



**PUNJAB STATE POWER CORPORATION LIMITED**  
**(Office of Engineer-in-Chief/Commercial, Patiala)**  
Regd. Office- PSEB Head Office, The Mall, Patiala-147001

To

All EICs/CEs/DyCEs/SEs/DS  
Under PSPCL

Memo No. 290/318 /DD/SR-33

Dated: 22 / 03 / 2012

SUB: Applicability of provisions of Section 126 and 135 of the Electricity Act 2003

Director R&R, Ministry of Power, Govt. of India in its letter no. 42 / 2 / 2005 – R&R dated 12.11.2007 on the subject cited above addressed to the Pr. Secretary / Secretary Energy) and Secretary of all SERC's has clarified that:-

- i) Key difference between the two provisions of sections 126 and 135 is that dishonest intention as mentioned u/s 135 is the necessary ingredient for the offence of theft of electricity.
- ii) For prosecuting someone u/s 135, a complaint or a report by police to the court is necessary u/s 151.
- iii) Section 126 is for assessment of the charges for unauthorized use of electricity. This provision would also be applicable to those cases where action is taken for offences under section 135 and the situation of alleged commitment of offence is covered under the provisions of Section 126.

Copy of the above clarification is available on the website for your reference please.

It is requested that the above clarification may be brought to the notice of all the officers / subordinates working under your control.

21.31.12.  
EIC/Commercial  
PSPCL, Patiala

CC

- 1) Director/Commercial, PSPCL, Patiala
- 2) Director/Distribution, PSPCL, Patiala
- 3) SE/IT, PSPCL, Patiala with the request to upload this letter alongwith above clarification on the PSPCL website please.

321  
22/3/12

No. 42/2/2005-R&R  
Government of India  
Ministry of Power

Shram Shakti Bhawan, Rafi Marg,  
New Delhi, the 12<sup>th</sup> November, 2007

To

The Pr. Secretary/Secretary (Energy) of all the States  
The Secretary of all SERCs

Subject: Applicability of provisions of Section 126 and 135 of the  
Electricity Act 2003

Sir,

Subsequent to the enactment to the Electricity (Amendment) Act, 2007, references have been received from the M.P. Electricity Regulatory Commission and the UP Electricity Regulatory Commission seeking clarification regarding applicability of the provisions of Section 126 and 135 of the Electricity Act. The matter has been examined in consultation with the Deptt. of Legal Affairs and accordingly following is clarified:

- (i) Key difference between the two provisions of sections 126 and 135 is that 'dishonest intention' as mentioned u/s 135 is the necessary ingredient for the offence of theft of electricity.
- (ii) For prosecuting someone u/s 135, a complaint or a report by police to the court is necessary u/s 151.
- (iii) Section 126 is for assessment of the charges for unauthorized use of electricity. This provision would also be applicable to those cases where action is taken for offences under section 135 and the situation of alleged commitment of offence is covered under the provisions of Section 126.

Yours faithfully

(Alok Kumar)  
Director (R&R)



## Consumer fora has no jurisdiction in electricity theft or unauthorised use cases

Posted on 02 July 2011 by A.A.JOSE BARODA

### Court

Hon'ble Gujarat High Court

### Brief

The Division Bench of the Hon'ble Gujarat High Court headed by its Chief Justice held on 21st June 2011, in a group of LPAs filed against different Electricity Companies of the GUVNL, challenging the orders of the single Judge of the same HC, that the Consumer Courts constituted under the Consumer Protection Act 1986 has no jurisdiction to entertain cases of unauthorised use under section 126 of the Electricity Act 2003 and of theft of electricity booked under section 135 of the Electricity Act 2003. This is an important judgement which would clear lot of confusions prevailing in the minds of the legal fraternity and the consumers of electricity.

### Citation

### Judgement

1759/2010 28 JULY 2011

### IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

METERS PATENT APPEAL No. 1759 of 2010

In

CIVIL CIVIL APPLICATION No. 12461 of 2009

With

CIVIL APPLICATION No. 8932 of 2010

In

METERS PATENT APPEAL No. 1759 of 2010

With

METERS PATENT APPEAL No. 307 of 2009

In

CIVIL CIVIL APPLICATION No. 528 of 2009

With

CIVIL APPLICATION No. 2896 of 2009

In



## **Consumer fora has no jurisdiction in electricity theft or unauthorised use cases**

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### **Court**

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### **Citation**

### **Judgement**

LPA/1759/2010 28 JUDGMENT

### **IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

LETTERS PATENT APPEAL No. 1759 of 2010  
In  
SPECIAL CIVIL APPLICATION No. 12461 of 2009  
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In  
SPECIAL CIVIL APPLICATION No. 528 of 2009  
With  
CIVIL APPLICATION No. 2896 of 2009  
In

- 3 Whether their Lordships wish to see the fair copy of the judgment ? No
- 4 Whether this case raises a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ? No
- 5 Whether it is to be referred to the civil judge ? No

MANORAMA KANSARA WD/O BALKRISHNA KANSARA - Appellant(s)  
 Versus  
 PARAT VIJ COMPANY LIMITED & 4 - Respondent(s)

**Appearance :**

MR MITUL K. BHAYANI for Appellant(s) : 1,  
 MR KAMAL DAVLE for Appellant(s) : 2  
 MR HARSHI S. JOSHI for Respondent(s) : 1,  
 Respondent(s) : 2 NOTICE SERVED BY DS for Respondent(s) : 3 - 5

**CORAM :** BENCH OF THE CHIEF JUSTICE MR. S.J. MUKHOPADHAYA  
 and  
 MR. JUSTICE J.B. PARDIWALA

**Date :** 21/06/2011

**COMMON CAV JUDGMENT**

BY THE CHIEF JUSTICE MR. S.J. MUKHOPADHAYA)

In these appeals, a common question of law is involved and common judgment by the learned Single Judge is under challenge, they were heard together and decided by this common judgment.

2. The only question involved in these cases is whether the Consumer Disputes Redressal Forum has jurisdiction to entertain the complaint filed by the consumer against the Respondent for Section 126 of the Electricity Act, 2003 or against the Respondent for Section 135 of the Electricity Act, 2003.

3. The learned Single Judge by the impugned common judgment held that -  
 The Consumer Disputes Redressal Forum has no jurisdiction to entertain the complaint in the matters pertaining to supply of electricity against the Respondent Companies.

4. The learned Single Judge further held that -  
 The Respondent Companies are indulged in theft of electricity and for that theft under Section 135 of the Electricity Act, 2003 have been issued, but the Consumer Disputes Redressal Forum has no jurisdiction to entertain the complaints against the Respondent Companies nor such forum can pass any interim order.

directing the Electricity Company to grant electricity connection.

- (iii) Once the Electricity Company issues bill under Section 126 of the Electricity Act, 2003 for unauthorized use of electricity, the consumer must approach the Appellate Authority under Section 127 of the Act. It does not fall within the jurisdiction of the consumer forum.
- (iv) As per the provisions contained in Section 153 of the Electricity Act, 2003, the Special Courts have the jurisdiction to entertain the complaint relating to theft under Section 135 of the Act and the Appellate Authority under Section 127 can entertain an appeal against the bill issued under Section 126 of the Act for unauthorized use of electricity and under Section 42(5) of the Electricity Act, 2003, the consumer can file a complaint before the forum for redressal of grievances of the consumers constituted under the Electricity Act, 2003 and against the decision of the forum, an appeal can be filed before the Electricity Ombudsman under Section 42(7) of the Act. Thus, there are three different forums available for the consumers for ventilating their grievances. Hence, the consumer forum constituted under the Consumer Protection Act, 1986 has no jurisdiction to entertain such application.

4. Since the issue involved in these appeals is in a very narrow compass, it is not necessary to discuss all the facts except the relevant one, as mentioned hereunder.

5. The case of one of the petitioners before the learned Single Judge was that the respondent - consumer had been provided with industrial connection for running flour mill. In course of a meter replacement drive, the meter of the consumer was replaced on 28.1.2008 and sent to the laboratory at Junagadh for joint laboratory inspection. The consumer was given notice to remain present for inspection on 24.7.2007, 31.7.2009 and 7.8.2009. Subsequently, the laboratory inspection was carried out in absence of the consumer on 4.9.2009, as according to the Electricity Company, the consumer did not remain present. It was found during the course of inspection that MMB seals and TC and TCC squares were tampered with. It was also noticed that the MMB seals had been refixed. Moreover, male and female parts of the TC had severe scratches. There were marks of scratches and of sparking on terminal block B-Phase current coil was found burnt. With this evidence, the Electricity

Company made up a mind that was a clear case of the consumer having used the electricity dishonestly, which is in breach of Section 135 of the Electricity Act, 2003. Therefore, a supplementary bill of Rs. 668,988/- was filed for power theft was served on the consumer as per the provisions of the Supply Code of the Gujarat Electricity Regulatory Commission constituted under Section 50 of the Electricity Act, 2003. An FIR was lodged at GBB Power Station, Rajkot at No. IT-2594/2009 on 12.10.09.

6. Being aggrieved with the said supplementary bill, the consumer filed a complaint before the District Consumer Disputes Redressal Forum, Rajkot and also filed an application for interim relief against disconnection. The District forum initially granted interim relief on payment of 50% of the amount of the supplementary bill and compensation charges of Rs. 1,00,000/-. The said order was challenged by the Electricity Company before this Court in the writ petition.

7. Similar to all other cases, the consumers moved before the District Consumer Disputes Redressal Forum and/or the Commission against the bill raised either under Section 135 of the Electricity Act, 2003 or the bill issued pursuant to the action taken under Section 135 of the Electricity Act, 2003. Therein also, certain orders were passed by different Electricity Companies who being aggrieved preferred writ petitions challenging the respective orders passed by the District Consumer Commission. In those cases, the learned Single Judge passed the common order, as discussed above. The grounds to set aside the order have already been stated in para 1. Therefore, it is not necessary to discuss further facts except to state that the order was challenged by the parties before this Court.

8. The learned counsel for the appellants made the following submissions to assail the order of the learned Single Judge:-

(A) The order made by the appellants who applied for grant of electricity connection or reconnection was in violation of the provisions of the Consumer Protection Act, 1986.

(B) The jurisdiction of the Consumer Court constituted under the Consumer Protection Act, 1986 is not ousted in view of the provisions of the Electricity Act, 2003.

- (iii) The learned Single Judge was not justified in law in entertaining the writ petitions, when there was remedy of statutory appeal under Section 15 to the State Commission and further appeal under Section 19 to the National Commission.

The learned counsel for the appellants placed reliance on different provisions of law including Sections, 2(1)(d), 2(1)(g), 2(1)(o) and 3 of the Consumer Protection Act, 1986 as also Sections 49, 126, 127, 135 to 139 and 173 of the Electricity Act, 2003. Reliance was also placed on the different decisions of the Supreme Court and other High Courts, which will be discussed at appropriate stage.

9. Per contra, according to Mr Kamal Trivedi, learned senior counsel appearing on behalf of the Electricity Companies, after enactment of the Electricity Act, 2003, the Parliament has sought to consolidate all the previous laws relating to generation and transmission of electricity and has provided for more methodical and scientific self-contained code. The relationship between the Electricity Companies as "licensees" under Section 2(3) and the "consumer" within the meaning of Section 2(15) of the Electricity Act, 2003 is governed by the Electricity Act, 2003. The State Government made the Electricity Supply Code in exercise of the powers conferred by Section 50 of the Electricity Act, 2003 for recovery of electricity charges, disconnection of supply of electricity for non-payment thereof, restoration of supply of electricity, to take action against tempering, distress or damage to electrical plat. electric lines or meter, etc. The Electricity Act, 2003 defines the term "unauthorized use of electricity" and provides for investigation and enforcement under Section 126 of the Act. The term "theft of electricity" is defined under Section 135 of the Electricity Act, 2003 and the term "theft of electric lines and materials" is defined under Section 136 of the Act. The offence committed under Section 135 of the Act is required to be tried by the Special Court constituted under the Electricity Act, 2003. There are provisions of appeals under Section 127 of the Electricity Act, 2003 against the assessment made under Section 126 of the Electricity Act, 2003. There being other provisions prescribed under Section 42(5) read with Section 42(7) of the Electricity Act, 2003, a person can make grievances against the electricity bill raised by the authority and, therefore, the consumer forum constituted under the Consumer Protection Act, 1986 would not apply to the cases governed by or under the provisions of the Electricity Act, 2003.



The learned counsel for the Electricity Companies also relied on the decisions of the Supreme Court and other Courts including the National Consumer Disputes Redressal Commission, New Delhi.

10. In reply, the learned counsel for the appellants would submit that Section 3 of the Consumer Protection Act, 1986 recognizes that the provisions of the Consumer Protection Act are in addition to and not in derogation of the provisions of any other law for the time being in force. Therefore, the jurisdiction of the consumer forum and the Consumer Protection Act cannot be said to be ousted even by implication.

11. From the record, it will be evident that in all the cases, the Electricity Company either passed the order of assessment of the electricity charges payable by one or other persons under Section 126 of the Electricity Act, 2003 or took measures under Section 135 of the said Act. In some of the cases, the electrical lines being disconnected or the efforts are made for disconnection, some of the parties also asked for reconnection of the electricity lines and obtained orders to that effect. They were allowed by the concerned District forum or Commission.

12. At this stage, it would be appropriate to refer to the Statement of Objects and Reasons and some of the provisions of the Consumer Protection Act, 1986.

The Consumer Protection Bill, 1986 sought to provide for better protection of the interests of consumers and for the purpose, to make provision for the establishment of Consumer councils and other authorities for the settlement of consumer disputes and for matter connected therewith. It sought, inter alia, to promote and protect the rights of consumers such as -

- (a) the right to be protected against marketing of goods which are hazardous to life and property;
- (b) the right to be informed about the quality, quantity, potency, purity, standard and price of goods to protect the consumer against under trade practices;
- (c) the right to be assured, wherever possible, access to an authority of goods at competitive prices;

- (d) the right to be heard and to be assured that consumers interests will receive due consideration at appropriate forums;
- (e) the right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers; and
- (f) right to consumer education.

To provide speedy and simple redressal to consumer disputes, a quasi-judicial machinery is sought to be set up at the district, State and Central levels, which are required to observe the principles of natural justice and have been empowered to give relief of a specific nature and to award, wherever appropriate, compensation to the consumers and penalties for non-compliance of the orders given by the quasi-judicial bodies.

13. Section 2(1)(d) of the Consumer Protection Act, 1986 defines "consumer" as follows :-

"2(1)(d) "consumer" means any person who,-

- (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promises, or under any system of deferred payment, when such use is made with the approval of such persons, but does not include a person who obtains such goods for resale or for any commercial purpose; or
- (ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promises, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned persons but does not include a person who avails of such services for any commercial purpose;

*Explanation.* - For the purposes of this clause, "commercial purpose" does not include use by a person of goods bought and used by him and serviced availed by him exclusively for the purposes of earning his livelihood by means of self-employment."

According to Section 2(1)(m) of the Consumer Protection Act, 1986. "person"

includes (i) a firm whether registered or not, (ii) a Hindu undivided family, (iii) a co-operative society and (iv) every other association of persons whether registered under the Societies Registration Act, 1860 (21 of 1860) or not.

“Service” has been defined under Section 2(1)(o) of the Consumer Protection Act, 1986 and reads as follows :-

“2(1)(o) “service” means services of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of a personal service.”

From the aforesaid provisions, it will be evident that the petitioner - complainants fall under the definition of “person” having availed of service for supply of electrical energy on payment of consideration and thereby fall within the definition of “consumer” as defined under Section 2(1)(d)(ii) for the purpose of “service” as defined under Section 2(1)(o) of the Consumer Protection Act, 1986.

14. The next question arises whether there was any deficiency in service on the part of the Electricity Companies so as to warrant the grant of any relief to the consumer in the proceeding under the Consumer Protection Act, 1986.

15. For the purpose of determination of such issue, we will refer to the relevant provisions of the Electricity Act, 2003, as noticed hereunder.

The Electricity Act, 2003 was enacted to consolidate the laws relating to generation, transmission, distribution, trading and use of electricity and generally for taking measures conducive to development of electricity industry, promoting competition therein, protecting interest of consumers and supply of electricity to all areas, rationalization of electricity tariff, ensuring transparent policies regarding subsidies, promotion of efficient and environmentally benign policies, constitution of Central Electricity Authority, Regulatory Commissions and establishment of Appellate Tribunal and for matter connected therewith or incidental thereto.

Section 2(15) of the Electricity Act, 2003 defines “consumer” as follows :-

"2(15) "consumer" means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be."

16. The complainant – appellants in all the cases claim to be consumers as they are supplied with electricity for their own use by the licensee or as their premises are for the time being connected for the purpose of receiving electricity.

17. Part XII of the Electricity Act, 2003 relates to "Investigation and Enforcement". Section 126 relates to "indulging in unauthorized use of electricity by any person", which reads as follows :-

**"126. Assessment.**- (1) If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorized use of electricity, he shall provisionally assess to the best of his 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 unauthorized use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorized use of electricity has taken place and if, however, the period during which such unauthorized 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 (3).

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) "unauthorized use of electricity" means the usage of electricity -

(i) by any artificial means; or

(ii) by a means not authorized 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 authorized; or

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

18. There is a provision of an appeal under Section 127 against the final order made under Section 126, as quoted hereinbelow :-

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

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

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

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

(5) The order of appeal to the appellate authority referred to in sub-section (1) may be set aside or modified with the consent of the parties.

(6) Where a person defaults in making payment of assessed amount, he, in addition to the assessed amount, shall be liable to pay, on the expiry of thirty

days from the date of order of assessment, an amount of interest at the rate of sixteen per cent, per annum compounded every six months."

19. From the aforesaid provision, it will be evident that Section 126 is not only confined to the consumer, but also applicable to any person whoever indulges in unauthorized use of electricity.

In normal course, electricity bill is raised on the basis of the electricity consumed by the consumer, but the bill raised under Section 126 is penal in nature, as it is raised if a consumer or any person is found to be indulged in unauthorized use of electricity. The normal charge is not charged to such person, but a penal charge at the rate equal to twice the tariff applicable for the relevant category of services and the final order of assessment is passed only after affording a reasonable opportunity of hearing to such person. Therefore, it will be clear that the assessment made and the electricity bill raised under Section 126 is penal in nature and distinct from the normal bill of electricity as raised in favour of one or other consumers and, therefore, the question of deficiency in service is not applicable in the case of the assessment under Section 126 of the Electricity Act, 2003.

20. Chapter XIV of the Electricity Act, 2003 relates to "Offences and Penalties". Section 135 relates to "Theft of electricity", imposition of fine for first conviction, sentence of imprisonment in the event of second or subsequent conviction, as evident from the said provisions and quoted hereunder :-

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

- (a) taps, makes or causes to be made any connection with overhead, underground or under water lines or cables, or service wires, or service facilities, of a licensee or supplier, as the case may be; or
- (b) tampers a meter, installs or uses a tampered meter, current reversing transformer, loop connection or any other device or method which interferes with accurate or proper registration, calibration or metering of electricity current or otherwise results in a manner whereby electricity is stolen or wasted; or
- (c) damages or destroys an electric meter, apparatus, equipment, or wire or cable, or allows any of them to be so damaged or destroyed as to interfere with the proper or accurate metering of electricity; or
- (d) uses electricity through a tampered meter; or

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

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

Provided that in a case where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use -

(i) does not exceed 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction the fine imposed shall not be less than six times the financial gain on account of such theft of electricity;

(ii) exceeds 10 Kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction, the sentence shall be imprisonment for a term not less than six months, but which may extend to five years and with fine not less than six times the financial gain on account of such theft of electricity.

Provided further than in the event of second and subsequent conviction of a person where the load abstracted, consumed, or use or attempted abstraction or attempted consumption or attempted use exceeds 10 kilowatt, such person shall also be debarred from getting any supply of electricity for a period which shall not be less than three months but may extend to two years and shall also be debarred from getting supply of electricity for that period from any other source or generating station :

Provided also that if it is provided that any artificial means or means not authorized by the Board of licensee or supplier, as the case may be, exist for the abstraction, consumption or use of electricity by the consumer, it shall be presumed, until the contrary is proved, that any abstraction, consumption or use of electricity has been dishonestly caused by such consumer.

(1A) Without prejudice to the provisions of this Act, the licensee or supplier, as the case may be, may, upon detection of such theft of electricity, immediately disconnect the supply of electricity :

Provided that only such officer of the licensee or supplier, as authorized for the purpose by the Appropriate Commission or any other officer of the licensee or supplier, as the case may be, of the rank higher than the rank so authorized shall disconnect the supply line of electricity :

Provided further that such officer of the licensee or supplier, as the case may be, shall lodge a complaint in writing relating to the commission of such offence in police station having jurisdiction within twenty-four hours from the time of such disconnect :

Provided also that the licensee or supplier, as the case may be, on deposit or payment of the assessed amount or electricity charges in accordance with the provisions of the Act, shall, without prejudice to the obligation to lodge the complaint as referred to in the second proviso to this clause, restore the supply line of electricity within forty-eight hours of such deposit or payment;

(2) Any officer of the licensee or supplier, as the case may be, authorized in this behalf by the Government may -

- (a) enter, inspect, break open and search any place or premises in which he has reasonable grounds to believe that electricity has been or is being, used unauthorisedly;
- (b) search, seize and remove all such devices, instruments, wires and any other article which has been or is being, used for unauthorized use of electricity;
- (c) examine such books of account or documents which in his opinion are useful for or relevant to, any proceedings in respect of the offence under sub-section (1) and allow the person from whose custody such books of account or documents are seized to make copies thereof or to inspect the same in his presence.

(3) The occupant of the place of search or any person on his behalf shall remain present during the search and a list of all things seized in the course of such search shall be prepared and delivered to such occupant or person who shall sign the list.

Provided that the inspection, search and seizure of any domestic places or premises shall be carried out between sunset and sunrise except in the case of a female member occupying such premises.

(4) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to search and seizure shall apply, as far as may be, to searches and seizures made under this section.

21. Section 136 of the Electricity Act, 2003 on the other hand deals with "Theft of electric lines and materials", whereas Section 137 relates to "Punishment for receiving stolen electric lines and materials" as quoted hereunder :-

"136. Theft of electric lines and materials.- (1) Whoever, dishonestly,-

- (a) cuts, breaks, removes, takes away or transfers any electric line, material or meter from a pole, any other installation or place of installation or any site where it may be rightfully or lawfully stored, kept, stocked, situated or located, including during



transportation, without the consent of the licensee or the owner, as the case may be, whether or not the act is done for profit or gain; or

- (b) stores, possesses or otherwise keeps in his premises, custody or control, any electric line, material or meter without the consent of the owner, whether or not the act is committed for profit or gain; or
- (c) loads, carries, or moves from one place to another any electric line, material or meter without the consent of the owner, whether or not the act is done for profit or gain,

is sated to have committed an offence of theft of electric lines and materials, and shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

(2) If a person, having been convicted of an offence punishable under sub-section (1) is again guilty of an offence punishable under that sub-section, he shall be punishable for the second or subsequent offence for a term of imprisonment which shall not be less than six months but which may extend to five years and shall also be liable to fine which shall not be less than ten thousand rupees.

**\* 137. Punishment for receiving stolen property.-** Whoever, dishonestly receives any stolen electric line or material knowing or having reasons to believe the same to be stolen property, shall be punishable with imprisonment of either description for a term which may extend to three years or with fine or with both."

**22. In case of interference with meters or works of licensee, penal provision is prescribed under section 138, as follows :-**

**\* 138. Interference with meters or works of licensee.-**Whoever,-

- (a) unlawfully connects any meter, indicator or apparatus with any electric line through which electricity is supplied by a licensee or disconnects any such meter, indicator or apparatus from any such electric line; or
- (b) unlawfully reconnects any meter, indicator or apparatus with any electric line or other works being the property of a licensee when the said meter, indicator or apparatus has or have been cut or disconnected; or
- (c) attempts to be laid, or connects up any works for the purpose of interfering with any other works belonging to a licensee; or
- (d) tampers with, or fraudulently alters the index of any such meter, indicator or apparatus or prevents any such meter, indicator or apparatus from registering:

shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to ten thousand rupees, or with both, and, in the case of continuing offence, with a daily fine which may extend to five hundred rupees; and if it is proved that any means exist for making such connection as is referred to in clause (a) or such re-connection as is referred to in clause (b), or such communication as is referred to in clause (c), for causing such alteration or prevention as is referred to in clause (d), and that the meter, indicator or apparatus is under the custody or control of the consumer, whether it is his property or not, it shall be presumed, until the contrary is proved, that such connection, reconnection, communication, alteration, prevention or improper use, as the case may be, has been knowingly and wilfully caused by such consumer."

There are other penal provisions like Section 139 which relates to "Negligently breaking or damaging works", Section 140 which relates to "Penalty for intentionally injuring works", Section 141 which relates to "Extinguishing public lamps" and Section 142 which relates to "Punishment for non-compliance of directions by Appropriate Commission".

23. Under Section 145, there is a bar on jurisdiction of the Civil Court to entertain any suit or proceeding in respect of any matter which an assessing officer referred to in Section 126 or an appellate authority referred to in Section 127 or the adjudicating officer appointed under the Electricity Act, 2003 is empowered by or under the said Act to determine and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under the Electricity Act, 2003.

24. Chapter XV of the Electricity Act, 2003 relates to Special Courts constituted under Section 153 for the purposes of providing speedy trial of offences referred to in Sections 135 to 140 and Section 150 of the Electricity Act, 2003 and reads as follows :-

**"153. Constitution of Special Courts.-** (1) The State Government may, for the purposes of providing speedy trial of offences referred to in sections 135 to 140 and Section 150, by notification in the Official Gazette, constitute as many Special Courts as may be necessary for such area or areas, as may be specified in the notification.

(2) A Special Court shall consist of a single Judge who shall be appointed by the State Government with the concurrent of the High Court.

(3) A person shall not be qualified for appointment as a Judge of a Special Court unless he was, immediately before such appointment, an Additional District and Sessions Judge.

(4) Whether the office of the Judge of a Special Court is vacant, or such Judge is absent from the ordinary place of sitting of such Special Court, or he is incapacitated by illness or otherwise for the performance of his duties, any urgent business in the Special Court shall be disposed of -

(a) by a Judge, if any, exercising jurisdiction in the Special Court;

(b) where there is no such other Judge available, in accordance with the direction of District and Sessions Judge having jurisdiction over the ordinary place of sitting of Special Court, as notified under sub-section (1)."

25. Section 154 deals with "Procedure and power of Special Court" which have powers of a Court of Sessions under Section 155. The appeal and revision against such decision is maintainable before the High Court under Section 156 of the Electricity Act, 2003.

26. From the aforesaid provisions, it will be evident that Section 135 and the order passed thereunder relates to theft of electricity which is an offence for which penalty is prescribed and to be tried by the Special Court under Section 153 of the Electricity Act, 2003. It has nothing to do with any deficiency in service on the part of the Electricity Company, but relates to an offence committed by any person including a consumer.

27. We have already noticed that the State Government has also made the Electricity Supply Code in exercise of powers conferred under Section 50 of the Electricity Act, 2003. The said Code statutorily provides for the cases, inter alia, with regard to tempering of electrical lines or meter and the manner and method of collection of electricity charges.

28. Section 42 of the Electricity Act, 2003 relates to "Duties of distribution licensees and open access". Under sub-section (1), the distribution licensee is to develop and maintain an efficient co-ordinated and economical distribution system in his area of supply and to supply electricity in accordance with the provisions contained in the

Electricity Act, 2003. Under sub-section (2) of Section 42, the State Commission is required to introduce open access in phases subject to such conditions as may be prescribed on payment of surcharge in addition to the charges for wheeling. Any person, whose premises are situated within the area of supply of a distribution licensee, requires a supply of distribution of electricity from a generating Company or any licensee other than such distribution licensee, such person may, by notice, require the distribution licensee for wheeling such electricity in accordance with the regulations made by the State Commission under sub-section (3) of Section 42. Under sub-section (4) of Section 42, the State Commission permits a consumer or class of consumers to receive supply of electricity from a person other than the distribution licensee of his area of supply. For such consumer, a forum for redressal of grievance in accordance with the guidelines required to be set out by the distribution licensee under sub-section (5) of Section 42. Under sub-section (6) of Section 42, such consumer, who is aggrieved by non-redressal of his grievances under sub-section (5) can make a representation for redressal of his grievances before an authority to be known as "Ombudsman" to be appointed or designated by the State Commission. Under sub-section (7) of Section 42, the Ombudsman shall settle the grievance of the consumer within such time and in such manner as may be specified by the State Commission and the provisions of sub-sections (5), (6) and (7) shall be without prejudice to the right of the consumer apart from the rights conferred by those sub-sections.

Therefore, it will be evident that Section 42 relates to duties of distribution licensees and for giving open access with respect to the consumers who take such advantage under Section 42 and do not apply in cases where any person, including a consumer, is assessed by way of penalty under Section 126 of the Electricity Act, 2003 for indulging in unauthorized use of electricity nor applies to the person who commits offence and defaults under Section 135 or Section 136 or Section 137 or Section 139 or Section 140 of the Electricity Act, 2003.

The finding of the learned Single Judge that there is a third forum of appeal under Section 42 of the Electricity Act, 2003 against assessment under Section 126 or cases of theft of electricity alleged under Section 135 of the Electricity Act, 2003, therefore, does not lay down a correct law.

29. Section 3 of the Consumer Protection Act, 1986 specifically provides that the said

Act is not in derogation of any other law and reads as follows :-

**"3. Act not in derogation of any other law.-** The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force."

30. Subsequently, when the Electricity Act, 2003 was enacted, with a view to protect the provisions of the Consumer Protection Act, 1986, the following provisions have been made under Section 173 and read as follows :-

**"173. Inconsistency in laws,-** Nothing containing in this Act or any rule or regulation made thereunder or any instrument having effect by virtue of this Act, rule or regulation shall have effect in so far as it is inconsistent with any other provisions of the Consumer Protection Act, 1986 (68 of 1986) or the Atomic Energy Act, 1962 (33 of 1962) or the Railways Act, 1989 (24 of 1989)."

From the aforesaid provisions, it will be evident that the jurisdiction of the Consumer Court in the matter of deficiency in service on the part of the Electricity Company is not ousted in view of the provisions of the Electricity Act, 2003 and the finding of the learned Single Judge that the consumer forum has no jurisdiction to entertain complaints in respect of the matter pertaining to supply of electricity against the Electricity Company is incorrect and does not lay down a correct law.

31. The learned counsel appearing on behalf of the consumers relied on the following Supreme Court decisions :-

- (i) The case of **State of Karnataka vs. Vishwabharathi House Building Co-op. Society**, reported in (2003) 2 SCC 412 wherein the Supreme Court held that the Consumer Protection Act, 1986 is a socio-economic legislation which should be interpreted as broadly as possible. The Forums under the Act can entertain a complaint notwithstanding concurrent jurisdiction of other forums/Courts.
- (ii) In the case of **Secretary, Thirumurugan Co-op. Agricultural Credit Society vs. M. Lalitha**, reported in AIR 2004 SC 448, the Apex Court held that the remedy before the consumer forum is in addition and not in derogation to remedy under other Acts. The jurisdiction of the consumer forum to decide the dispute is not ousted in view of the remedy of arbitration provided under Section 90 or 156 of the Tamil Nadu Co-operative Societies Act. 1983.

- (iii) The Supreme Court In the case of **Kishori Lal vs ESI Corporation**, reported in AIR 2007 SC 1819 held that claim of damages for medical negligence by ESIC doctors can be entertained by the consumer forum and such claim does not fall within the purview of employee Insurance Court.
- (iv) In the case of **Karnataka Power Transmission Corporation vs. Ashok Iron Works Pvt. Ltd.**, reported in III (2009) Consumer Protection Judgments 5 (SC), the Supreme Court noticed the words and phrases of “consumer”, “person”, “service” and “deficiency” as defined under Sections 2(1)(d), 2(1)(g), 2(1)(m) and 2(1)(o) of the Consumer Protection Act, 1986 and remitted the matter to the District forum to decide the matter in terms with the ratio laid down by the Supreme Court.
- (v) In the case of **Jharkhand State Electricity Board vs Anwar Ali**, reported in II (2008) CPJ 284 (NC), the National Consumer Disputes Redressal Commission, New Delhi held that consumer forum has jurisdiction to deal with the grievances of the consumers in case of deficiency in service by electricity supplier. Supply of electrical/other energy is included within the definition of “service” under the Consumer Protection Act. Person availing such service would be “consumer” and thereby the consumer forum is not barred by the provisions of the Electricity Act.
- (vi) In the case of **Dakshin Haryana Bijli Vitran Nigam Ltd. vs. Megh Raj**, reported in IV (2008) CPJ 11 (NC), the National Consumer Disputes Redressal Commission, New Delhi set aside the orders passed under Sections 126, 127 and 135 of the Electricity Act, 2003 without issuing notice or without passing provisional order, on the ground that the orders were arbitrary, unjustified and de hors of the statutory provisions.

32. The learned counsel for the consumers also relied on the Supreme Court decision in the case of **Om Prakash Saini vs. DCM Ltd.**, reported in AIR 2010 SC 2608, wherein taking into consideration the consumer dispute and the order passed by the State Commission, the Supreme Court observed that there being a specific remedy of appeal provided by the Act, it is not proper to entertain the writ petition under Article 226 of the Constitution though there has to be some justification to make a departure from the rule that the High Court will not entertain the writ petition when alternative

remedy is available.

33. The learned senior counsel appearing on behalf of the Electricity Companies also relied on certain decisions, inter alia, on the question that a special law will prevail over the general law, as decided by the Supreme Court in the case of **Thiruvalluvar Transport Corporation vs. Consumer Protection Council**, reported in (1995) 2 SCC 479 and in the case of **Department of Telecommunications vs. M. Krishnan**, reported in (2009) 8 SCC 481. He also placed reliance on the decisions of the Supreme Court in the case of **Gujarat Urja Vikas Nigam Ltd. vs. Essar Power Ltd.**, reported in (2008) 4 SCC 755 and in the case of **Haryana State Electricity Board vs. Mam Chand**, reported in (2006) 4 SCC 649.

However, it is not necessary to discuss all those cases, as they being not relevant for the determination of the issue as raised in the present appeals.

34. We have already noticed the stand taken by the consumers and accepted that the complainant – appellants fall within the definition of “consumer” as defined under Section 2(1)(d) read with definition of “person” as defined under Section 2(1)(m) and the supply of electrical and other energy fall within the definition of ‘service’ under Section 2(1)(o) of the Consumer Protection Act, 1986.

35. In the present cases, the question arises is whether there was any deficiency in service caused by any one or other Electricity Companies for the complainant(s) to move a petition under the Consumer Protection Act, 1986.

36. The term “deficiency” is defined under Section 2(1)(g) of the Consumer Protection Act, 1986, which reads as follows :-

“2(1)(g) “deficiency” means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service.”

37. In the present case, we find that there is no allegation relating to any deficiency on the part of the Electricity Companies alleged by one or other complainants. There is nothing on record to suggest that any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which was required to

be maintained by or under any law or has been undertaken to be performed by the Electricity Company to allege deficiency.

38. The complainants moved against the bill raised under Section 126 of the Electricity Act, 2003, which relates to indulging in unauthorized use of electricity or against the measures under Section 135, which constituted an offence for which penalties are prescribed. Thus, there was no deficiency in service on the part of the Electricity Companies.

Therefore, even if it is accepted that in the case of deficiency in service by the Electricity Companies in supply of electricity, the person can file a complaint before the Consumer Dispute Redressal Forum under the Consumer Protection Act, 1986, but in absence of any such allegation, no such petition is maintainable before the Consumer Disputes Redressal Forum constituted under the Consumer Protection Act, 1986. In a case where the bill is raised alleging indulgence in unauthorized use of electricity by a person under Section 126 of the Electricity Act, 2003 or the measures or the penal action taken for the offence under Section 135 of the Electricity Act, 2003, in absence of any provision made under the Consumer Protection Act, 1986 to entertain any complaint or any such action, we hold that the petitions preferred by the consumer – appellants were not maintainable before the Consumer Disputes Redressal Forum.

39. In the case of **CESC Ltd. vs. Smt. Sunita Pal**, reported in III (1997) CPJ 116 (NC), the National Consumer Disputes Redressal Commission, New Delhi noticed the prima facie evidence of theft. Taking into consideration the earlier decision in the case of **MP Electricity Board vs. Babu Lal**, reported in II (1995) CPJ 132, the Commission held that where there was tampering with the metering connection by the consumer, it cannot be said that there was any deficiency in service on the part of the Electricity Board so as to warrant the grant of any relief to the consumer in proceedings, under the Consumer Protection Act, 1986.

In the said case of **Smt. Sunita Pal** (Supra), the National Consumer Disputes Redressal Commission, New Delhi also noticed the Supreme Court decision in **MP Electricity Board vs. Harsh Wood Products**, reported in JT 1996(5) SC 434, wherein the Supreme Court considered the provisions of Section 24 of the Indian Electricity Act, 1910 Act and held that the Board when it detects that any consumer had



commitment by malpractice with reference to his use of electric energy including unauthorized alterations, installations, unauthorized extension and use of devices to commit theft of electricity energy, the Board may without prejudice to other rights, disconnect the supply of electricity forthwith and may call upon the consumer to make payment for compensation for the unauthorized use of the electricity.

40. In the case of **Uttar Pradesh State Electricity Board vs Anwar Ali**, reported in 11 (2008) Consumer Disputes, the National Consumer Disputes Redressal Commission, New Delhi has observed, as observed above, that the jurisdiction of the consumer forum to deal with the grievances of the consumer is only in case of deficiency in service by electricity supply.

41. In view of the aforesaid discussion, we summarize our findings as follows :-

(a) The finding of the learned Single Judge that there is a third forum of appeal under Section 126 of the Electricity Act, 2003 in this type of cases under Section 126 of the Electricity Act, 2003, is incorrect and does not lay down a correct law.

(b) The finding of the learned Single Judge that the jurisdiction of the Consumer Court in the matter of deficiency in service on the part of the Electricity Company is not ousted in view of the provisions of Section 126 of the Electricity Act, 2003. The finding of the learned Single Judge to that effect is incorrect and does not lay down a correct law. The finding of the learned Single Judge that the consumer forum has no jurisdiction to entertain a complaint in respect of the matter pertaining to supply of electricity against the Electricity Company is incorrect and does not lay down a correct law.

(c) In view of the fact that a writ is raised alleging indulgence in unauthorized use of electricity by a person under Section 126 of the Electricity Act, 2003 or the taking of any remedial or disciplinary or penal action taken for the offence under Section 135 of the Electricity Act, 2003, in absence of any provision made under the Consumer Disputes Redressal Act, 1986 to entertain any complaint or any such action, the writs sought by the consumer are not maintainable before the Consumer Disputes Redressal Forum.

42. For the reasons stated above, we hold that the Consumer Dispute Redressal Commission is not entitled to come to the conclusion that the Consumer Disputes Redressal Commission has jurisdiction to try cases against assessment made under Section 126 of the Electricity Act, 2003 and the learned Single Judge rightly

interfered with those orders and set aside the orders. For the reason aforesaid, no interference is called for against the impugned common judgment rendered by the learned Single Judge. In absence of any merit, the appeals and the Civil Applications are dismissed, but there shall be no order as to costs.

[S. J. MUKHOPADHAYA, C.J.]

[J. B. PARDIWALA, J.]

The prayer for extension of the interim relief as made by the learned counsel on behalf of the appellants is rejected in view of the grounds mentioned in the judgment.

[S. J. MUKHOPADHAYA, C.J.]

[J. B. PARDIWALA, J.]

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