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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	Pronounced on
29.09.2026	30.10.2026

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI
AND
THE HONOURABLE MR. JUSTICE N.DILIPKUMAR

W.A. (MD) NO. 1698 OF 2021
CNR:{HCMD010511422021}
AND
C.M.P. (MD) NO. 7276 OF 2021

1 The Executive Engineer
Operation & Maintenance
Tamil Nadu Electricity Board
Karur Electricity Distribution Circle
Karur.

2 The Assistant Accounts Officer
Office of the Executive Engineer
Tamil Nadu Electricity Board
Revenue Branch / Urban
Karur, Karur District. .. Appellants

- Vs -

M.Kadirvel .. Respondent

Writ Appeal filed under Clause 15 of the Letters Patent Act against the order dated 27.11.2018 passed by the learned single Judge in W.P. (MD) No.5128/2009.

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For Appellants : Mr. S.Deenadhayalan

For Respondents : Ms. Gopika Nambiar for
Mr. C.Nahil Nandha

JUDGMENT

M.DHANDAPANI, J.

The impugned order of the learned single Judge in W.P. (MD) No.5128/2009 dated 27.11.2018 in and by which the demand notice issued u/s 4 of the Tamil Nadu Electricity Board (Recovery of Dues) Act, 1978 was quashed is put in issue through the present appeal.

2. The facts leading to the filing of the writ petition, as evidenced through the order of the learned single Judge and captured from the said order, is as under :-

> *The petitioner is owning a mosquito net manufacturing unit in the name and style of "Senthil Filaments". The unit was functioning at Door No.22, Chinna Goundanoor, Uppidamangalam, Karur District. It was granted electricity service connection vide S.C.No.2061. The petitioner is also having his residence at the very same address and he was enjoying electricity supply vide S.C.No.2067. There was an inspection of the petitioner's factory by the second respondent on 19.11.2007 at around 21.30 hours. It was noted that there was an illegal tapping of electricity. Thereafter, the second*

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respondent issued an order of provisional assessment for theft of electrical energy vide letter bearing No.AEE/O&M/PYR/F Doc/D No.202/07 dated 19.11.2007. The figure mentioned in the provisional assessment order was Rs.28,28,499/-.

2. The petitioner lodged his objections to the demand set out in the provisional assessment order. But the second respondent rejected the objections of the petitioner and passed the final assessment order vide letter bearing No.AEE/O&M/PYR/F.Doc/D.No.227/07 dated 04.12.2007. The same was put to challenge in W.P.(MD)No.10918 of 2007. During its pendency, the second respondent issued a letter bearing No.AAO/RB/U/KRR/ASI/F.SC.2061/D.No.454/08 dated 13.10.2008, enclosing the bill under Section 3(1) of the TNEB (Recovery of Dues Act) 1978 and also informed the petitioner that the petitioner has to pay a sum of Rs.26,30,669/- within a period of thirty days from the date of service of the bill.

3. Challenging the same, the petitioner filed an appeal before the first respondent. The first respondent by proceedings bearing No.E.E/O & M/URBAN/KARUR/2009 dated 09.03.2009 rejected the said appeal. Subsequently, to enforce the earlier proceedings, the second respondent issued demand notice under Section 4 of TNEB (Recovery of Dues) Act 1978 on 17.03.2009. Challenging the same, this writ petition has been filed.

3. Learned single Judge held that the Electricity Act 2003 has been laid down as an exhaustive code in respect of the subject matter of electricity and

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that the earlier enactments had been repealed. Further it was held that the Electricity Act which is a central enactment is operating the same field in which the state legislation is also operating and further it was held that there is a direct conflict between two statutory schemes and the absence of the Tamil Nadu Electricity Board being in existence due to the paradigm shift in the law it was held that the respondents were not justified in clinging on to old concepts that are no longer in vogue and on the above reasoning, the impugned notice was held to be one without the authority of law. Aggrieved by the same, the present writ appeal has been filed by the appellants.

4. Learned standing counsel appearing for the appellants submit that there is no denial of the theft of electricity by the respondent and in fact, by paying the compounding charges, the respondent had accepted the guilt and in such a situation, the demand notice, which is a continuation of the same cannot be challenged by the respondent.

5. It is the further submission of the learned standing counsel that the Tamil Nadu Electricity Board (Recovery of Dues) Act, 1978, (for short 'Recovery Act') has received the assent of the President and the mere repeal of the

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Electricity (Supply) Act, 1948 by means of the Electricity Act, 2003 (for short 'Act, 2003'), would not render the provisions of the Recovery Act repugnant. It is the further submission of the learned standing counsel that the replacement of the Tamil Nadu Electricity Board (for short 'the Board') by the other two arms, viz., TANGEDCO and TANTRANSCO, the generating and transmission entities would not affect the hold of the Board, as the Board holds all the shares of the two entities. Therefore, the Recovery Act cannot be said to be repugnant to Section 56 (1) of Act, 2003.

6. It is the further submission of the learned standing counsel that both the Recovery Act and Act, 2003, prescribes the modes of recovery of electricity dues and such being the case, the manner of recovery alone cannot make the provisions of the Recovery Act repugnant to Act, 2003. It is the further submission of the learned standing counsel that Section 175 of Act, 2003 clearly stipulates that Act, 2003 shall be in addition to and not in derogation of other laws and such being the case, deeming the Recovery Act as repugnant to Act, 2003 is wholly erroneous.

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7. It is the further submission of the learned standing counsel that there is no repugnancy in the Recovery Act and it will prevail as it has received the assent of the President as early as on 13.06.1978. Further, it is submitted that the learned single Judge erred in holding that the Recovery Act is repugnant as per Article 254 (1) of the Constitution without adverting to Article 254 (2) of the Constitution.

8. It is the further submission of the learned standing counsel that when a law occupies the field and prescribes the manner for recovery and a new law is put in place repealing the earlier enactment and the new law provided that the said law will be in addition and not in derogation of the old law, as both the laws occupy the same field and the laws create distinct procedure to recover the dues, the said in procedure between the two laws could only be added and there cannot be any deletion of the procedure, which is the crux of Section 175 of Act, 2003. However, this crucial point has been failed to be noticed before the order was passed by the learned single Judge holding that the provisions of the Recovery Act is repugnant to Act, 2003.

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9. It is the further submission of the learned standing counsel that even otherwise, on the basis of the new law, viz., Act, 2003, the respondent had accepted the theft of electricity, which was the basis for the impugned provisional assessment and had paid the compounding charges of Rs.2,10,000/= as calculated u/s 152 of Act, 2003, to wriggle out of prosecution u/s 135 of Act, 2003, the theft having been accepted by the respondent, the respondent had paid the compounding charges. When the theft had been accepted by the respondent and compounding charges have been paid without any demur, moreso, when the notice alongwith the calculation had been on the basis of Section 3 (1) of the Recovery Act, the respondent is estopped from contending that the provisions of the Recovery Act is repugnant to Act, 2003 insofar as demand made, which is also part and parcel of the levy made towards compounding charges.

10. It is the further submission of the learned standing counsel that Section 6 of the Recovery Act provides for recovery of the amount as land revenue in addition to other modes of recovery as prescribed, inclusive of the prescription under Act, 2003 and such being the case, the respondent having accepted the theft of electricity and paid the compounding charges, the act of the

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appellants in resorting to recovery of the amount due from the respondent by taking recourse to the Recovery Act cannot be said to be erroneous as the said provision stands protected by Section 175 of Act, 2003, which clearly states that the provisions contained in Act, 2003 are only in addition and not in derogation of the other laws, which hold the field. However, there is no discussion with regard to Section 175 of Act, 2003 in the order passed by the learned single Judge, while the repugnancy is tested only on the basis of Section 56 of Act, 2003 vis-a-vis Section 6 of the Recovery Act.

11. It is the further submission of the learned standing counsel that the Recovery Act has been enacted only for the purpose of collecting the dues, which are payable to the Board as could be evidenced from the objects and reasons for enacting the Recovery Act, which also provides that the mode of recovery provided therein would be without prejudice to the other modes of recovery, which clearly shows that the said provision is not repugnant to Act, 2003, as even Act, 2003 provides that the provisions therein are only additions to the already existing laws. When the respondent has accepted the theft of electricity and had compounded the offence by paying the compounding charges, the respondent cannot seek to wriggle out of the payment due to the Board by claiming that the

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said amount could, if at all, be collected only through a suit, which is a cumbersome procedure for which alone the Recovery Act was enacted and the mode prescribed in the Recovery Act being in addition to the other modes of recovery provided even under Act, 2003, the action of the appellants in resorting to recovery under the Recovery Act cannot be faulted with.

12. In fine, it is the submission of the learned standing counsel that the provisions of the Recovery Act and Act, 2003 should be harmoniously read, more particularly with regard to the repeal and saving clause provided u/s 185 of Act, 2003, which would clearly show that the provision of recovery mandated under the Recovery Act is not repugnant to Act, 2003. However, without adverting to the other provisions of Act, 2003, which has saved the repugnancy alleged under the Recovery Act, the impugned order has come to be passed, which requires interference at the hands of this Court.

13. Per contra, learned counsel appearing for the respondent submits that Section 2 (1) of the Recovery Act defines the term 'Board' which means the Tamil Nadu Electricity Board constituted under S.5 of the Electricity (Supply) Act, 1948. Upon enactment of Act, 2003 by the Parliament, by virtue of Section 185 of Act,

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2003 the Electricity (Supply) Act, 1948 stood repealed and the Board, which was created by the Electricity (Supply) Act, 1948, immediately ceased to exist.

14. Though Section 131 of the Act, 2003 provides for creation of a transfer scheme whereby the properties, liabilities, rights, etc., of the Tamil Nadu Electricity Board stood vested in the Government which would then re-vest it in a Government Company, which is the fulcrum of the argument of the appellant that the dues to the Board would not get extinguished, it is the submission of the learned counsel that there is no dispute about the fact that the dues to the Electricity Department survive even after the extinguishment of the Board. However, it is the contention of the learned counsel that upon the repeal of the Electricity (Supply) Act, 1948 which created the Tamil Nadu Electricity Board, the Recovery Act would not survive.

15. It is the further submission of the learned counsel that upon the enactment of Act, 2003 and after framing a scheme under Section 131 of the Act, 2003, the Government of Tamil Nadu ought to have amended the Recovery Act and substituted the successor to the Tamil Nadu Electricity Board in its place. It is the further submission of the learned counsel that even assuming for the sake of

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argument that the scheme formulated by the State of Tamil Nadu had revived the Tamil Nadu Electricity Board itself, even then it would be necessary for the State to amend Section 2 (1) of Recovery Act. This is because as per Section 2(1) of the 1978 Act, the Tamil Nadu Electricity Board is constituted under the Electricity (Supply) Act, 1948, which has now been repealed by Section 185(1) of the Electricity Act, 2003.

16. It is the further submission of the learned counsel that any law made by the State Legislature, the assent of the Governor of the State would suffice and the assent of the President is required only in circumstances as is contemplated under Article 254 of the Constitution. Since the law made by the State through the Recovery Act was repugnant to the Electricity Act, 1910, the assent of the President was obtained and once the said law stood repealed and replaced by Act, 2003, then it is incumbent on the State to resubmit the said Recovery Act for the assent of the President and in the absence of any assent of the President, the said Recovery Act would be repugnant to Act, 2003 as Act, 2003, only permits recovery of the dues to the Electricity Department by way of civil suit and disconnection of electricity supply.

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17. It is the further submission of the learned counsel that even the repealed Electricity (Supply) Act, 1948, provided only for recovery of the dues to the Board by institution of a suit in the event of expiry of period of limitation. The Recovery Act was enacted only to overcome the difficulty faced by the Electricity Board in realising the amount by filing a civil suit, as the procedure is cumbersome and realisation takes quite a lengthy period.

18. It is the further submission of the learned senior counsel that as the mode of recovery contemplated u/s 24 of the Indian Electricity Act, 1910 and Section 60-A of the Electricity (Supply) Act, 1948 on the one hand and Section 6 of the Recovery Act on the other hand were contradictory, the provisions being repugnant to each other, the assent of the President was required, which was obtained to make the Recovery Act valid.

19. It is the further submission of the learned counsel that such realisation of dues by the Recovery Act had left the consumers in lurch, as they could not dispute the liability or quantum and were forced to pay out the amount demanded, to obviate the difficulties faced by the consumers by following the summary proceedings for realisation of the due amount, where the consumers

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would not be left with any avenue to question the liability or the quantum, Act, 2003 had put in the built in safeguard of providing only the institution of a civil suit and disconnection of electricity as the course for realising the dues. In the absence of assent of the President, the Recovery Act would be repugnant to Act, 2003, as the repugnancy was done away with only in respect of the Electricity (Supply) Act, 1948 and Indian Electricity Act, 1910 by the Presidential assent for the Recovery Act and not in respect of Act, 2003. Once Act, 2003 has been enacted, the State was bound to have resubmitted the Recovery Act for the assent of the President and the absence of assent of the President would render the Recovery Act repugnant to Act, 2003.

20. It is the further submission of the learned counsel that Section 56 (1) of Act, 2003 is a *pari materia* provision to Section 24 of the Indian Electricity Act, 1910. No assent of the President having been obtained for the Recovery Act after coming into force of Act, 2003, the provisions for recovery of dues as contemplated under the Recovery Act would be repugnant to Act, 2003 as the Presidential assent obtained previously to obliterate the repugnancy insofar as the Indian Electricity Act, 1910 and Electricity (Supply) Act, 1948 would not save the Recovery Act upon coming into force of Act, 2003, as per the law laid down in

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Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Educational & Charitablke Trust – Vs – State of Tamil Nadu & Ors. (1996 (3) SCC 15).

21. It is the further submission of the learned counsel that the aforesaid ratio has taken into consideration the fact that the Parliament, under Article 254 (2) of the Constitution can enact at any time any law that varies or repeals the law made by the Legislature of the State even though the latter has received Presidential assent. To drive home the aforesaid point, learned counsel, referring to the decision of the Apex court in ***Pt.Rishikesh & Anr.- Vs – Salma Begum (1995 (4) SCC 718)***, it is submitted that once Parliaments amends the law and the State legislation, which had previously got Presidential assent is repugnant to the Central legislation, once again the State Legislature has to reserve the said order for the consideration for the assent of the President and the lack of Presidential assent in the face of repugnancy leads to implied repeal of the Recovery Act.

22. Pointing out the various repugnancy between the Recovery Act and Act, 2003, it is the submission of the learned counsel that the mode of recovery by way of suit to recover the electricity dues as contemplated under Act, 2003 is

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the only mode by which the amount could be recovered and the recovery of the amount as land revenue contemplated under the Recovery Act is wholly erroneous. It is the further submission of the learned counsel that Act, 2003, is a consolidating statute and a complete code and the Recovery Act contemplating a different mode or recovery is repugnant to Section 56 of Act, 2003 and, therefore, there is implied repeal of the Recovery Act.

23. It is the further submission of the learned counsel that the *non obstante* clause provided under Section 174 of Act, 2003 would have an overriding effect over any other law, which is inconsistent with Act, 2003 and, therefore, the inconsistency of the provisions of the Recovery Act will stand negated through the binding nature of the provisions of Act, 2003, spelt out through Section 174.

24. It is the further submission of the learned counsel that the Electricity Supply Code, 2004, has been framed, which provides for the manner in which action is to be initiated against a consumer, who has allegedly committed theft of electricity. Specifically adverting to Regulation 23 therein, it is the submission of the learned counsel that even the provisional assessment and final assessment

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orders passed in the present case refers to Act, 2003 and the Supply Code and reference in this regard was drawn to Regulation 23 (20) of the Tamil Nadu Electricity Supply Code.

25. Pointing out the above, learned counsel submitted that Regulation 2 (a) of the Tamil Nadu Electricity Supply Code, 2004 defines 'Act' as the Electricity Act, 2003 and, therefore, a combined reading of Regulation 23 of Chapter 4 of the Tamil Nadu Electricity Supply Code, 2004 and Regulation 2 (a) would mean that the Department can recover the dues payable by an accused person, who committed theft of electricity by resorting to the provisions of Act, 2003 alone, more particularly Section 56 and it cannot take recourse to the Recovery Act for recovery of the dues.

26. It is further submitted by the learned counsel that if really the Parliament had intended the provisions of the Recovery Act to be one of the modes of recovery of electricity dues along with a civil suit, then it would have been expressly provided as has been provided in certain provisions of Act, 2003. Since there is a conscious omission of the recovery of electricity charges by way of arrear of land revenue, the intention of the Parliament is writ large and,

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therefore, the Recovery Act cannot be pressed into service for the purpose of recovering the amount due from the respondent.

27. It is therefore the submission of the learned counsel that rightly appreciating all the aforesaid factors, the learned single Judge had set aside the impugned notice of recovery, which does not warrant any interference at the hands of this Court.

28. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

29. The facts in the present case relating to the theft of electricity by the respondent has not been deliberated by the learned single Judge; rather the learned single Judge had only gone into the legality of the provisions of the Recovery Act vis-a-vis Act, 2003 more particularly with reference to the repugnancy of the provision u/s 6 of the Recovery Act as against Section 56 of Act, 2003. Therefore, this Court would dissect the various provisions under the

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Recovery Act and Act, 2003 to find out whether Section 6 of the Recovery Act is repugnant to Section 56 of Act, 2003.

30. The Indian Electricity Act, 1910 and the Electricity (Supply) Act, 1948 governed the field of electricity before the said Acts were repealed Act, 2003, which came into force on 10.06.2003. However, when the repealed Acts were governing the field, the theft of electricity and the manner of recovery of the amounts for the said theft was provided for u/s 24 of the Indian Electricity Act, 1910, which stood as under :-

> *"**24. Discontinuance of supply to consumer neglecting to pay charge :-***
>
> *(1) Where any person neglects to pay any charge for energy or any [sum, other than a charge for energy,] [Substituted by Act 1 of 1922, Section 10, for " other sum" .] due from him to a licensee in respect of the supply of energy to him, the licensee may, after giving not less than seven clear days' notice in writing to such person and without prejudice to his right to recover such charge or other sum by suit, cut off the supply and for that purpose cut or disconnect any electric supply-line or other works, being the property of the licensee, through which energy may be supplied, and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer."*

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31. The aforesaid provision, without prejudice provides for realising such charges, which are due from the person by filing a suit while also permitting the cutting off of electrical supply to the said person.

32. As already stated above, while the Indian Electricity Act, 1910 as also the Electricity (Supply) Act, 1948, stood thus, there arose a necessity to enact the Recovery Act, as the recovery of dues due to theft of electricity and other fraudulent activities through filing of a suit was cumbersome and, therefore, the Recovery Act was enacted and came into force on 13.06.1978 and the objects and reasons therein, show the necessity for such enactment, which is as under :-

> *"Prior to the formation of the Tamil Nadu Electricity Board, arrears of current consumption charges, etc., due to the Electricity Department were recovered as arrears of land revenue by invoking the provisions of the Revenue Recovery Act 1864 (Tamil Nadu Act II of 1864). This facility was withdrawn subsequently after the formation of the Tamil Nadu Electricity Board, as the arrears were not due to Government. The Tamil Nadu Electricity Board has, therefore, to file civil suits for recovery of arrears. The process of filing suits and execution petitions for bringing the part of consumers to pay the arrears, even after the decrees were- passed, is a time consuming process and very often it takes a number of years*

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for recovery of arrears. Even then, the consumers take up the matter on appeals and the Tamil Nadu Electricity Board has to face endless litigation to realise the amount. In view of the above practical difficulties, the Tamil Nadu Electricity Board has suggested that suitable legislation may be undertaken providing for expeditious recovery of the arrears of current consumption charges, etc. After carefully examining the proposal of the Tamil Nadu Electricity Board, the Government have decided to undertake a separate legislation for this purpose."

33. From the above objects and reasons, it is clear that the time consuming nature of the recovery process in filing a suit to recover the dues payable has resulted in the enactment of the Recovery Act. This legislation, which has been enacted by the State, has been submitted to the President for assent and had also received the Presidential assent. Thereby, while the Indian Electricity Act, 1910 provided for recovery of the dues by filing a suit and also disconnection of electrical supply, divergent to the said provision, which is found in Section 24 of the Indian Electricity Act, the Recovery Act was enacted, which provided for recovery of the dues as land revenue. The Presidential assent had set at naught the repugnancy between the Indian Electricity Act, 1910 and the Recovery Act, which is not in dispute.

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34. Ever since the coming into force of the Recovery Act, the recovery of dues payable to the Board has been recovered by resorting to the provisions of the Recovery Act. For almost two and a half decades, the Recovery Act had been used for recovering the dues. Then came Act, 2003, which was enacted by repealing the Indian Electricity Act, 1910 and the Electricity (Supply) Act, 1948, which came into effect on 26.05.2003. One of the salient features of the Bill, which culminated into Act, 2003 was the *provisions relating to theft of electricity to have a revenue focus.*

35. The enactment of Act, 2003, resulted in the repealing of the Indian Electricity Act, 1910, the Electricity (Supply) Act, 1948 and the Electricity Regulatory Commissions Act, 1998. The objects behind such enactment and the reasons for the same have been spelt out while enacting Act, 2003. The manner of recovery of dues payable for the electricity is provided for u/s 56 of Act, 2003 and for better appreciation, the same is extracted hereunder :-

> ***"56. Disconnection of supply in default of payment :-***
>
> *(1) Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to*

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him, the licensee or the generating company may, after giving not less than fifteen clear days' notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:

Provided that the supply of electricity shall not be cut off if such person deposits, under protest, -

(a) an amount equal to the sum claimed from him, or

(b) the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months,

whichever is less, pending disposal of any dispute between him and the licensee.

(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity."

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36. Section 56 also provides for recovery of such charges or other sums, which are due by filing a suit and also by cutting off the electrical supply. The aforesaid provision is a *pari materia* provision to Section 24 of the Indian Electricity Act, 1910.

37. During the subsistence of Section 24 of Indian Electricity Act, 1910, the Recovery Act came into force on 13.6.1978 upon receiving the assent of the President, as the Recovery Act provided for the recovery of the sum payable by the person as land revenue, which was not in line with Section 24 of the Indian Electricity Act, which provided for recovery only by way of suit and, therefore, to overcome the repugnancy, Presidential assent was obtained and the said Recovery Act had been enforced.

38. Upon the enactment of Act, 2003, a *pari materia* provision is included therein by way of Section 56 (1), wherein also the recovery mode is shown as filing of a suit. In the wake of the said provision, the notice had come to be issued under the Recovery Act to recover the amount due as land revenue by invoking Section 6 of the Recovery Act, which, according to the respondent, is repugnant to Section 56 (1) of Act, 2003, as subsequent to the enactment of Act,

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2003, the Recovery Act had not received the Presidential assent and, therefore, Section 6 of the Recovery Act is repugnant to Section 56 (1) of Act, 2003. This contention has been upheld by the learned single Judge for the reasons stated in the order, the relevant portion of which is quoted hereunder :-

> *"11. As rightly contended by the petitioner's counsel, Section 56 of the Act clearly states that the dues can be recovered by filing of a civil suit. Section 56(2) incorporates the bar of limitation. Thus, there is an obvious repugnancy between the scheme of the Electricity Act 2003 and the scheme sets out in the TNEB (Recovery of Dues) Act 1978. Rule 23(A)(a) of the Tamil Nadu Electricity Supply Code, 2004 categorically provides that the dues shall be recovered in the manner as provided in the Electricity Act. Section 56 speaks about disconnection and filing of civil suit. It does not permit any other mode. If the Tamil Nadu Electricity Supply Code 2004 had intended that the mode of recovery prescribed in the 1978 Act also can be invoked, it would have spelt it out explicitly. What was omitted to be provided in the statute, cannot be supplied by the Court. The petitioner's counsel drew my attention to the decision of the Constitution Bench of the Hon'ble Supreme Court reported in AIR 1959 SC 648(Deep Chand V. State of U.P.) wherein it was held as follows:*
>
> > *"(29) ... Repugnancy between two statutes may thus be ascertained on the basis of the following three principles: (1) Whether there is direct conflict between the two provisions; (2) Whether Parliament intended to lay down an exhaustive*

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code in respect of the subject matter replacing the Act of the State Legislature; and (3) Whether the law made by Parliament and the law made by the State Legislature occupy the same field."

12. I am of the view that all the three conditions set out above are satisfied in the instant case. The Electricity Act 2003 has been laid down as an exhaustive code in respect of the subject matter of electricity. Earlier enactments had been repealed. Electricity Act which is a central enactment is operating the same field in which the state legislation is also operating. I have already held that there is a direct conflict between two statutory schemes. The petitioner's counsel also draws my attention to another decision of the Hon'ble Supreme Court reported in (1964) 4 SCR 461 : AIR 1964 SC 1284 (State of Orissa and another V. M.A.Tulloch and Co.). In the said decision, the Hon'ble Supreme Court held as under:-

"14. ... Repugnancy arises when two enactments both within the competence of the two Legislatures collide and when the Constitution expressly or by necessary implication provides that the enactment of one legislature has superiority over the other then to the extent of the repugnancy the one supersedes the other. But two enactments may be repugnant to each other even though obedience to each of them is possible without disobeying the other. The test of two legislations containing contradictory provisions is not, however, the only criterion of repugnancy, for if a competent legislature with a superior efficacy expressly or impliedly evinces by its legislation an intention to cover the whole field, the enactments of the

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other legislature whether passed before or after would be overborne on the ground of repugnance. Where such is the position, the inconsistency is demonstrated not by a detailed comparison of provisions of the two statutes but by the mere existence of the two pieces of legislation. In the present case, having regard to the terms of Section 18(1) it appears clear to us that the intention of Parliament was to cover the entire field and thus to leave no scope for the argument that until rules were framed, there was no inconsistency and no supersession, of the State Act."

Applying the aforesaid ratio, I hold that a consolidating statute like the Electricity Act 2003 edges out the TNEB (Recovery of Dues) Act 1978 from its field of operation."

39. There is no quarrel with the fact that Act, 2003 provides for recovery, while providing disconnection of electrical supply to the said person, which is provided u/s 56 (1). As already stated, it is a *pari materia* provision to Section 24, which was already in existence in the Indian Electricity Act, 1910 to overcome which, the Recovery Act was enacted. There existed a repugnancy between the Indian Electricity Act, 1910 and the Recovery Act, which necessitated the placement of the Recovery Act before the President and assent was obtained. Upon the assent being given, the Recovery Act came into force and has been holding the field, till its challenge through the writ petition resulting in the impugned order.

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40. As already stated above, Section 56 (1) of Act, 2003, is a *pari materia* provision to Section 24 of the Indian Electricity Act, 1910. Is there a need to obtain the assent of the President for the Recovery Act on coming into force of Act, 2003 or does the provisions of Act, 2003 save the Recovery Act from being repugnant in the light of Article 254 of the Constitution is the only issue that requires to be considered.

41. The issue of repugnancy between a Central legislation and a State legislation, which fall under the Concurrent List have been dealt with by the Constitution Bench in ***M. Karunanidhi – Vs - Union of India (1979 (3) SCC 431)***, wherein the Apex Court held thus :-

> *"On a careful consideration, therefore, of the authorities referred to above, the following propositions emerge:-*
>
> *1. That in order to decide the question of repugnancy it must be shown that the two enactments contain inconsistent and irreconcilable provisions, so that they cannot stand together or operate in the same field.*
>
> *2. That there can be no repeal by implication unless the inconsistency appears on the face of the two statutes.*
>
> *3. That where the two statutes occupy a particular field, there is room or possibility of both the statutes*

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operating in the same field without coming into collision with each other, no repugnancy results.

4. That where there is no inconsistency but a statute occupying the same field seeks to create distinct and separate offences, no question of repugnancy arises and both the statutes continue to operate in the same field.

In the light of the propositions enunciated above, there can be no doubt that the State Act creates distinct and separate offences with different ingredients and different punishments and it does not in any way collide with the Central Acts. On the other hand, the State Act itself permits the Central Act, namely, the Criminal Law (Amendment) Act to come into its aid after an investigation is completed and a report is submitted by the Commissioner or the Additional Commissioner. It was contended however by Mr. Venugopal that by virtue of the fact that the State Act has obtained the assent of the President, it will be deemed to be a dominant legislation, and, therefore, it would overrule the Central Acts. Doubtless, the State Act is the dominant legislation but we are unable to agree with Mr. Venugopal that there are any provisions in the State Act which are irreconcilably or directly inconsistent with the Central Acts so as to overrule them. Last but not the least there is a very important circumstance which completely and conclusively clinches the issue and takes the force out of the argument of Mr. Venugopal on the question of repugnancy. It would be seen that in the original State Act, section 29 ran thus:-

"Act to overrule other laws, etc.- The provisions of this Act shall have effect notwithstanding anything inconsistent

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therewith contained in any other law for the time being in force or any custom, usage or contract or decree or order of a court or other authority".

This section underwent an amendment which was brought about by Tamil Nadu Act 16 of 1974 which substituted a new section 29 for the old one. The new section which was substituted may be extracted thus:-

"Saving - The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force, and nothing contained herein shall exempt any public man from any proceeding by way of investigation or otherwise which might, apart from this Act, be instituted against him".

This amendment received the assent of the President on 10th April, 1974 and was published in the Tamil Nadu Government Gazette Extraordinary dated 16th April, 1974. We have already shown that although the State Act was passed as far back as 30th December, 1973 it received the assent of the President on the 10th April, 1974 that is to say, on the same date as Act 16 of 1974. The Act was however brought into force on the 8th May, 1974 when the new section 29 which had already replaced the old section and had become a part of the statute. Therefore, for all intents and purposes the State Act cannot be read in isolation, but has to be interpreted in conjunction with the express language contained in section 29 of the State Act. This section has in unequivocable terms expressed the intention that the State Act which was undoubtedly the dominant legislation would only be "in addition to and not in derogation with any other law for the time being in force" which manifestly includes

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the Central Acts, namely, the Indian Penal Code, the Corruption Act and the Criminal Law (Amendment) Act. Thus, the Legislature about a month before the main Act came into force clearly declared its intention that there would be no question of the State Act colliding with the Central Acts referred to above."

(Emphasis Supplied)

42. By a comprehensive legislation, Act, 2003 replaced the Indian Electricity Act, 1910, the Electricity (Supply) Act, 1948 and the Electricity Regulatory Commission Act, 1998. Considering the expanding field of electricity, a comprehensive Act combining all the three was enacted to pave the way for Generating, Distribution and Transmission entities. In effect, the State Electricity Boards were trifurcated into Generating, Distribution and Transmission entities, while the Board retained its overall control. By Act, 2003, the entire framework of the electrical supply was revamped and private players were also roped in, in the generation of electricity.

43. The recovery aspect comes within the bounds of the Distribution and Transmission entities, as the entire generation of electricity by the private players is either sent to the grid from where distribution is undertaken. The manner in which the defaulters should be dealt with, including matters involving theft of

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electricity is provided for u/s 56, which has already been extracted and discussed above, which provides for laying a suit to recover the charges, which is the very same provision, which was in existence in the earlier repealed Indian Electricity Act, 1910.

44. To fulfil the objectives of the Act, Tamil Nadu Electricity Supply Code, 2004 was also enacted, wherein rule 23 (A)(a) of the said Code provided for recovery of the dues as provided for in the Electricity Act, meaning thereby, according to the respondent, a reference to Section 56 and resort to Section 6 of the Recovery Act is impermissible.

45. One of the important highlights of Act, 2003 is making theft of electricity a penal offence, including criminal prosecution and to achieve the same, Section 135 to 157 relate to theft of electricity and prosecution thereto. Section 152 of Act, 2003, provides for compounding of offences by paying a sum of money as quantified by the Department. Even at this stage, it is to be pointed out that while the notice calling upon payment of charges was issued by the Department to the respondent herein, the said notice had also prescribed the amount that is payable for compounding the offence, as provided u/s 152 and

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the respondent, with a view to come out of the clutches of the penal consequences, had paid the sum of Rs.2,10,000/-, which quantification was arrived at on the basis of the theft, alleged and assessed by the Department, which formed the basis for calculation of dues in the notice.

46. One of the objects of the Bill which formed the basis for enacting Act, 2003, related to a revenue focus in respect of theft of electricity. Therewith, penal consequences also stood included in Act, 2003. Act, 2003 comprehensively dealt with all the factors relating to the generation, distribution and transmission of electricity in the current day scenario. However, as aforesaid, it also retained certain aspects of the provisions from the Indian Electricity Act, 1910, which stood repealed.

47. Section 56 (2) of Act, 2003, which provided for filing of suit for recovery of the charges has been adverted to by the writ court to hold that Section 6 of the Recovery Act is repugnant to Section 56. However, two other provisions of Act, 2003, which have a bearing on the repugnancy have not been adverted to by the writ court.

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48. The manner in which the inconsistency between the laws made by Parliament and laws made by the State Legislatures are to be looked into is provided for under Article 254 of the Constitution and for reference, the same is extracted hereunder :-

> ***"254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States:***
>
> *(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.*
>
> *(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:*
>
> *Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to*

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the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State."

49. Clause (1) of Article 254 plainly spells out that where any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

50. From clause (1) of Article 254 it is clear that it is the primacy of the law made by Parliament which is supreme and any provision of law made by the State which is not in consonance with the law made by the Parliament with regard to matters in the Concurrent List, to that extent of repugnancy would be void.

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51. However, the clause (1) of Article 254 is not without a caveat. Clause (2) of Article 254 provides that where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State.

52. Article 254 (2) in clear terms spells out that the repugnancy of the State law with the law made by Parliament, even if any, would stand weeded out if the said law has received the assent of the President and in such a situation, the same would prevail in the said State. Further, it is not only to an earlier law, but also to any existing law, the State law would not be repugnant if it had received the assent of the President.

53. In the present case, it is the averment of the parties that the Indian Electricity Act, 1910 was occupying the field along with Electricity (Supply) Act, 1948 and recovery of charges from defaulters was provided in the form of filing of suit in the Indian Electricity Act, 1910. Due to the difficulties faced in the

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process of recovery of the charges, the Recovery Act had been enacted by the State Legislature providing for recovery of the charges as land revenue and since there was a marked departure from the Central legislation in relation to recovery, the Recovery Act, to weed out the repugnancy, was placed before the President for assent, which had since been granted and had come into force on 13.6.1978 and had been in operation till the enactment of Act, 2003.

54. Upon coming into force of Act, 2003 and the repeal of the Indian Electricity Act, 1910 and Electricity (Supply) Act, 1948, the stand of the respondent, which has been accepted by the writ court is that, though Act, 2003 and the Indian Electricity Act, 1910 had *pari materia* provision in Section 56 and Section 24, the mere *pari materia* provision will not save Section 6 of the Recovery Act, as it is inconsistent with Act, 2003 and, therefore, necessarily, it has to be placed once again before the President for assent and in the absence of assent, Section 6 is repugnant to Section 56 and, therefore, applying the doctrine of implied repeal, the Recovery Act would also have to be held as having been repealed.

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55. However, to counter the said stand of the respondent, the appellants drew the attention of this Court to Section 175 of Act, 2003 which provides that the provisions of Act, 2003 are only in addition and not in derogation of other laws and, therefore, so long as the Recovery Act only provides for an additional mode of recovery of the charges due from the defaulters, the same cannot be said to be inconsistent with the Central legislation and, therefore, it cannot be termed to be repugnant to Act, 2003 and further, Section 175 saves the Recovery Act from being placed once again to the President for assent.

56. Section 174 of Act, 2003 deals with the overriding effect that Act, 2003 will have over any other law while Section 175 stipulates that the provisions of Act, 2003 are to be in addition to and not in derogation of other laws. For better appreciation, the said provisions are quoted hereunder :-

> *"**174. (Act to have overriding effect):***
>
> *Save as otherwise provided in section 173, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.*
>
> ***175. (Provisions of this Act to be in addition to and not in derogation of other laws):***
>
> *The provisions of this Act are in addition to and not in derogation of any other law for the time being in force."*

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57. While Section 174 is a *non obstante* clause, which provides for the overriding of the provisions of this Act over any other laws so long as they are inconsistent with this Act, Section 175 is a saving provision, which provides that the provisions of this Act are in addition to and not in derogation of any other law for the time being in force.

58. Though both the provisions, at first look, seem to be mutually contradictory, however, a careful perusal of the said provisions would reveal that it seeks to achieve a broader purpose. While the *non obstante* provision u/s 174 saves the application of this law from inconsistency and have an overriding effect over any other laws, the provision u/s 175 seeks to maintain a balance between the various laws that have been enacted during the subsistence of the Indian Electricity Act, 1910.

59. The maintenance of balance between the various laws have been necessitated on account of the fact that the Indian Electricity Act, 1910 had been in operation for about a century with additions through the Electricity (Supply) Act, 1948, which was consciously considered by the Parliament while enacting

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Act, 2003. Parliament would definitely have been conscious of the fact that between the enactment of the Indian Electricity Act, 1910 and Act, 2003, many State enactments to offset the difficulties faced in the implementation of the Indian Electricity Act, 1910 would have been passed, such as the present case, where the Recovery Act had come to be enacted in the year 1978 to overcome the difficulty in realising the dues/charges due to the Department. The Central legislation would have definitely taken into consideration the fact that many other laws would have been enacted by the State Legislatures to plug the shortfall that would have come to light in the Indian Electricity Act, 1910, which was also one of the main reason the Indian Electricity Act, 1910 was repealed by way of Act, 2003, which would be evident from the objects and reasons of Act, 2003.

60. In the above backdrop, though the *non obstante* clause u/s 174 would spell out that any inconsistency between Act, 2003 and any other law, Act, 2003 would gain supremacy, however, in the absence of any inconsistency, any other laws, which provide for certain other measures, which have not been specifically spelt out in Act, 2003, would have to be considered as additive and not in derogation to Act, 2003. The vision of the Parliament in bringing both Sections

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174 and 175 would spell out the clear intention in saving many of the laws, which have been enacted in the interregnum between the enactment of the Indian Electricity Act, 1910 and Act, 2003.

61. Further, the ratio laid down by the Constitution Bench in *Karunanidhi case (supra)* squarely applies in all fours to the present case, as the Central legislation, which is the dominant legislation, has, in unequivocable terms expressed the intention that the provisions of the Central legislation would be *"in addition to and not in derogation of any other law for the time being in force"* which manifestly includes the State Acts as well, thereby, the Presidential assent obtained for the Recovery Act, as early as on 13.6.1978, when the Indian Electricity Act, 1910, was in force, would equally flow to the new legislation, viz., Act, 2003, and there would arise no necessity to obtain a fresh assent for the very same legislation, which has already been assented to by the President for the very same *pari materia* provision. Therefore, the decision relied on by the respondent in *Pt.Rishikesh case (supra)* would not be of any help to canvass the plea of non-obtainment of fresh presidential assent.

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62. One other aspect which has been canvassed on behalf of the respondent is the implied repeal of the Recovery Act on account of its inconsistency with the Central legislation, viz., Act, 2003. Though this Court in the preceding paragraph has held that there is no inconsistency between Act, 2003 and the provisions of the Recovery Act, the issue of implied repeal of the Recovery Act also cannot be sustained. In this regard, useful reference can be had to the decision of the Apex Court in ***Ratan Lal Adukia & Anr. – Vs - Union of India (1989 (3) SCC 537),*** wherein the Supreme Court held thus :-

> *"11. The contention emphasised is that where a statute merely recognises a right pre-existing in common-law and provides a remedy, such a remedy, unless the statute expressly bans or excludes other remedies, could only be an additional or concurrent one open to an election. It is true that where a statute does not itself bring into being a new right not a pre-existing right and also provides a remedy therefore so however that the right and the remedy cannot be said to have been brought into existence for the first time uno-flatu, such a remedy would not generally be held to be exclusive but only an additional and concurrent one, along with the pre-existing remedies, unless there are express indications to the contrary in the statute itself. In* ***Municipal Council, Palai v. T.J. Joseph, [1964] 2 SCR 87****, this Court considered the tests of repugnancy applied under Article 254(2) of the Constitution, relevant in the examination of circumstances bringing about an implied repeal.*

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Strictly speaking the examination of the question whether an act of Parliament prevails against the law enacted by a State under Article 254, does not really involve any question of repeal. In ***Zaver Bhai Amaidas v. State of Bombay, AIR 1954 SC 752*** *this Court applied the test conversely, of the principle of implied repeal to cases of repugnancy under Article 254(2). It was observed:*

> *"It is true, as already pointed out, that on a question under Art. 25(1) whether an Act of Parliament prevails against a law of the State, no question of repeal arises, but the principle on which the rule of implied repeal rests, namely, that if the subject-matter of the later legislation is identical with that of the earlier, so that they cannot both stand together, then the earlier is repealed by the later enactment, will be equally applicable to a question trader Art. 254(2) where the further legislation by Parliament is in respect of the same matter as that of the State law."*

The doctrine of implied repeal is based on the postulate that the legislature which is presumed to know the existing state of the law did not intend to create any confusion by retaining conflicting provisions. Courts, in applying this doctrine, are supposed merely to give effect to the legislative intent by examining the object and scope of the two enactments. But in a conceivable case, the very existence of two provisions may by itself, and without more, lead to an inference of mutual irreconcilability if the later set of provisions is by itself a complete code with respect to the same matter. In such a case the actual detailed comparison of the two sets of provisions may not be necessary. It is a matter of legislative intent that the

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two sets of provisions were not expected to be applied simultaneously. Section 80 is a special provision. It deals with certain class of suits distinguishable on the basis of their particular subject-matters. The High Court has come to the conclusion that new Section 80 made a conscious departure on the law as to the place of suing in respect of suits of a particular subject- matter envisaged by that Section. The High Court has held that the new Section 80 is a self-contained provision in regard to the choice of fora for such suits. According to the High Court, there was no need for the legislature to specify the places of suing which would otherwise be covered by Section 20 C.P.C. unless the special prescription as to places of suing was considered to be necessary in derogation to the general law as contained in Sec. 20 CPC or the provisions in the Small cause Courts Act. As to the words "may be instituted" occurring in that Section, the High Court observed:

> *"The use of the expression 'may be instituted' in Section 80 of the Railways Act was equivalent to 'shall be instituted'. Section 80 conferred right to institute suits for compensation against the Railways for breach of their obligations for carrying passengers, animals or goods specified in Chapter VII of the Indian Railways Act. Both the obligation on the part of the Railways and the right of the consignor and the consignee to institute suits are now statutory in their nature. The clear intendment of the Legislature was that it would be obligatory for the plaintiffs to institute suits only in the Courts mentioned in Section 80 of the Railways Act for enforcement of the claims for compensation against the Railways."*
>
> *(Emphasis Supplied)*

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63. Once when the Central legislation has, in unequivocable terms, expressed the intention that the provisions of the Central legislation would be *"in addition to and not in derogation of any other law for the time being in force"* which manifestly includes the State Acts as well, then the question of implied repeal advanced by the respondent would not survive. Further, only when there is a manifest confusion between the Central legislation and the State legislation and in the absence of Presidential assent for the State legislation, the question of implied repeal would not survive.

64. One crucial aspect which requires consideration is the view of the writ court that to realise the charges due, the Department has to file only a suit and any recovery through the Recovery Act by way of land revenue is inconsistent with Act, 2003 as Act, 2003 recognises only the filing of the suit and any other mode of recovery, unlike Section 6 of the Recovery Act, is repugnant to Section 56 of Act, 2003. Therefore, the issue that requires the determination of this Court is whether it is really the Department, which is to file a suit for recovery of the said sum as is claimed to have been mandated u/s 24 of the Indian Electricity Act, 1910 and u/s 56 of Act, 2003, which are quoted hereunder:-

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Electricity Act, 2003 (New Act)	***Indian Electricity Act, 1910 (Old Act)***
Section 56. (Disconnection of supply in default of payment): *(1) Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days' notice in writing, to such person and **without prejudice to his rights** to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:* *Provided that the supply of electricity shall not be cut off if such person deposits, under protest, -* *(a) an amount equal to the sum claimed from him, or* *b) the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months, whichever is less, pending disposal of any dispute between him and the licensee.* *(2) Notwithstanding anything contained in any other law for the time being in force, no sum*	***24. Discontinuance of supply to consumer neglecting to pay charge .-*** *(1) Where any person neglects to pay any charge for energy or any [sum, other than a charge for energy,] [Substituted by Act 1 of 1922, Section 10, for " other sum" .] due from him to a licensee in respect of the supply of energy to him, the licensee may, after giving not less than seven clear days' notice in writing to such person and **without prejudice to his right** to recover such charge or other sum by suit, cut off the supply and for that purpose cut or disconnect any electric supply-line or other works, being the property of the licensee, through which energy may be supplied, and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer.*

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due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.	

65. A careful perusal of both the *pari materia* provisions reveal that where "*the licensee or the generating company may, after giving not less than fifteen clear days' notice in writing, to such person and* ***without prejudice to his rights*** *to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company".* The carefully worded provision, both in the Indian Electricity Act, 1910 and in Act, 2003 reveals that for the purpose of realising the sum, a mandate has been cast on the licensee or the generating company to give clear seven days notice in writing to such person to pay the said sum, failing which the generating company/licensee can disconnect the electrical supply beyond which no other remedy has been given u/s 56 of Act, 2003 or u/s 24 of the Indian Electricity Act for the Department to recover the said sum. However, for the purpose of recovering such charges or other sum, which has been charged and which has been paid by the defaulter on notice, may be under protest, it is only the defaulter, who is provided with a remedy to file a suit

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for recovery of the said sums. This would be evident from the fact that by the use of the phrase "***and without prejudice to his rights to recover such charge or other sum by suit*** " the Parliament has specifically conjuncted the action which could be taken by the licensee/generating company as also the defaulter, which is evident from the usage of the word ***"his rights"*** which clearly signify the rights, which are enjoyed by the consumers. There is no specification either u/s 24 or u/s 56 mandating the Department to file only a suit to recover the dues and not through any other manner and if really the intent of the Parliament was to have put a condition on the Department to file a suit to recover the amount, the word *"**his rights**"* would not have been used as there would be no prejudice of rights of the Department in any scenario. This would reveal the intention and mind of the Parliament with regard to recovery of the amount which has been left to the discretion of the respective State Legislatures to take appropriate steps for creating the necessary framework for recovering the amount.

66. The above assumes more significance in view of the fact that Section 175 of Act, 2003 clearly provides that the *provisions of this Act are in addition to and not in derogation of any other law for the time being in force.* The clear intent of the Parliament is revealed by the fact that for the purpose of recovery,

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the respective States could frame the necessary laws and such laws, which have been enacted by the said States would be an inclusion/addition to Act, 2003 which would alone not jeopardize the rights of the Department. However, at the same time, the defaulter has also been provided with an avenue to file a suit to recover such charge or any other sums by resorting to a suit, which definitely provides the defaulter with an opportunity to establish, through trial, that there exists no liability on his part to pay the amount as he would be provided with all opportunity to lead evidence and establish his case.

67. It is to be pointed out that repugnancy would arise only when there is a semblance of inconsistency between the Central Act and the State Act. In the present scheme of the provisions, when the Central Act, viz., Act, 2003, has not provided any mode for recovery by the Department and such recovery mode has been provided only to the alleged defaulter to file a suit, the State, in public interest, has enacted the Recovery Act providing for recovery of such charges which are due and payable by a person. When Act, 2003, has not provided any manner for recovery of the amount by the department, the recovery mode, which is provided u/s 6 of the Recovery Act cannot be said to be repugnant to

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Section 56 of Act, 2003, as there is no inconsistency between Section 56 of Act, 2003 and Section 6 of the Recovery Act, 1978.

68. It is to be pointed out, at the risk of repetition, that even Section 24 of the Indian Electricity Act, 1910, a *pari materia* provision to Section 56 of Act, 2003, was erroneously construed by the State resulting in the objects and reasons of the Recovery Act spelling out that the Recovery Act had been enacted providing for the mode of recovery by pointing out that the cumbersome process of going through the filing of suit and the timelines that it would take to realise the amount, which causes great difficulties to the exchequer. However, as stated above, even the Indian Electricity Act, 1910, did not mandate filing of a suit by the department for recovery of the charges from the defaulter and even thereto, only the person, who is prejudiced by the said notice calling upon him to pay the sum quantified, has been provided with an avenue of filing a suit to recover the amount, if the person has paid the said sum apprehending disconnection of electricity, which has been carried on to Act, 2003. Therefore, the interpretation of the provision to mean that the hands of the department was scuffled and the recovery of the amounts could be recovered only by filing a suit, is a wrong assumption of the State while enacting the Recovery Act, as no such mandate for

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filing a suit by the department has been provided either under the Indian Electricity Act, 1910 or under Act, 2003.

69. When there is no mode specified under Act, 2003 for recovery of the charges due to the Department from the alleged defaulter, any mode prescribed under the Recovery Act cannot be said to be repugnant to the provisions of Act, 2003, when there is no inconsistency between Act, 2003 and the Recovery Act. At best, the Recovery Act could be termed to be a provision which fills up the lacunae under Act, 2003 insofar as recovery is concerned by providing the manner in which recovery could be undertaken by the Department.

70. Issue of repugnancy will arise only when there is inconsistency between the Central and State legislation on a particular aspect. However, where the Central legislation is silent on the mode of recovery of charges from the defaulter insofar as the Department is concerned, the stepping in by the State to legislate on the same and providing for a mode of recovery is only to fill up the lacunae left by the Central legislation in Act, 2003 which could be meted out by the State on the basis of its prevailing laws and if such lacunae is filled up the State, the said inclusion would only partake the character of addition, which has

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been specifically provided u/s 175 of Act, 2003 and, therefore, not only would there be no repugnancy, but the concept of repugnancy would not even creep in.

71. A provision of law could be tested for repugnancy only when two enactments, one being a Central legislation and the other being a State legislation cover the same field with the Central legislation having a march over the State legislation. However, when the Central legislation has not provided for any mechanism on the department with respect to recovery and the State, for the purpose of realising the amounts from the defaulters, had enacted a law, the State enactment is a stand-alone enactment, which does not lean on the Central legislation for the purpose of testing the repugnancy; rather the leaning on the Central legislation is only for the purpose of achieving the objectives of the Central legislation without detriment to the exchequer. The decision in *Ratan Lal case (supra)* squarely sails with the view expressed by this Court above and gives the stamp of approval for the aforesaid view.

72. In the present case, the Recovery Act, by no stretch of imagination, could be said to lean on Act, 2003 for the purpose of recovery or for that matter, its predecessor, the Indian Electricity Act, 1910, as both do not provide for any

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specific mechanism for recovering the amounts due from the defaulters, the Recovery Act had been enacted way back in the year 1978 for safeguarding the interest of the exchequer.

73. The above view of this Court is strengthened by the later portion of Section 56 of Act, 2003, which further provides to "*cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid*....". The latter portion of Act, 2003 would clearly spell out that reconnection would be provided by the licensee only if the charges or other sum together with any expenses incurred are paid. If really the intention of the Parliament was to provide suit only as the mode of recovery, the question of reconnection cannot be subjected to the payment of the charges and any other sum, as the said portion of the Section casts a condition on the defaulter to pay the said amounts, which alone would form the basis for seeking reconnection.

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74. Though in the later portion of Section 24 as well as Section 56, it has been provided that *'may discontinue the supply until such change or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid"*, wherein there is a conspicuous use of the word *"by him"* a careful and disjuncted reading of the entire section would clearly reveal that what is sought to be projected by the Parliament by the use of the word *"by him"* is to portray the incurred for him, which has to be read as *"for him"*, which alone would achieve the object of the respective Acts. The aforesaid interpretation alone would satisfy the entire structure of the provision, as expenses towards disconnection or reconnection of electricity is done by the Department for the benefit of the individual and the expenses therefore would be incurred only by the Department. Adopting the theory of purposive interpretation, the word *"by him"* as found in the latter portion of Section 56 as also Section 24 would only have to be read as *"for him"* as that alone would satisfy not only the framework of the Acts, but also the intention of the Parliament. Therefore, the use of the word *"by"* in the latter portion of the Acts would have to be read as *"for"* to achieve the purpose for which the provision has been made. The manner in which a word in a provision has to be interpreted so as to achieve the purposes of the Act has been spelt out by the Constitution Bench in ***Indore Development***

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Authority – Vs – Manoharlal & Ors. (AIR 2020 SC 1496), which supports the view of this Court in reading the word *"by"* as *"for"*.

75. Though by the said Recovery Act, the Board has been vested with the powers to do all the things that are mandated under the Recovery Act, however, on and from the coming into force of Act, 2003, the operation of electricity having been decentralised under various heads such as generation, distribution, transmission, etc., and the activities of the three entities are vested in the Department by divesting the responsibilities of the above nature from the Electricity Board, the term Board as spelt out in the Recovery Act could only mean the Electricity Department under which the Electricity Board functions and in that backdrop, if the Electricity Board had issued the notice, the said notice cannot be said to be without authority, as the Recovery Act empowers the Electricity Board to collect the dues as arrears of land revenue u/s 6 of the Recovery Act. Further, it is the specific case of the appellants that all the shares of the Generation, Distribution and Transmission entities are vested in the Board and it is the Board, which has overall control over the decentralised arms in electricity generation.

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76. In view of the above, this Court is of the considered view that Section 6 of the Recovery Act is not repugnant to Section 56 (1) of Act, 2003, as the inconsistency, which is pointed out between the two statutes, as held by the writ court, is on a misreading of Section 56 of Act, 2003 and for the above reason, this Court has no hesitation to hold that Section 6 of the Recovery Act is not repugnant to Section 56 of Act, 2003.

77. Coming to the facts of the present case, the provisional assessment as also the final assessment have been made under the provisions of the Recovery Act and in fact, in the said assessment, by invoking the provisions of Section 135 of Act, 2003, relating to penal consequences, the compounding charges have been specified so as to enable the respondent to compound the offence and the respondent has compounded the offence by paying the said amount. The balance amount, which has been quantified way back in the year 2007, it yet to be paid, though, it is informed across the Bar that electrical supply has been disconnected, but for the writ petition, the amount, which is sought to be recovered through the said notice is yet to be paid.

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78. This Court has already held that Act, 2003, does not specify the manner in which recovery of amount due to the Department has to be made and only to offset the said lacuna, which was in existence even in the Indian Electricity Act, 1910, the Recovery Act had been enacted by the State providing for recovering the said amount as land revenue. The provision for recovery u/s 6 of the Recovery Act having been held to be not repugnant to Section 56 of Act, 2003, which is *pari materia* to Section 24 of the Indian Electricity Act, 1910, necessarily, no assent of the President was required even when the Indian Electricity Act, 1910 was in subsistence to overcome the repugnancy and the assent of the Governor alone was sufficient. However, Presidential assent was taken and the Recovery Act had come into force on 13.6.1978.

79. Once Presidential assent had been taken for the Recovery Act even though the provisions of the Recovery Act were not repugnant to the Indian Electricity Act, no fresh assent is required to be taken from the President for the continuance of the Recovery Act on and from the coming into force of Act, 2003. Therefore, the notice issued u/s 6 of the Recovery Act calling upon the respondent to pay the charges towards the theft of electricity cannot be said to be an act beyond the competence of the Act, but one that is duly approved by

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law. Therefore, this Court holds that the appellant is empowered to follow the course of law to collect the charges due to the theft of electricity from the respondent, moreso, considering the fact that the respondent, accepting his guilt, had paid the compounding charges as quantified in the notice and the appellants have also compounded the offence by dropping penal action against the respondent. Therefore, the act of the respondent in accepting his guilt and compounding the offence would act as a bar for the respondent from proceeding to agitate his rights by invoking the leverage given to him u/s 56 to file a suit.

80. In such view of the matter, this Court is of the considered view that there is no embargo on the appellants from proceeding further to collect the charges due from the respondent by invoking the provisions of the Recovery Act as also the Tamil Nadu Electricity Supply code, 2004.

81. For the reasons aforesaid, this writ appeal is allowed with the following observations and directions :-

i *The impugned order passed by the learned single Judge is set aside;*

ii *This Court holds that Section 6 of the Recovery Act is not repugnant to Section 56 of Act, 2003;*

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iii *This Court further holds that the Department, for the purpose of collecting the charges due and payable by the defaulter, need not resort to filing of a suit, but could resort to the provisions of the Recovery Act and the Tamil Nadu Electricity Supply Code, 2004 to collect the said dues;*

iv *The notice issued by the appellants against the respondent is revived and the respondent herein is directed to pay the amount, as quantified in the notice, without any charges and interest as provided in the BPC within a period of four weeks from the date of receipt of a copy of this order;*

v *If the respondent fails to pay the amount demanded in the notice within the time stipulated by this Court above, it is open to the appellants to resort to collection of the said amount from the respondent in accordance with law by invoking the provisions of the Recovery Act and the Tamil Nadu Electricity Supply Code, 2004.*

vi *Consequently, connected miscellaneous petition is closed. There shall be no order as to costs in this appeal.*

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(M.D.I.J.) (N.D.K.J.)
30.10.2026

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To

1 The Executive Engineer
Operation & Maintenance
Tamil Nadu Electricity Board
Karur Electricity Distribution Circle
Karur.

2 The Assistant Accounts Officer
Office of the Executive Engineer
Tamil Nadu Electricity Board
Revenue Branch / Urban
Karur, Karur District.

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M.DHANDAPANI, J.
AND
N.DILIPKUMAR, J.

GLN

PRE-DELIVERY JUDGMENT IN
W.A. (MD) NO.1698 OF 2019

Pronounced on
30.10.2026

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