2026 INSC 851

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO(S). 33179 OF 2025

M/S. HIMADRI STEEL PVT.LTD. … PETITIONER(S)

VERSUS

JHARKHAND URJA VIKAS NIGAM LIMITED & ORS. … RESPONDENT(S)

J U D G M E N T

ARAVIND KUMAR, J.

CONSPECTUS

1. The Petitioner is a private limited company incorporated under the relevant provisions of Companies Act, 1956. It was granted electrical connection under HTSS (High Tension Special Service) Tariff with contract demand of 3000 KVA which was energized on 03.07.2006. On account of blast in the cubical metering unit there was electricity breakdown in the

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petitioner's premises which was rectified on 16.06.2017 by a team of the Respondent Nigam's officials and a report was prepared. The report recorded that the metering unit chamber was slightly damaged, K-Phase CT and all PT were found in proper condition (written as OK), meter reading was correct and there proper sealing, however, b-phase CT which was totally cracked and damaged was replaced.

2. Authorities visited the petitioner's premises on 26.09.2017 and inspected the check meter installed by them and also inspected the metering cubical installed. Further, they prepared an inspection report dt. 26.09.2017.

3. On the strength of the written report of the Assistant Electrical Engineer, Chakulia PS Case No. 30 / 2017 u/Ss. 379 / 420 / 353 IPC and u/Ss. 135 / 137 / 138 of the Electricity Act, 2003 was lodged. The next day, the respondents disconnected the electrical connection.

4. On 29.09.2017, the Respondents issued a Provisional Assessment Order determining a liability of Rs. 3,23,71,524/- towards loss caused due to theft of electricity as per Section 125 of the Act in accordance with the provisions of the Electricity Act, 2003 and applicable regulations, based on the inspection findings and relevant consumption data.

5. The Petitioner ended up filing a Writ Petition (C) No. 6054 / 2017 before the High Court of Jharkhand, challenging the Provisional Assessment Order and contending that the Respondents had illegally disconnected the electrical connection of the petitioner on 27.09.2017 on mere suspicion of theft of electricity, in absolute contravention of the specific provisions of the Electricity Act, 2003 as well as Clause 11.12 Jharkhand (Electricity Supply Code) Regulations, 2015 (*hereinafter referred to as "the Regulations"*) issued by the Jharkhand State Electricity Regulatory Commission.

6. The said Writ Petition was allowed by the Ld. Single Judge vide order dt. 05.09.2018 and the Provisional Assessment Order was quashed. It was held that the inspection report did not disclose conclusive evidence of theft of electricity.

7. Against the order of the Ld. Single Judge, the Respondents filed LPA No. 648 / 2018 and in the said LPA, the Ld. Division Bench allowed the LPA and set aside the order of the Single Judge vide order dt. 08.08.2025, holding that the inspection report disclosed sufficient material and that the statutory mechanism under the Electricity Act is a complete code and the Writ Petition was not maintainable in view of the

alternative remedy available to the Petitioner. It is against this order that the petitioners are before us.

<u>SUBMISSIONS OF THE PETITIONER</u>

8. The submissions of the Petitioner/ Electricity Consumer are as follows:

- **a.** That the inspection report dt. 26.09.2017 neither makes any averment regarding the alleged "theft of electricity", nor does it record the satisfaction of the assessing officer on "theft of electricity".
- **b.** The conclusion in the report that "further action will be taken as per norms" is too vague and gives wide discretion to respondents to twist the facts.
- **c.** The inspection report does not allege "theft of electricity" and the respondents are trying to build this claim as per FIR.
- **d.** During the detailed inspection by the authorities of the petitioner's premises, they found no irregularity or disturbance in the check meter or the metering cubical which may lead to evidence of theft. All the seals were found intact and there had been no interference in any manner with the entire metering arrangement.

e. If at all there was any evidence of theft, they would have mentioned that in the inspection report concluding that there has been a theft of electricity and then they would have mandatorily disconnected the electricity connection. However, the inspecting team after the conclusion of inspection restored the power supply and left the premises saying that the metering cubicle is very old and it needs to be replaced.

f. In the absence of direct evidence of theft of electricity, the penalty cannot be imposed on the petitioner.

g. Subjective satisfaction of the officer based on evidence or material collected during inspection is mandatory for initiating proceedings for "suspected theft of electricity", or "unauthorized use of electricity" or "theft of electricity". In absence thereof, subsequent registration of FIR or issuance of Provisional Assessment Order, which is based on Inspection Report would be wholly without jurisdiction.

SUBMISSIONS OF THE RESPONDENTS

9. The submissions of the Respondents / Jharkhand Urja Vikas Nigam Ltd. are as follows:

a. That the SLP ought to be dismissed at the threshold as the petitioner has consciously bypassed the remedy u/Ss. 126 and 127 of the Electricity Act which provide a complete and self - contained mechanism for assessment, adjudication, filing of objections and appeal and in such a case, no Writ Petition should have been entertained.

b. Under the Electricity Act, an inspection report is only required to disclose *prima facie* material indicating unauthorized use or theft of electricity, and there is no requirement that such report must record a conclusive finding at the stage of inspection.

c. Proceedings u/S. 126 of the Electricity Act, 2003 are civil in nature and operate independently of criminal prosecution under S. 135 and it is well-settled that assessment for unauthorized use and criminal liability for theft are distinct and can proceed simultaneously. In the present case, clear jurisdictional facts existed in asmuch as the inspection report dt. 26.09.2017 disclosed material irregularities in the metering system enabling unauthorized abstraction of electricity, thereby validly conferring jurisdiction upon the Respondents to initiate proceedings.

LEGAL POSITION

10. We have heard the parties and thoroughly perused the record. Before proceeding with the case, we would like to discuss the Electricity Act, 2003 first.

11. As the Title of the Act states, it is an act 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, rationalisation 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 matters connected therewith or incidental thereto.

12. Before this Act, the Electricity Act, 1910, the Electricity (Supply) Act, 1948 and the Electricity Regulatory Commissions Act, 1998 held the ground. With an intent to encourage the private sector participation in generation, transmission and distribution of the electricity, the Electricity Act, 2003 was introduced.

13. In the present case, we are dealing with terms such as "unauthorised use of electricity" which features u/S. 126 and 127 of the Act and "theft of electricity" which features u/S. 135 of the Act.

14. Sections 126 and 127 fall in Part XII of the Act which relates to Investigation and Enforcement and form a complete code unto themselves. Section 135 falls under Part XIV of the Act which deals with "Offences and Penalties". For quick reference, Sections 126, 127 and 135 of the Electricity Act, 2003 have been reproduced below:

> **"126. Assessment. — (*1*)** If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in **unauthorised use of electricity**, he shall provisionally assess to the best of his judgment the electricity charges payable by such person or by any other person benefited by such use.
> **(*2*)** The order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such manner as may be prescribed.
> **(*3*)** The person, on whom an order has been served under sub-section (*2*), shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who shall, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment within thirty days from the date of service of such order of provisional assessment, of the electricity charges payable by such person.

(***4***) Any person served with the order of provisional assessment may, accept such assessment and deposit the assessed amount with the licensee within seven days of service of such provisional assessment order upon him:
* * * * *
(***5***) If the assessing officer reaches to the conclusion that unauthorised use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorised use of electricity has taken place and if, however, the period during which such unauthorised use of electricity has taken place cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection.
(***6***) The assessment under this section shall be made at a rate equal to twice the tariff applicable for the relevant category of services specified in sub-section (*5*).
Explanation.
—For the purposes of this section, —
(***a***) "assessing officer" means an officer of a State Government or Board or licensee, as the case may be, designated as such by the State Government;
(***b***) "unauthorised use of electricity" means the usage of electricity—

(***i***) by any artificial means; or
(***ii***) by a means not authorised by the concerned person or authority or licensee; or
(***iii***) through a tampered meter; or
(***iv***) for the purpose other than for which the usage of electricity was authorised; or
(***v***) for the premises or areas other than those for which the supply of electricity was authorised.

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

(**2**) No appeal against an order of assessment under sub-section (*1*) shall be entertained unless an amount equal to 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 a copy of the order to the assessing officer and the petitioner.
(**4**) The order of the appellate authority referred to in sub-section (*1*) passed under sub-section (*3*) shall be final.
(**5**) No appeal shall lie to the appellate authority referred to in sub-section (*1*) against the final order made with the consent of the parties.
(**6**) When a person defaults in making payment of assessed amount, he, in addition to the assessed amount shall be liable to pay, on the expiry of thirty days from the date of order of assessment, an amount of interest at the rate of sixteen per cent. per annum compounded every six months.

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

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

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

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

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

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

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

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

(*1A*) 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 authorised for the purpose by the Appropriate Commission or any other officer of the licensee or supplier, as the case may be, of the rank higher than the rank so authorised shall disconnect the supply line of electricity:

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

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

(***2***) Any officer of the licensee or supplier as the case may be, authorised in this behalf by the State Government may—

(***a***) enter, inspect, break open and search any place or premises in which he has reason to believe that electricity has been or is being used unauthorisedly;

(***b***) search, seize and remove all such devices, instruments, wires and any other facilitator or article which has been, or is being used for unauthorised use of electricity;

(***c***) examine or seize any books of account or documents which in his opinion shall be 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 take extracts therefrom 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 no inspection, search and seizure of any domestic places or domestic premises shall be carried out between sunset and sunrise except in the presence of an adult male 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 seizure under this Act."

ISSUES

15. In the instant case, it emerges that on the basis of the Inspection Report dated 26.09.2017, a provisional assessment order was passed by the Respondent / Jharkhand Bijli Vitran Nigam Ltd. for payment of loss of amount of Rs. 3,23,71,524/- under Section 135 of the Electricity Act, 2003 r/w Clause 11 of the Electricity Supply Code Regulation, 2015.

16. In the light of this fact, the following questions emerge for consideration:

a. Whether the remedy of Writ Petition was available to the Petitioner when statutory remedies are available under the Act?

b. Whether the Petitioner is liable to be held accountable under Section 135 of the Electricity Act, 2003? In other words, are the ingredients of Section 135 satisfied in the present case?

17. We now proceed to analysis.

<u>Whether the remedy of Writ Petition was available to the Petitioner when statutory remedies are available under the Act?</u>

18. The General law is that if the statutory remedies are available, then the aggrieved party will not ordinarily move the High Court. However, the said position of law is not free of exceptions. Availability of a statutory remedy does not oust the jurisdiction of the High Court to entertain a matter under A.226 of the Constitution. In the case of ***Southern Electricity Supply Co. of Orissa Ltd. v. Sri Seetaram Rice Mill***[1], it was expounded as follows.

> "**80.** It is a settled canon of law that the High Court would not normally interfere in exercise of its jurisdiction under

[1] **(2012) 2 SCC 108**

Article 226 of the Constitution of India where statutory alternative remedy is available. It is equally settled that this canon of law is not free of exceptions. The courts, including this Court, have taken the view that the statutory remedy, if provided under a specific law, would impliedly oust the jurisdiction of the civil courts. The High Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India can entertain writ or appropriate proceedings despite availability of an alternative remedy. This jurisdiction, the High Court would exercise with some circumspection in exceptional cases, particularly, where the cases involve a pure question of law or vires of an Act are challenged. This class of cases we are mentioning by way of illustration and should not be understood to be an exhaustive exposition of law which, in our opinion, is neither practical nor possible to state with precision. The availability of alternative statutory or other remedy by itself may not operate as an absolute bar for exercise of jurisdiction by the courts. It will normally depend upon the facts and circumstances of a given case. The further question that would inevitably come up for consideration before the Court even in such cases would be as to what extent the jurisdiction has to be exercised.

81. Should the courts determine on merits of the case or should they preferably answer the preliminary issue or jurisdictional issue arising in the facts of the case and remit the matter for consideration on merits by the competent authority? Again, it is somewhat difficult to state with absolute clarity any principle governing such exercise of jurisdiction. It always will depend upon the facts of a given case. We are of the considered view that interest of administration of justice shall be better subserved if the cases of the present kind are heard by the courts only where they involve primary questions of jurisdiction or the matters which go to the very root of jurisdiction and where the authorities have acted beyond the provisions of the Act. However, it should only be for the specialised tribunal or the appellate authorities to examine the merits of assessment or even the factual matrix of the case.

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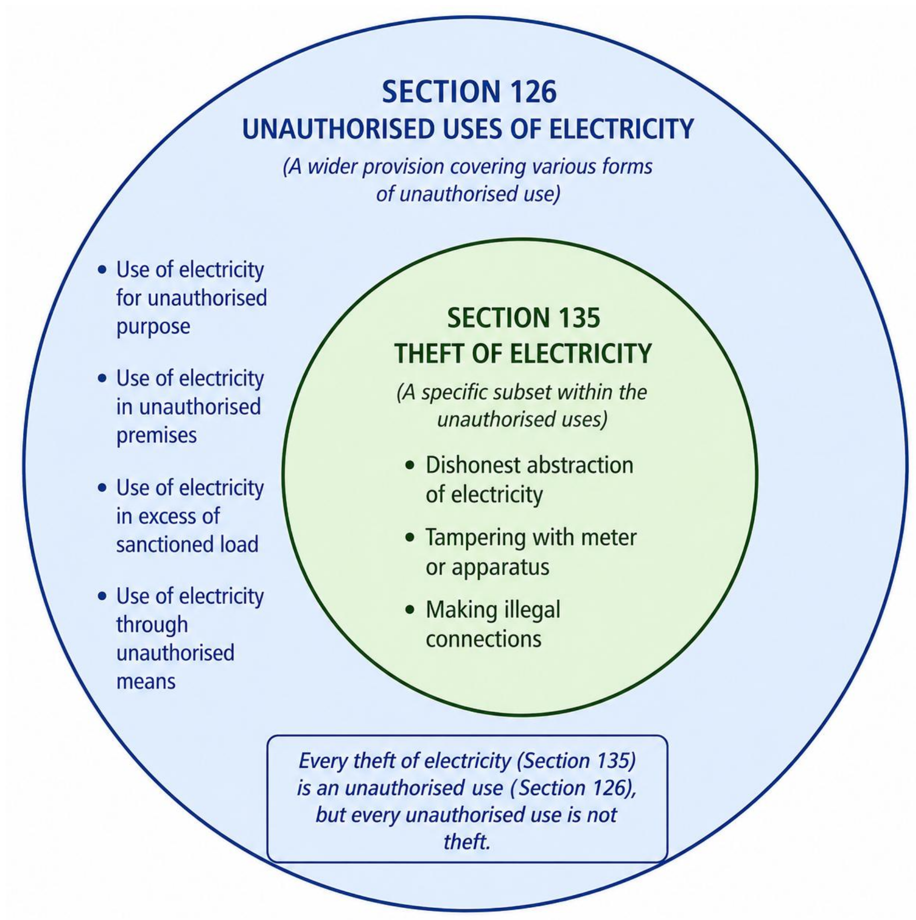
> **3.** In view of the language of Section 127 of the 2003 Act, only a final order of assessment passed under Section 126(3) is an order appealable under Section 127 and a notice-cum-provisional assessment made under Section 126(2) is not appealable.
>
> **4.** Thus, the High Court should normally decline to interfere in a final order of assessment passed by the assessing officer in terms of Section 126(3) of the 2003 Act in exercise of its jurisdiction under Article 226 of the Constitution of India."

19. The concept of "provisional order of assessment" and "final order" find their place under Section 127 of the Act which governs the cases falling squarely under Section 126 of the Act. Section 135 does not have a separate procedure. Even then, the procedure applicable under Section 127 is applicable on cases falling under Section 126 simply for the reason that all acts of unauthorised use of electricity are not theft, but all cases of "theft of electricity" fall under the unauthorised use of electricity. Hence, if we were to make a Venn Diagram, it will look somewhat like this:



20. Our assessment also finds precedence in the case of ***W.B. State Electricity Distribution Co. Ltd. v. Orion Metal (P) Ltd.***[2], wherein it came to be held as under: -

> "**12.** A perusal of the aforesaid provisions and on giving a conjoint reading of the same, it appears to us that after an inspection of any place or any premises of any consumer, when the assessing officer comes to a conclusion that the

[2] **(2020) 18 SCC 588**

consumer is indulging in unauthorised use of electricity, the provisional assessment to the best of his judgment is to be made in accordance with Section 126(1) of the Act and such provisional assessment shall be served upon the person in occupation of the premises. After giving an opportunity to file objections to the provisional assessment, the assessing officer is empowered to pass a final order of the assessment assessing the loss of energy, on account of unauthorised use of energy. The unauthorised use of electricity is defined under Section 126(6)(*b*) of the Act. It is clear from the aforesaid definition that unauthorised use of electricity means, the usage of electricity by any artificial means or by a means not authorised by the person or authority or licensee concerned; or through a tampered meter; or for the purpose other than for which the usage of electricity was authorised; or for the premises or areas other than those for which the supply of electricity was authorised.

13. It is clear from the reading of Section 126(6)(*b*)(*iii*) of the Act that instances of use of energy through a tampered meter is included in the definition of unauthorised use of electricity. If that is so, there is no reason, for excluding the power of the authorities for making assessment under Section 126(1) of the Act to assess the loss of energy, where electricity is used through a tampered meter. All instances of unauthorised use of energy may not amount to theft of electricity within the meaning of Section 135 of the Act, but at the same time, the theft of electricity which is covered by Section 135 of the Act, will fall within the definition of unauthorised use of electricity. As per Section 135(1-A) of the Act, without prejudice to the other provisions of the Act, the licensee or supplier, as the case may be, upon detection of theft of electricity, is empowered to disconnect the power supply immediately. Further, as per the third proviso to Section 135(1-A) of the Act, the licensee or supplier, as the case may be, on deposit or payment of assessed amount or electricity charges, without prejudice to the obligation to lodge a complaint, can restore the power supply electricity within forty-eight (48) hours of deposit/payment of such amount. Thus, it is clear that the authorities under the Act are empowered to make a provisional and final assessment by invoking power under Section 126(1) of the Act, even in cases where electricity is unauthorisedly used by way of theft. When a consumer deposits the assessed amount, the licensee or the supplier has to restore the power supply. The assessed amount referred to in the aforesaid proviso, relates to assessment which is contemplated under Section 126(1) of the Act only. There is apparent distinction between Section 126 and Section 135 of the Act. Section 126 forms part of the scheme which authorises electricity supplier to ascertain loss in terms of revenue caused to it by the consumer by his act of "unauthorised use of electricity" whereas Section 135 deals with offence of theft if he is found to have indulged himself in the acts mentioned in clauses (*a*) to (*e*) of sub-section (1) of Section 135 of the Electricity Act. Further, it is also clear from Section 154 of the Act, which prescribes procedure and power of the Special Court, that the Special Court is empowered to convict the consumer and impose a sentence of imprisonment. The Special Court, in cases, where a criminal complaint is lodged, is also empowered to determine civil liability under Section 154(5) of the Act. As per Section 154(6) of the Act, in case civil liability so determined by the Special Court is less than the amount deposited by the consumer or the person, the excess amount so deposited by the consumer or the person, shall be refunded by the licensee or the person concerned, as the case may be. Merely because the Special Court is empowered to determine civil liability under Section 154(5) of the Act, in cases where a complaint is lodged, it cannot be said that there is no power conferred on authorities to make provisional assessment/final assessment under Section 126 of the Act."

21. It stands established that though not explicitly mentioned, Section 127 applies as much to Section 135 as it does to Section 126. It is clear as daylight that the provision for statutory appeal under Section 127 of the Electricity Act is only with regards to a final order of assessment and not a provisional order. Since the Act does not provide for a statutory appeal against a Provisional Assessment Order, the Writ Petition against the same is maintainable.

Whether the Petitioner is liable to be held accountable under Section 135 of the Electricity Act, 2003? In other words, are the ingredients of Section 135 satisfied in the present case?

22. The Provisional Assessment Order was issued under Section 135 of the Electricity Act, 2003, which exhaustively defines "theft of electricity" as including acts such as interference with the meter, tapping of electricity, making or causing to be made any connection with overhead, underground or underwater lines or cables, or service wires, installation or use of tampered meter etc. This Court has illuminatingly explained the features of Section 135 and also expounded upon the procedure mentioned under Sections 126 and 127 in the case of ***Southern***

Electricity Supply Co. of Orissa Ltd. v. Sri Seetaram Rice Mill[3], thus:

> "**25.** Section 135 of the 2003 Act falls under Part XIV relating to "offences and penalties" and title of the section is "theft of electricity". The section opens with the words "whoever, **dishonestly**" does any or all of the acts specified under clauses (*a*) to (*e*) of sub-section (1) of Section 135 of the 2003 Act so as to abstract or consume or use electricity shall be punishable for imprisonment for a term which may extend to three years or with fine or with both. Besides imposition of punishment as specified under these provisions or the proviso thereto, sub-section (1-A) of Section 135 of the 2003 Act provides that without prejudice to the provisions of the 2003 Act, the licensee or supplier, as the case may be, through officer of rank authorised in this behalf by the appropriate commission, may immediately disconnect the supply of electricity and even take other measures enumerated under sub-sections (2) to (4) of the said section. The fine which may be imposed under Section 135 of the 2003 Act is directly proportional to the number of convictions and is also dependent on the extent of load abstracted.
>
> **26**. In contradistinction to these provisions, Section 126 of the 2003 Act would be applicable to the cases where there is no theft of electricity but the electricity is being consumed in violation of the terms and conditions of supply leading to malpractices which may squarely fall within the expression "unauthorised use of electricity". This assessment/proceedings would commence with the inspection of the premises by an assessing officer and recording of a finding that such consumer is indulging in an "unauthorised use of electricity". Then the assessing officer shall provisionally assess, to the best of his judgment, the electricity charges payable by such consumer, as well as

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[3] **(2012) 2 SCC 108**

pass a provisional assessment order in terms of Section 126(2) of the 2003 Act.

27. The officer is also under obligation to serve a notice in terms of Section 126(3) of the 2003 Act upon any such consumer requiring him to file his objections, if any, against the provisional assessment before a final order of assessment is passed within thirty days from the date of service of such order of provisional assessment. Thereafter, any person served with the order of provisional assessment may accept such assessment and deposit the amount with the licensee within seven days of service of such provisional assessment order upon him or prefer an appeal against the resultant final order under Section 127 of the 2003 Act. The order of assessment under Section 126 and the period for which such order would be passed has to be in terms of sub-sections (5) and (6) of Section 126 of the 2003 Act. The Explanation to Section 126 is of some significance, which we shall deal with shortly hereinafter. Section 126 of the 2003 Act falls under Part XII and relates to investigation and enforcement and empowers the assessing officer to pass an order of assessment.

28. Section 135 of the 2003 Act deals with an offence of theft of electricity and the penalty that can be imposed for such theft. This squarely falls within the dimensions of criminal jurisprudence and mens rea is one of the relevant factors for finding a case of theft. On the contrary, Section 126 of the 2003 Act does not speak of any criminal intendment and is primarily an action and remedy available under the civil law. It does not have features or elements which are traceable to the criminal concept of mens rea.

29. Thus, it would be clear that the expression "unauthorised use of electricity" under Section 126 of the 2003 Act deals with cases of unauthorised use, even in the absence of intention. These cases would certainly be different from cases where there is dishonest abstraction of electricity by any of the methods enlisted under Section 135 of the 2003 Act. A clear example would be, where a consumer has used excessive load as against the installed load simpliciter and there is violation of the terms and conditions of supply, then, the case would fall under Section 126 of the 2003 Act. On the other hand, where a consumer, by any of the means and methods as specified under Sections 135(*a*) to 135(*e*) of the 2003 Act, has abstracted energy with dishonest intention and without authorisation, like providing for a direct connection bypassing the installed meter, the case would fall under Section 135 of the Act.

30. Therefore, there is a clear distinction between the cases that would fall under Section 126 of the 2003 Act on the one hand and Section 135 of the 2003 Act on the other. There is no commonality between them in law. They operate in different and distinct fields. The assessing officer has been vested with the powers to pass provisional and final order of assessment in cases of unauthorised use of electricity and cases of consumption of electricity beyond contracted load will squarely fall under such power. The legislative intention is to cover the cases of malpractices and unauthorised use of electricity and then theft which is governed by the provisions of Section 135 of the 2003 Act."

23. Reference must also be made to the case of ***Kerala SEB v. Thomas Joseph***[4]***,*** which laid down broad principles of law pertaining to Sections 126 and 127; the same are as follows:

"**60.1**. The provisions of Section 126, read with Section 127 of the 2003 Act become a code in themselves. It specifically provides the method of computation of the amount that a consumer would be liable to pay for excessive consumption of electricity and for the manner of conducting assessment proceeding. Section 126 of the 2003 Act has been enacted

[4] **(2023) 11 SCC 700**

> with a purpose to achieve i.e. to put an implied restriction on such unauthorised consumption of electricity.
> **60.2.** The purpose of Section 126 of the 2003 Act is to provide safeguards to check the misuse of powers by unscrupulous elements. The provisions of Section 126 of the 2003 Act are self-explanatory. They are intended to cover situations, other than, the situations specifically covered under Section 135 of the 2003 Act. In such circumstances, the Court should adopt an interpretation which should help in attaining the legislative intent.
> **60.3.** The purpose sought to be achieved with the aid of the provisions of Section 126 of the 2003 Act is to ensure stoppage of misuse/unauthorised use of the electricity as well as to ensure prevention of revenue loss.
> **60.4**. The overdrawal of electricity is prejudicial to the public at large, as it is likely to throw out of gear the entire supply system, undermining its efficiency, efficacy and even — increasing voltage fluctuations.
> **60.5.** The expression "unauthorised use of electricity" means as it appears in Section 126 of the 2003 Act. It is an expression of wider connotation and principle construed purposively in contrast to contextual interpretation, while keeping in mind the object and purpose of the 2003 Act."

24. Section 135 is a criminal remedy as it falls under Part XIV which pertains to Offences and Penalties under the Act. In order to invoke this remedy, the State must *firstly* satisfy the twin tests of *actus reus* and *mens rea* and further, the State must prove the offence beyond reasonable doubt. Hence, the threshold for proof is high. Section 135 is a distinct provision from Section 126 which talks about "unauthorised use of electricity". The former is a criminal remedy and the latter is a civil remedy. The cases covered under Section 126 are those in which electricity was consumed in variation of the terms and conditions of supply leading to malpractises and *mens rea* is not a vital element of the same.

25. However, on the contrary, Section 135 starts with the word "whoever dishonestly" which indicates that there must be presence of *mens rea* for invoking the said provision. The word "dishonestly" has been defined u/S. 24 of Indian Penal Code, 1860 as well as S.2(7) of the Bhartiya Nyaya Sanhita, 2023 as doing anything with the intention of causing wrongful gain to one person or wrongful loss to another person. The *actus reus* in this provision is tapping the connection or cables, or tampering a meter, or damaging the electrical meter or apparatus, or using electricity through a tampered meter or using it for a purpose other than the one which was prescribed.

26. Section 135 (1A) of the Act confers powers on the authorized officer to disconnect the electricity connection provided that he is satisfied that theft of electricity has occurred, but the starting point to take such a decision is an inspection.

27. As per Clause 11.3 of the Regulations, an authorised officer upon reliable information shall promptly conduct inspection of the premises. As per Clause 11.8, in case sufficient evidence is found to establish direct theft of electricity, licensee or Supplier as per Section 135 sub-clause (1A) of the Act shall disconnect the supply and seize all material evidence including wires/cables, meter, service line etc., from the premises and shall lodge a complaint in writing relating to the commission of such offence in police station having jurisdiction within 24 hours from the time of such disconnection. Clause 11.10 says that an assessment order has to be prepared by the Authorised Officer. As per Clause 11.12, in case of suspected theft, the Authorised Officer shall remove the old meter under a seizure memo and seal it in the presence of the consumer or his authorised representative. The Distribution Licensee or supplier shall continue the supply to the consumer with a new meter.

28. Further, Clause 11.14 provides that after the detailed examination of the evidence and the consumption pattern of the consumer, if the Distribution Licensee or supplier is convinced that a prima-facie case is made out for the abstraction, consumption or use of electricity dishonestly against the consumer, the Distribution Licensee or supplier shall, within 7 days of inspection, serve a provisional assessment order assessed as per clause 11.24 of these Regulations along with show cause notice to the consumer, giving reasons, as to why a case of theft should not be booked against such consumer giving full details for arriving at such decision and points on which reply has to be submitted. As per Clause 11.17, the person, on whom an order has been served under clauses 11.14 and 11.15 of these Regulations, shall be entitled to file objections, if any, against the provisional assessment before the Authorised Officer, who shall, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment. Clause 11.28 says that the Distribution Licensee or supplier, as the case may be, on deposit or payment of the assessed amount or electricity charges in accordance with the provision of these regulations, shall, without prejudice to the obligation to lodge the complaint as referred to in the second proviso to the clause (1A) of Section 135 of the Electricity (Amendment) Act, 2007, restore the supply line of electricity within forty eight hours of such deposit or payment.

29. In other words, the following procedure emerges on a consonant reading of Section 135 of Electricity Act and Regulations, 2015.

a. Inspection of Theft.

b. Disconnection of Electricity in case sufficient evidence is found to establish direct theft of electricity.

c. Removal and seizure of meter.

d. Preparation of Provisional Assessment Order.

e. Objections, if any, to be filed.

f. Final Assessment Order to be passed.

g. If the consumer deposits the assessed amount then the electricity supply shall be restored within 48 hours.

30. At this juncture, it is pertinent to refer to the Inspection Report dt. 26.09.2017 relied upon by the 1st Respondent Nigam which reads as follows:

> *"As directed by GM cum CE surprise inspection has been carried out by MRT officials alongwith supply officials. During inspection cubical metering arrangement was found raising two compartments one is meter chamber and other is CT, PT chamber. This cubical metering arrangement installed under metal sheet room and wall. This arrangement makes easily approach to the CT/DT of metering cubical. It has been absorbed that the nut in which GPC seal is used to affix is found welded at mid point. This welding enables the removal of the seal to start the CT terminal point without disturbing seal. Two holes found in meter chambers. The cover of meter chamber was opened very easily without breaking the glass. The check metering unit secondary box control cable came out through given slot but more space between cable and slot. Further action will be as per norms.*

> ***Remarks:*** *(i) There is no welding on the nut, (ii) earlier also there had been blast in the cubical metering, which is very old, and was twice repaired, (iii) door cannot be opened without opening plastic seal, (iv) all plastic seals (paper seal) were found correct, plastic seal may be checked, and (v) joint inspection be made by the officer of Board and the office bearer of Chamber."*

31. To this inspection report, the petitioners have two objections, *firstly* that the Cubical Metering Unit was installed by the respondents themselves in open space since it is a huge device. The petitioners had simply covered the same with a Metallic Sheet with a purpose to secure the same from direct sunlight and rain. The premises were inspected by the authorities periodically and not even once did they object to the sheet and the seals on the meter were found intact at all times. *Secondly,* when this inspection was conducted, nothing was seized as per the seizure report and hence the 2015 Regulations were not followed.

32. There is merit in what the petitioner says. The inspection report does not have even a whiff of allegation of theft of electricity, much less the evidence. At best, there was a suspicion and only on the basis of the said suspicion an FIR was registered. The Ld. Single Judge was right to record that as a matter of practice, many people cover their metering unit to protect it from depreciation. The minor discrepancy alleged by the inspecting team is not enough to prove the case of theft of electricity, which has to adhere to the strict standards of criminal law.

33. Suspicion, no matter how strong, cannot take the place of strict proof. After a thorough perusal of record, we find that not even a single shred of evidence has been produced by the State which would allow us to come to the conclusion that the discrepancies that the State alleges can be elevated to the level of an offence.

34. It is essential that in order to hold a person or a legal entity responsible for the theft of electricity, the theft has to be first detected in the course of inspection. The inspection report must reveal that theft was detected and the details of such evidence must also be recorded therein. As noted above, in the present inspection report, no details or evidence of theft of electricity were noted. Further, there was no subjective satisfaction of the authorized officer either. Only if the inspection report records a finding on the theft of electricity and gives details of the evidence collected during the inspection which unerringly disclose theft of electricity, the provisional assessment order can be sustained. Such a finding of theft must be apparent on a bare reading of the report. If the report is of such a nature that upon bare reading of the same, one cannot construe the basis of theft, then in such a thorough investigation would be required to ascertain whether theft took place or not and the inspection officer will not be allowed to visit penalties upon the consumer in the name of theft only on the basis of such a provisional report that has no legs to stand on.

35. In the instant matter, as the Ld. Single Judge has rightly recorded, upon a bare reading of the report, one cannot arrive at the conclusion that a theft of electricity has taken place. The inspection reported that the door cannot be opened without opening a plastic seal and that all plastic seals were found correct, intact and further reported that the meter chamber was easily accessible, however, that by itself does not prove *mens rea*.

36. Further, there is also a violation of Regulation 11.8 as per which all material evidence including wires, cables and meters, service lines are to be seized. Neither the inspection report nor the written report has disclosed that any material from premises of the consumer have been seized.

37. Lastly, the respondents have tried making a case that the provisional assessment order was issued and electricity connection was disconnected in order to protect the revenue of the State. This argument has to be rejected at the threshold because if protection of revenue is accepted as an argument, then that will open floodgates of cases where the inspecting authority will be get arbitrary powers to disconnect electricity of the consumers on the basis of vague reports that do not satisfy the essentials of Section 135, turning this provision into an abuse of process of law.

38. The Ld. Division Bench was in error in setting aside the well-reasoned order of the Ld. Single Judge and same cannot be sustained. For the aforesaid reasons, the Order of Division Bench rendered in L.P.A. No. 648 of 2018 is set aside and the Order of the Single Judge dated 05.09.2018 passed in W.P. (C) No. 6054 of 2017 is restored by allowing this Appeal with no order as to costs. Pending applications, if any, stand disposed of.

..J.
[ARAVIND KUMAR]

..J.
[VIPUL M. PANCHOLI]

NEW DELHI;
AUGUST 12th, 2026.