.

Apart from this, she has also placed before us the Annexure to the Commercial Circular, which is followed by the MSEDCL, pertaining to the method of assessment of electric charges payable in case of theft of electricity.

It is her specific submission that all the while the department is computing the assessment amount based on these guidelines annexed to the Commercial Circular No.133 dated 05/02/2011 which according to her is still in force.

6 In the aforesaid context, we could prima facie note that the provisions in the circular/guidelines, run contrary to the provision under Section 135 of the Act of 2003 and in specific the third proviso appended to Sub-section (1A) which permit restoration of electricity subject to payment or deposit of the assessed amount of electricity charges in accordance with the provisions of the Act, that is strictly in accordance with Section 126 of the Act of 2003.

However, since the Regulation and the Circular has prescribed a mechanism which do not contemplate order of provisional assessment with an opportunity being afforded before a final assessment is passed, we are afraid whether the provisions in the Regulation and Circular is in consonance with the provision in the parent statute, as it has prescribed a mechanism in which any assessment shall be made. However, since we do not find any challenge raised in this regard, at

present, we deem it appropriate to offer a practical solution to the issue before us.

7 Since we have noted that by way of interim order the electricity connection is restored to the Petitioner and he has deposited an amount of Rs.50,000/-, we make the order absolute and direct that till the Special Court determine the civil liability upon the Petitioner, as an outcome of the proceedings under Section 135 in accordance with the procedure prescribed under Section 154, if at all the complaint is lodged, the Petition is disposed.

We, however, caution the Petitioner that he shall not indulge into such an act till the civil liability is fastened, in respect of the act relating to which the impugned order has been passed.

Needless to state that the said amount is liable for adjustment at the final outcome of the proceedings by the Special Court under Sub-section (5) and (6) of Section 154 of the Act of 2003.

With the aforesaid direction, Writ Petition is disposed of.

Pending Interim Application also stand disposed of.

[MANJUSHA DESHPANDE, J.]

[BHARATI DANGRE, J.]