



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**RSA No.1952 of 2024 (O&M)
Date of decision : 27.10.2025**

Sub Divisional Officer and another

...Appellants

Versus

Smt. Kamla Devi

...Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Surinder K. Mahajan, Advocate
for the appellants.

PANKAJ JAIN, J. (ORAL)

Defendants are in second appeal, aggrieved of the judgment and decree passed by the Courts below.

2. The issue involved in the present regular second appeal relates to jurisdiction of Civil Court *qua* disputes between electricity supplier and the consumer wherein the supplier alleges theft of electricity against consumer.

3. Counsel for the appellants claims that the issue is covered in favour of the electricity supplier in terms of ratio of law laid down by Division Bench of this Court in **RSA No.4181 of 2016** titled as '**Mahesh Kumar vs. Sub Divisional Officers and another**' *decided on* 14.05.2025.



4. I have heard counsel for the appellant and have carefully gone through records of the case and the ratio of law laid down by Division Bench in *Mahesh Kumar's* case (supra).

5. Keeping in view conflicting decisions by different Benches of this Court, the following question was formulated by the Single Bench to be adjudicated by the Larger Bench:

“As to whether the bar contained in Section 145 of the Act, on the jurisdiction of the civil Court, would be restricted only to proceedings arising from an order passed by the Assessing Officer under Section 126 and an appellate authority under Section 127, or, in view of the language contained in Sections 154 and 155, (read with Section 145 of the Act), such bar would extend to matters falling under Sections 135 to 140 and Section 150 of the Act also?”

6. The Division Bench answered the issue, observing as under:

“42. Now since sub-Sections (5) and (6), as embodied in Section 154 of the Act of 2003, provisions whereof become re-extracted hereinafter, do confer jurisdiction upon a Special Court also to determine the civil liability of the errant concerned, whereafter compensation can also be settled against the errant concerned.

“x x x x

(5) The [Special Court shall] determine the civil liability against a consumer or a person in terms of money for theft of energy which shall not be less than an amount equivalent to two times of the tariff rate applicable for a period of twelve months preceding the date of detection of theft of energy or the exact period of theft if determined



whichever is less and the amount of civil liability so determined shall be recovered as if it were a decree of civil court.

(6) In case the civil liability so determined finally 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, to the Board or licensee or the concerned person, as the case may be, shall be refunded by the Board or licensee or the concerned person, as the case may be, within a fortnight from the date of communication of the order of the Special Court together with interest at the prevailing Reserve Bank of India prime lending rate for the period from the date of such deposit till the date of payment.”

43. However, the conferment of the said jurisdiction, naturally has to be exercised, rather only after a conclusive and binding verdict of conviction becoming recorded against the errant concerned, and, not prior thereto. Conspicuously so, if there is a parallel determination of both civil and criminal liabilities, therebys if the civil liability is determined prior to the determination of the apposite criminal liability. As such, therebys the Special Court while trying an offender qua the ably triable offences, rather would become presented with a *fait accompli*. Moreover, in case there are different sets of evidences for respectively convicting the errant concerned, and, for encumbering the errant concerned, with compensation amounts, therebys also both the criminal trial as well as the determinations of civil liability(ies) against the errant concerned, rather are required to be naturally separately working. In other words, they are not required to be conjointly embarked upon, as therebys there would be encumbrance of gross hardship, vis-a-vis the errant/consumer concerned.



44. Therefore this Court is convinced, that only pursuant to a binding and conclusive verdict of conviction becoming made by the Special Court, vis-a-vis the errant consumer concerned, therebys the Special Court in terms of sub-Section (5) of Section 154 of the Act of 2003, shall proceed to determine the compensation amount to be paid by the consumer concerned, to the supplier concerned.

45. However, since the Special Court(s) has been declared by Section 155 of the Act of 2003 to be a Court of Session, besides when there is also an empowerment vested, thus through the mandate enclosed in sub-Section (5) of Section 154 of the Act of 2003, in the Special Court, to determine the civil liability, vis-a-vis the consumer concerned, therebys it would be more appropriate that a provision becomes engrafted in the Act of 2003, so that, when the Special Court, thus proceeds to determine the civil liability of the errant concerned, therebys the determination of the apposite civil liability, rather than being so determined by the Court of Session, which exclusively tries an offender, qua the said civil liability, being determined by the District Judge concerned. The said anomaly also fortifies the above assigned reason by this Court, that only post the conclusive determination of criminal liability by the Special Court, that the civil liability is to be determined vis-a-vis the errant consumer concerned. Obviously, an amendment in the said regard is required to be made in the Act of 2003.

46. Moreover, the non obstante clause, wherebys becomes ousted the provisions, as embodied in the Cr.P.C., excepting to the extent of investigations in respect of offences made punishable under the Act of 2003, thus being conducted by the investigating officers concerned, who become stationed at the police stations concerned. However, since now the former Cr.P.C. has been replaced by *Bharatiya Nagarik Suraksha Sanhita* (for short 'BNSS'), therefore, a compatible thereto amendment is required to



be made to sub-Section (1), whereby there is an introduction therein vis-a-vis the apposite provisions of BNSS.

47. All the supra amendments be considered to be most expeditiously passed by the State Legislature concerned, as thereby the supra anomalies would become erased.

48. Since the makings of composition(s) of an offence in terms of Section 152 of the Act of 2003, would also tantamount to acceptance of the guilt by the errant consumer concerned, thereby post the making of an order of composition, if the compounding fee, does not also cover the apposite civil liability, thereupon in terms of sub-Section (5) of Section 154 of the Act of 2003, thus the Court concerned may proceed to determine the civil liability against the errant consumer concerned.

49. The utmost burning issue relates to the fact, that when sub-Section (5) of Section 154 of the Act of 2003, speaks about determination of civil liability against the consumer or a person, as arises from theft of electricity. Moreover when the apposite explanation, which occurs at the end of Section 154 of the Act of 2003, explanation whereof becomes extracted hereinafter, makes expressions about the phrase ‘civil liability’, thus obviously connoting loss or damage incurred by the Board or licensee or the concerned person.

“x x x x

Explanation.—For the purposes of this section, “civil liability” means loss or damage incurred by the Board or licensee or the concerned person, as the case may be, due to the commission of an offence referred to in sections 135 to 140 and section 150.”

50. Though prima facie thereby, the phrase ‘concerned person’ may imply, that the conferment of jurisdiction in terms of sub-Sections (5) and (6) of Section 154 of the Act of 2003, also encompasses therein, thus a remedy to the consumer, to post a



conclusive and binding verdict of acquittal becoming rendered in respect of a charge relating to the offence of theft of electricity, to thus recourse the remedy as envisaged therein.

51. However, to the considered and objective contemplation of this Court, the concerned person, does not cover a consumer of electricity, nor does it cover the aspect relating to the consumer, upon the latter becoming clinchingly and provenly acquitted of the charge relating to theft of electricity, thus nourishing a claim in terms of sub-Section (5) of Section 154 of the Act of 2003.

52. The reason for stating so generates from the factum, that the opening sentence of sub-Section (5) of Section 154 of the Act of 2003, speaks about the determination of civil liability by the Special Court, but against the consumer or a person. Therefore, if in the explanation, which occurs at the end of Section 154 of the Act of 2003, there occurs the expression ‘concerned person’, whereby the apposite determination of civil liability, does prima facie connote, qua the concerned person, rather may also being the consumer. Nonetheless, if the intent of the legislature was so, then under the jurisdiction foisting provision, vis-a-vis the Special Courts, inasmuch as, in sub-Section (5) of Section 154 of the Act 2003, thus apart from speakings made therein, that against a consumer, both the civil and criminal action being ably contemplated to become initiated, there was but also a requirement of ‘concerned person’ being specifically included therein. Since the foisting of jurisdiction upon the Special Court, to determine civil liability is not only against a consumer, but is also against “a person”, whereby the intent of the legislation, irrespective of the explanation carrying the phrase ‘concerned person’, whereby the apposite germination of civil liability does prima facie takes within its ambit, thus the consumer of electricity, rather the concerned person is neither the consumer, nor also any person, which is expressed in sub-Section (5) of Section 154 of the Act of 2003, thus becomes the consumer. Contrarily, any person, as expressed in the supra sub-Section (5), rather is referable either to any



corporate entity, thus private or public. Moreover, concomitantly therebys, the word ‘concerned person’ means the supplier, who has been endowed permission to supply electricity. Reiteratedly therebys, the consumer of the electricity is left remediless.

53. The further effect of the above interpretation, is that, there is no remedy to the accused, to post the making of a binding and clinching verdict of acquittal, thus by the Special Court concerned, to thereupon subsequently claim damages for malicious prosecution. As such, in respect of the claim of malicious prosecution, a suit in the said regard can be laid before the Civil Court of competent jurisdiction.

54. Last but not the least, even if this Court has concluded, that the jurisdiction of the Civil Court is, thus barred through the occurrence of Section 145 of the Act of 2003, but yet in respect of the first three segments, which become alluded to hereinabove, there is yet vestment of jurisdiction qua a Writ Court, to thus determine the validity of passing of the apposite orders. The reason for stating so, is that, the jurisdiction of the High Courts to issue writs of various genres, is a constitutionally invested power, and, the said power is an insegregable component of judicial review of administrative actions, or of the *quasi judicial* actions, besides is the basic structure of the constitution. As such, the power of judicial review, a becomes invested in the High Courts, rather cannot be snatched even through the occurrence of Section 145 in the Act of 2003.”

7. Accordingly, the Division Bench relied upon Section 154 of the Electricity Act, 2003 (hereinafter referred to as ‘2003 Act’) to hold that the jurisdiction of the Civil Court is barred as the adjudicatory power vests with the Special Court constituted under Section 153 of the 2003 Act. It is Special Court, which would determine the civil liability against the consumer for



theft of energy. The question, however, still remains :

“Whether the bar under Section 154 (5) can be invoked in the cases where there is no FIR against the theft and thus the Special Court has not even clutched upon the jurisdiction vested in it by law?”

8. The other issue that calls for the consideration of this Court is the observation made by Division Bench in Para No.38 holding that the provisions relating to investigations and assessment are embodied in Section 126 of the 2003 Act.

9. The scheme of Act of 2003 needs to be understood in its entirety. Part XII of 2003 Act, deals with ‘investigation and enforcement’. Part XIV deals with ‘offences and penalties’. Section 126 contained in Part XII, deals with ‘assessment’ in the case of a person indulging in unauthorized use of electricity. Section 135 defines ‘theft of electricity’. Section 126 and Section 135, read as under:

Section 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 judgement 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.

1[(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:

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3[(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 unauthorized 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 1[twice] the tariff rates 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



- 2[(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 authorized.”]

Section135. (Theft of Electricity):- 1[(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,
- (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 authorized 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 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 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) 1[Any officer of the licensee or supplier as the case may be,] authorized 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 2[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 unauthorized 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, relating to search and seizure shall apply, as far as may be, to searches and seizure under this Act.

(emphasis supplied)

10. Initially there was a confusion w.r.t. overlapping nature of provisions contained under Section 126 and Section 135. Quite often the ‘cases of unauthorized use of electricity’ were misconstrued as the ‘cases of theft of electricity’ and *vice versa*.

11. The issue was elaborately dealt with and explained by Supreme Court in the case of ‘**The Executive Engineer and another vs. M/s Sri Seetaram Rice Mill**’ (2012) 2 SCC 108, observing as under:

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15. Upon their plain reading, the mark differences in the contents of Sections 126 and 135 of the 2003 Act are obvious. They are distinct and different provisions which operate in different fields and have no common premise in law. We have already noticed that Sections 126 and 127 of the 2003 Act read together constitute a complete code in themselves covering all



relevant considerations for passing of an order of assessment in cases which do not fall under Section 135 of the 2003 Act. 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 (1A) 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. 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 'unauthorized 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 'authorized 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 pass a provisional assessment order in terms of Section 126(2) of the 2003 Act. 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 Chapter XII and relates to investigation and enforcement and empowers the assessing officer to pass an order of assessment.

16. 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.

17. Thus, it would be clear that the expression 'unauthorized use of electricity' under Section 126 of the 2003 Act deals with cases of unauthorized use, even in 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 authorization, like providing for a direct connection bypassing the installed meter. 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 unauthorized 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 unauthorized use of electricity and then theft which is governed by the provisions of Section 135 of the 2003 Act.

18. Section 135 of the 2003 Act significantly uses the words 'whoever, dishonestly' does any of the listed actions so as to abstract or consume electricity would be punished in accordance with the provisions of the 2003 Act. 'Dishonesty' is a state of mind which has to be shown to exist before a person can be punished under the provisions of that Section.

19. The word 'dishonest' in normal parlance means 'wanting in honesty'. A person can be said to have 'dishonest intention' if in taking the property it is his intention to cause gain, by unlawful means, of the property to which the person so gaining is not legally entitled or to cause loss, by wrongful means, of property to which the person so losing is legally entitled. 'Dishonestly' is an expression which has been explained by the Courts in terms of Section 24 of the Indian Penal Code, 1860 as 'whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person is said to do that thing dishonestly'. [The Law Lexicon (2nd Edn. 1997) by P. Ramanatha Aiyar]

20. This Court in the case of Dr. S. Dutt v. State of U.P., [AIR 1966 Supreme Court 523] stated that a person who does anything with the intention to cause wrongful gain to one person or



wrongful loss to another is said to do that dishonestly.

21. Collins English Dictionary explains the word 'dishonest' as 'not honest or fair; deceiving or fraudulent'. Black's Law Dictionary (Eighth Edition) explains the expression 'dishonest act' as a fraudulent act, 'fraudulent act' being a conduct involving bad faith, dishonesty, a lack of integrity or moral turpitude.

22. All these explanations clearly show that dishonesty is a state of mind where a person does an act with an intent to deceive the other, acts fraudulently and with a deceptive mind, to cause wrongful loss to the other. The act has to be of the type stated under Sub-sections (1)(a) to (1)(e) of Section 135 of the 2003 Act. If these acts are committed and that state of mind, mens rea, exists, the person shall be liable to punishment and payment of penalty as contemplated under the provisions of the 2003 Act. In contradistinction to this, the intention is not the foundation for invoking powers of the competent authority and passing of an order of assessment under Section 126 of the 2003 Act.

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12. In the present case, we are only concerned with theft of electricity i.e., Part XIV of the 2003 Act.

13. From the perusal of Section 135(1A), it is evident that wherever there is a case of theft of electricity detected by the authorities, they are within their power to disconnect the supply line of the electricity provided the concerned officer of the licensee or supplier, has lodged a complaint, in writing, relating to commission of theft of energy in police station having jurisdiction within twenty four hours from the time of disconnection of supply line of electricity. However, in case, the consumer/person deposits



amount assessed in terms of the Act of 2003, the supply shall be restored within 48 hours of such deposit. However, the said restoration is without prejudice to the obligation to lodge the complaint. In terms of Section 145, no injunction can be granted against such disconnection where the power has been exercised in accordance with law by competent authority. Theft of energy is a cognizable offence. Statute prescribes punishment, which may extend to imprisonment for a period of three years or fine or both.

14. Section 151 provides for 'cognizance of offences'. Court is required to take cognizance of an offence punishable under the Act only on a complaint, in writing, made by the appropriate Government or appropriate Commission or any of their officer authorized by them or a Chief Electrical Inspector or an Electrical Inspector or licensee or the generating company. Court can also take cognizance on the report of a police officer, filed under Section 173 of the Code of Criminal Procedure, 1973.

15. Section 152 provides for 'compounding of offences'. The compounding fee has been prescribed in the provision. Section 152(2) provides that any person, arrested for offence punishable under Section 135, shall be set at liberty and no proceedings shall be instituted or continued against such consumer in any criminal court, once he has paid the compounding fee under Section 152(1). Section 152(3) provides that such compounding of offence, on acceptance of compounding fee, shall be



deemed to be an acquittal within the meaning of Section 300 of Cr.P.C., 1973. However, compounding can be claimed only once by the consumer. Section 153 provides for 'constitution of Special Courts'. Both in State of Punjab and State of Haryana, such Special Courts have been notified. Section 154 provides for 'procedure and power of Special Court'. The same reads as under:

Section 154. (Procedure and power of Special Court): --- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence punishable under [2sections 135 to 140 and section 150] shall be triable only by the Special Court within whose jurisdiction such offence has been committed.

(2) Where it appears to any court in the course of any inquiry or trial that an offence punishable under sections 135 to 139 in respect of any offence that the case is one which is triable by a Special Court constituted under this Act for the area in which such case has arisen, it shall transfer such case to such Special Court, and thereupon such case shall be tried and disposed of by such Special Court in accordance with the provisions of this Act :

Provided that it shall be lawful for such Special Court to act on the evidence, if any, recorded by any court in the case of presence of the accused before the transfer of the case to any Special Court :

Provided further that if such Special Court is of opinion that further examination, cross-examination and re-examination of any of the witnesses whose evidence has already been recorded, is required in the interest of justice, it may re-summon any such witness and after such further examination, cross-examination or re-examination, if any, as it may permit, the witness shall be discharged.



(3) The Special Court may, notwithstanding anything contained in subsection (1) of section 260 or section 262 of the Code of Criminal Procedure, 1973, try the offence referred to in sections 135 to 139 in a summary way in accordance with the procedure prescribed in the said Code and the provisions of sections 263 to 265 of the said Code shall, so far as may be, apply to such trial :

Provided that where in the course of a summary trial under this subsection, it appears to the Special Court that the nature of the case is such that it is undesirable to try such case in summary way, the Special Court shall recall any witness who may have been examined and proceed to re-hear the case in the manner provided by the provisions of the said Code for the trial of such offence:

Provided further that in the case of any conviction in a summary trial under this section, it shall be lawful for a Special Court to pass a sentence of imprisonment for a term not exceeding five years.

(4) A Special Court may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to, any offence tender pardon to such person on condition of his making a full and true disclosure of the circumstances within his knowledge relating to the offence and to every other person concerned whether as principal or abettor in the commission thereof, and any pardon so tendered shall, for the purposes of section 308 of the Code of Criminal Procedure, 1973, be deemed to have been tendered under section 307 thereof.

(5) The [Special Court shall] determine the civil liability against a consumer or a person in terms of money for theft of energy which shall not be less than an amount equivalent to two times of the tariff rate applicable for a period of twelve months preceding the date of detection of theft of energy or the exact period of theft if determined whichever is less and the amount of civil liability so determined shall be recovered as if it were a decree of civil court.



(6) In case the civil liability so determined finally 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, to the Board or licensee or the concerned person, as the case may be, shall be refunded by the Board or licensee or the concerned person, as the case may be, within a fortnight from the date of communication of the order of the Special Court together with interest at the prevailing Reserve Bank of India prime lending rate for the period from the date of such deposit till the date of payment.

Explanation. - For the purposes of this section, “civil liability” means loss or damage incurred by the Board or licensee or the concerned person, as the case may be, due to the commission of an offence referred to in sections 135 to 139.

16. Section 183 of 2003 Act, provides power with the Central Government to publish orders to make such provisions which appear to be necessary for removing difficulty in giving effect to the provisions of 2003 Act, provided they are not inconsistent with the provisions of the Act. Exercising the said powers, Central Government vide S.O.790(E), dated 8th of June, 2005, published the Electricity (Removal of Difficulties) Order, 2005, amending Section 50 of the Electricity Supply Code providing method of assessment of the electricity charges payable in case of theft of electricity pending adjudication by the appropriate Government. The removal of difficulties’ order, reads as under:

**THE ELECTRICITY (REMOVAL OF DIFFICULTIES)
ORDER, 2005**



Whereas the Electricity Act, 2003 (36 of 2003) (hereinafter referred to as the Act) came into force on the 10th June, 2003;

And whereas section 50 of the Act provides that the State Commission shall specify an Electricity Supply Code to provide for recovery of electricity charges, intervals for billing of electricity charges, disconnection of supply of electricity for non-payment thereof, restoration of supply of electricity, tampering, distress or damage to electrical plant, electric lines or meter, entry of distribution licensee or any person acting on his behalf for disconnecting supply and removing the meter, entry for replacing, altering or maintaining electric lines or electrical plant or meter; And whereas the distribution licensees have expressed difficulties in controlling theft of electricity and in taking appropriate action in this regard;

And whereas enabling the distribution licensees for taking timely and appropriate action in cases of theft or diversion of electricity has become necessary for the development of electricity industry and ensuring supply of electricity to all areas;

And whereas taking measures conducive to development of electricity industry and supply of electricity to all areas are objectives, amongst others, of the Act, as stated in its preamble; And whereas the difficulties have arisen in giving effect to the provisions of the Act in controlling theft of electricity by the distribution licensees;

Now, therefore, the Central Government, in exercise of its powers conferred by section 183 of the Act hereby makes the following order in respect of electricity supply code in terms of section 50 of the Act, not inconsistent with the provisions of the Act, to remove the difficulties, namely. –

1. Short title and commencement.- (1) This order may be called the Electricity (Removal of Difficulties) order, 2005.

(2) It shall come into force on the date of publication in the Official Gazette.

2. Inclusions of measures to control theft in Electricity Supply Code. - (1) The Electricity Supply Code as specified by the State Commission under section 50 of the Act shall also include the following, namely:-

- (i) method of assessment of the electricity charges payable in case of theft of electricity pending adjudication by the appropriate court;



- (ii) disconnection of supply of electricity and removing the meter, electric line, electric plant and other apparatus in case of theft or unauthorized use of electricity; and
- (iii) measures to prevent diversion of electricity, theft or unauthorized use of electricity or tampering, distress or damage to electrical plant, electric lines or meter.

(2) The above provisions in the Electricity Supply Code shall be without prejudice to other rights of the licensee under the Act or any other applicable laws to recover the sum due and to protect the assets and interests of the licensee.

17. Needless to add here that the Electricity Supply Code has a statutory backing, Section 50 of the 2003 Act, reads as under:

Section 50. (The Electricity Supply Code): The State Commission shall specify an electricity supply code to provide for recovery of electricity charges, intervals for billing of electricity charges, disconnection of supply of electricity for non-payment thereof, restoration of supply of electricity; measures for preventing tampering, distress or damage to electrical plant, or electrical line or meter, entry of distribution licensee or any person acting on his behalf for disconnecting supply and removing the meter; entry for replacing, altering or maintaining electric lines or electrical plants or meter and such other matters.]

18. Evidently, the assessment in case of theft of energy is not relatable to Section 126 of 2003 Act, but has to be governed by the Electricity Supply Code. The State Electricity Commissions are required to specify such assessments.



19. In exercise of the powers conferred under Section 50 and Section 181 of the Act of 2003, necessary regulations have been incorporated by the Haryana Electricity Regulatory Commission as well as Punjab Electricity Regulatory Commission. Both the Regulatory Commissions are alive to the obligation casted upon them by Removal of Difficulties Order, 2005, dated 08.06.2005. Since, we are concerned with the State of Haryana, the relevant regulations framed by State Regulatory Commission i.e., the Haryana Electricity Regulatory Commission, 2014, read as under :

THEFT OF ELECTRICITY AND UNAUTHORIZED USE OF ELECTRICITY UNDER SECTION 135 AND SECTION 126 OF THE ELECTRICITY ACT, 2003

7 THEFT OF ELECTRICITY UNDER SECTION 135 OF THE ELECTRICITY ACT, 2003

7.1 Theft of Electricity

7.1.1 A person shall be guilty of an act of theft of electricity if he dishonestly does an act as defined under Section 135 (1) (a to e) of the Act.

7.1.2 Theft shall not be limited to physical interference with the meter found during physical inspection. It shall also include theft committed by resorting to external methods which in any way interfere with the accurate registration of energy consumed.

7.1.3 Provision of Section 135 of the Act has to be used where the alleged act has been done with dishonest intention. In such cases recourse shall not be taken to Section 126 of the Act. It is only in cases where sufficient evidence of



dishonest intention is not available that recourse can be taken to Section 126. Benefit of doubt can be given only while applying Section 135 and not while applying Section 126. In a case where the dishonest intention is doubtful, the matter shall not be closed merely by giving benefit of doubt but the proceedings shall be converted to Section 126 of the Act.

7.2 Procedure for booking a case of theft of electricity

- 7.2.1 The State Govt. shall issue the list of authorized officers of the licensee or supplier as the case may be, for inspection of any place or premises, as per Section 135 (2) of the Act.
- 7.2.2 The licensee or supplier shall display the list of such authorized officers prominently in all its offices and put on its website. The photo identity cards shall be issued to such officers.
- 7.2.3 The authorized officer, suo-motu or on receipt of reliable information regarding theft of electricity in a premises shall promptly conduct inspection of such premises after obtaining permission from SDO or XEN concerned if he happens to be below the level of SDO. Provided that no inspection, search and seizure of any residential premises shall be carried out between sunset and sunrise except in the presence of an adult male member occupying such premises.
- 7.2.4 The inspection team of the licensee or supplier, headed by such authorized officer shall carry along with them their photo identity cards. Photo identity cards should be shown to the occupant of the place of inspection before entering the premises. Photo identity card of the authorized officer shall clearly indicate that he has been nominated as authorized officer as per provision of Section 135 of the Act.



- 7.2.5 While conducting inspection, the authorized officer and his team shall follow the provisions of sub-sections 2, 3 & 4 of Section-135 of the Act.
- 7.2.6 As far as possible, the events of inspection shall be photographed / video graphed. In cases, where significant law and order problem is anticipated, the authorized officer inspecting the premises shall immediately seek assistance from his senior officer(s) and also call for police help. In such cases all events shall be recorded through video camera.
- 7.2.7 If such entry or inspection reveals nothing to indicate the commission of or engagement in any act of theft of electricity by the person / consumer, the authorized officer, the employees accompanying him and the licensee shall not be liable for any alleged loss or inconvenience caused to the person/consumer on account of such entry, inspection and search.
- 7.2.8 The inspection of the meter made by the person authorized for reading the meter or meter reader as the case may be, including any other employee of the licensee for the purpose of recording of meter reading for consumption, shall not be deemed to be the inspection of the installation of the consumer for the purpose of Section 135 of the Act. The meter reader, however, shall be responsible for immediately reporting any suspicion of theft of electricity to the SDO concerned.
- 7.2.9 The authorized officer shall prepare a report giving details such as connected load, condition of meter seals, working of meter and mention any irregularity noticed (such as 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) on the prescribed format. The event would invariably be photographed or videographed with cameras having facility for recording date and time of event.

7.2.10 The report shall clearly indicate whether sufficient evidence substantiating the theft of electricity was found or not. The details of such evidence should be recorded in the report.

7.2.11 The report shall be signed by the authorized officer and each member of the inspection team and the same must be handed over to the consumer or his representative at site immediately under proper receipt. In case of refusal by the consumer or his authorized representative to either accept or give a receipt, a copy of the inspection report must be pasted at a conspicuous place outside the premises and photographed. Simultaneously, the report shall be sent to the consumer under registered post/ speed Post on the same day or the next day of the inspection.

7.2.12 Upon detection of theft of electricity, the authorized officer shall seize all material evidence including devices, instruments, wires and any other facilitator or article which has been or being used for unauthorized use of electricity, from the premises. All such evidence shall be packed and sealed with verification from the witness present during such seizure.

Provided that if in the process of seizure of the material evidence, supply to the consumer gets disconnected, it shall not be construed as disconnection of supply under Section 135 (1 A) of the Act.

7.2.13 The occupant of the place of search or any person on his behalf shall be allowed to 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. If he refuses to sign, the authorized officer shall record such refusal on the list and paste a copy of the list at a conspicuous place outside the premises.

7.2.14 It shall be the duty of the licensee to ensure that the meters, terminal covers of the meters and protection boxes where provided shall be duly secured with a seal of the licensee. The existing licensee shall certify within a period of six months from the notification of these Regulations in the official gazette of Haryana that all such seals have been put in place. Thereafter, in cases where the meter is installed inside the consumer premises or at the entry point, within in a period of next two months, any consumer may report that his meter or terminal cover or protection box wherever provided has not been sealed. On such report, the licensee shall verify the claim and if found true will promptly take steps to put the seals and will also initiate action against the employee who failed to put the seals in the given period of six months. After a period of eight months from the date of notification of these Regulations, it shall be presumed that all the meters, terminal covers of the meters and protection boxes wherever provided have been sealed

Thereafter:

(1) Where the meters are installed inside the premises or at the entry point:

- (a) If any of the seals is found broken during any inspection and the licensee finds on the basis of abnormality in consumption pattern with reference to the sanctioned load or otherwise that the seal would have been broken with an intent to commit



theft of electricity, it shall be presumed that the seal was broken by or on behalf of the consumer.

- (b) If the meter or any part of it including glass is found tampered but not with the intent of opening it or broken, the conclusion of theft shall not be drawn unless it is corroborated by consumption pattern of consumer and such other evidence as may be available.

(2) Where the meters are installed outside the premises:

No case for dishonest abstraction or theft of electricity shall be framed only on account of seal(s) on the meter and/or meter cubicle found missing or tampered with or fake or breakage of glass window or existence of hole in meter, loose glass, cut in the incoming PVC Cable or any other act, unless corroborated by consumption pattern of consumer, reliable tamper information and such other evidence which may establish that theft of energy was being actually committed.

7.2.15 In case on inspection of the premises sufficient evidence is found to establish that any artificial means or means not authorized by the 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 abstraction, consumption or use of electricity has been dishonestly caused by such consumer.

7.2.16 Whether the seizure under Regulation 7.2.12 results in disconnection of supply to the consumer or not, the licensee or supplier, as the case may be, upon detection of such theft of electricity, immediately disconnect the supply from a point further away from the connection point as per Section 135 sub-clause (1A) of the Act to ensure that the consumer does not reconnect the supply and further theft does not



take place. Provided that the supply shall be disconnected under the order of an officer of the rank higher than the rank of authorized officer who carried out the inspection and such officer shall not be below the rank of SDO.

7.2.17 Such officer of the licensee or supplier, as the case may be, not below the rank of SDO, shall lodge a complaint in writing relating to the commission of such offence in police station having jurisdiction in the area within 24 hours from the time of such disconnect.

7.3 Assessment of energy consumption

7.3.1 Notwithstanding the criminal action taken under Section 135 of the Act for theft of electricity, the assessing officer of the licensee or supplier, as the case may be, as defined under Section 126 of the Act, but not below the rank of SDO, shall assess the energy consumption as per the assessment formula given in Annexure – II to these Regulations.

7.3.2 In case of a regular metered connection, where a case of theft of electricity is detected, units recorded in the meter for the period for which the assessment is made and for which bills have been raised by the licensee, shall be accounted for while working out the net assessment of theft of electricity.

7.3.3 After assessing the energy consumption as per the assessment formula given in Annexure – II to these Regulations, the licensee shall prepare a final assessment bill on two times of the tariff applicable and serve upon the consumer notices containing the following information.

- (a) The details relating to the inspection carried out by the authorized officer including the dates and



timings, list of material seized and any other relevant fact

- (b) Detail of the energy consumption assessed on account of theft of electricity, the period for which assessment has been made and the amount to be deposited by the consumer / person (amount calculated as per the assessment formula given in Annexure – II to these Regulations).

7.4 Reconnection

The licensee or supplier, as the case may be, on payment of the assessed amount in accordance with the provisions of the Act read with these Regulations, shall without prejudice to the obligation to lodge the complaint as referred to under Regulation 7.2.17 above, restore the supply of electricity within forty-eight hours of such payment. Provided that the supply to a person who is not a consumer of the licensee shall not be restored and the payment of amount of assessment made by him shall not entitle such person to be a consumer of the licensee on such payment.

7.5 Default in payment of assessed amount

In case of default in payment of the assessed amount, the licensee shall, after giving a 15 day's notice in writing, file a case against the consumer in the designated Special Court as per the provisions of Section 135 of the Act. If, however, the consumer comes forward to pay the assessed amount along with interest, which shall be at the rate of 16% per annum compounded every six months, he shall be allowed to deposit the amount and interest without prejudice to other actions taken under Section 135 of the Act.

7.6 Compounding of offence



7.6.1 In case it is a first offence under Section 135 of the Act, then the person may request the officer authorized by the State Government under Section 152 of the Act, for compounding of offence in the prescribed format. The authorized officer shall hear the person and the assessing officer or his authorized representative and thereafter, after orders from such authorized officer, the amount for compounding of offence shall be deposited by the person with the State in the same manner as prescribed for depositing the fines imposed by the courts. The charges for compounding of the offence shall be as mentioned under Section 152 of the Act or as specified by the State Government.

7.6.2 A person can also deposit the amount of compounding even after an FIR/complaint has been lodged against him for the first offence, after getting approval from the authorized officer under Section 152 of the Act. In such eventuality, the authorized officer (under section 152) should accept the amount of compounding and intimate the same to the concerned police station and court regarding compounding of offence under Section-152 of the Act.

7.6.3 On payment of the sum of money in accordance with Regulations 7.6.1 & 7.6.2, any person in custody in connection with that offence shall be set at liberty and no proceedings shall be instituted or continued against such consumer or person in any criminal court.

7.6.4 The acceptance of the sum of money for compounding of offence in accordance with Regulations 7.6.1 & 7.6.2 by the Appropriate Government or an officer empowered in this behalf shall be deemed an acquittal within the meaning of section 300 of the Code of Criminal Procedure, 1973 (2 of 1974).



7.7 Special Court

Procedure and power of Special Court – The Special Court setup under Section 153 of the Act, shall have the powers as specified under Sections 154 and 155 of the Act.

7.8 Suspected Theft

7.8.1 On inspection of a premises, in case theft of electricity is not clearly established and it seems to be a case of suspected theft only, in that case the authorized officer shall remove the old meter under a seizure memo and seal it in the presence of the consumer or his authorized representative. The authorized officer and the consumer shall sign on the seals borne on the meter and meter box. The licensee or supplier shall continue the supply to the consumer simultaneously with a new meter. The old meter shall be tested in the presence of the consumer and the authorized officer at the licensee's testing lab which shall give a test report in writing, which along with photographs / video graphs shall constitute evidence thereof. Based upon this test report, the authorized officer shall prepare a report and record therein the reasons of suspected theft, if any.

Provided that if consumer insists, the testing of the meter shall be carried out at a third party facility approved by the licensee / Commission.

7.8.2 The authorized officer shall handover his report to the consumer or his representative immediately under proper receipt. In case of refusal by the consumer or his authorized representative to either accept or give a receipt, a copy of the inspection report shall be pasted at a conspicuous place outside the premises and photographed. Simultaneously, the report shall be sent to the consumer under registered post/speed post on the same day or the next day of the issue



of report. Provided that in case of suspected theft, the meter is found to be accurate within the prescribed limits and in proper working order after testing, no further proceedings shall be taken and the decision shall be communicated to the consumer under proper receipt within three days and the original meter shall be restored.

7.8.3 After detailed examination of the evidence and the consumption pattern of the consumer, if the licensee or supplier is convinced that a prima-facie case is made out against the consumer for dishonest abstraction, consumption or use of electricity, then the licensee or supplier shall proceed against the consumer as per provision under Regulations 7.2.16 to 7.6.4.

7.9 Voluntary declaration of tampered meters / seals

In case a consumer comes forward and voluntarily declares that his meter and / or seals are tampered: (1) If the licensee finds with reference to the abnormality in consumption pattern and the sanctioned load or otherwise that the meter and/or seals were tampered with malafide intent, then the licensee shall raise the assessment bill at two times the normal tariff for the period of last two months in case of domestic supply and for the period of last six months in case of other categories, reckoned from the date of declaration.

In case of AP connections, the assessment bill shall be raised at two times the AP tariff determined by the Commission without subtracting the subsidy component for the period of last two months, reckoned from the date of declaration.

The tampered meter/seals shall be replaced with new meter/seals at the consumer's cost immediately.



Thereafter the licensee shall not raise any other issue including action under Sections 126 & 135 of the Act.

- (2) The energy bill, for the period the meter is not replaced, shall be sent as per the procedure for defective meters.

20. Likewise Chapter VIII has been incorporated in the Punjab Supply Code, 2014. Chapter VIII in the Supply Code, 2014 deals with unauthorized use of electricity and theft of electricity in State of Punjab.

21. In view of the discussion held hereinabove and the scheme of the Act of 2003, it is held as under:

- (i) Once theft of electricity is discovered by the authorities, they are empowered to disconnect the supply of electricity. Under Section 145 of 2003 Act, no Civil Court shall have jurisdiction to entertain an application seeking injunction on such act by an officer/authority empowered under 2003 Act to disconnect the electricity.
- (ii) Within 24 hours of such disconnection, competent officer is obligated to lodge complaint, in writing, relating to commission of theft of electricity in police station having jurisdiction.
- (iii) In case, the consumer pays the assessed amount of electricity charges, the electricity will be restored within 48 hours of such deposit. However, it needs to be



noticed herein that such assessment and corresponding deposit, is without prejudice to the obligation to lodge the complaint in writing.

- (iv) The Court can take cognizance of an offence under Section 135 of the Act upon a complaint, in writing, made by competent officer/authority or upon report of a police officer filed under Section 173 of Cr.P.C.
- (v) Offences prescribed under Sections 135 to 140 or Section 150, are cognizable and non-bailable offences.
- (vi) Once the police takes cognizance of the offence punishable under Sections 135 to 140 and Section 150, the first time offender can claim compounding of offence, as prescribed under Section 152. If the payment is made, a person in custody in connection with the offence, has to be set at liberty and no proceedings be instituted or continued against him in any criminal Court.
- (vii) Acceptance of such payment, shall amount to acquittal within the meaning of Section 300 of Cr.P.C., 1973.
- (viii) States may notify in the official gazette Special Courts to try offences punishable under Sections 135 to 140 and Section 150 with the object of providing speedy trial. In terms of Section 153 Constitution of Special Courts



under the 2003 Act, is for purpose of trying offence referred to in Sections 135 to 140 and Section 150. Determination of civil liability being incidental and dependant upon criminal liability of offender, Special Court has no power to grant injunction on disconnection of supply of electricity under Section 135 of the Act or jurisdiction to entertain such plea.

- (ix) Any offence punishable under Sections 135 to 140 and Section 150, is triable only by the Special Court having jurisdiction over the area where the offence has been committed.
- (x) The offence has to be tried by Special Court as a summary trial in accordance with the procedure prescribed under Code of Criminal Procedure, 1973.
- (xi) The Special Court has to determine the Civil liability against the consumer or a person in terms of money *qua* theft of energy. The same shall not be less than an amount equivalent to two times of the tariff rate, applicable for a period of twelve months preceding the date of detection of theft or the exact period of theft, if determined, whichever is less.



(xii) The amount of the civil liability, so determined, is to be enforced like a Civil Court decree.

(xiii) The civil liability determined by the Special Court needs to be adjusted/set off against the amount deposited by the consumer subsequent to registration of case.

22. In view of above, this Court finds that the Division Bench having relied upon powers conferred by Section 154 to hold that the jurisdiction of Civil Court, is barred in the case of theft of energy, the ratio can be relied upon by the supplier only in the cases wherein compliance has been made to the provisions of Section 135. Which means that only when a complaint has been lodged by the competent officer/authority regarding theft of energy and the Special Court has taken cognizance of the offence pursuant to filing of such complaint or filing of police report as per Section 151 of 2003 Act, the jurisdiction can be said to be barred invoking Section 154 of the Act of 2003.

23. In the absence of there being any complaint filed before the Special Court or FIR registered by the police authorities, the allegations of theft of energy, cannot assume the status of offence. In all those cases, where there is no FIR registered by the police authorities and/or complaint filed by the competent authorities before the Special Courts, the consumer is well within his right to approach the Civil Court alleging violation of the law



and procedure prescribed therein. Reliance can be placed upon ratio of law laid down by Five Judges Bench of Supreme Court in the case of **Dhulabhai etc. vs. State of M.P. and anr, 1969 AIR (Supreme Court) 78** wherein the Supreme Court observed as under:

“32. xxxxx. The result of this inquiry into the diverse views expressed in this Court may be stated as follows :-

(1) Where the statute gives a finality to the orders of the special tribunals the civil court's jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.

Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted,



and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.

(3) Challenge to the provisions of the particular Act as ultra vires cannot be brought before Tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.

(4) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(5) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected a suit lies.

(6) Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry.

(7) An exclusion of the jurisdiction of the civil court is not readily to be inferred unless the conditions above set down apply.”

24. It also needs to be noticed herein that the ‘assessed amount’ as contemplated under 3rd proviso appended to Section 135(1A) is not relatable



to assessment provided under Section 126 of the 2003 Act. The same rather refers to the amount assessed as per procedure prescribed by State Commissions in the Electricity Supply Code under Section 50 of the 2003 Act pursuant to the Electricity (Removal of Difficulties) Order, 2005, dated 08.06.2005.

25. Applying the aforesaid parameters to the present case, this Court finds that it is case where there is neither any FIR registered *qua* offence punishable under Section 135 nor any complaint preferred before the Special Court notified under Section 153, the jurisdiction of Civil Court, cannot be held to be barred invoking Section 154 of 2003 Act.

26. No other point has been argued.

27. Finding no merits in the present appeal, the same is ordered to be dismissed.

28. Pending application, if any, shall also stand disposed off.

October 27, 2025

**(Pankaj Jain)
Judge**

Dpr

Whether speaking/reasoned : Yes

Whether reportable : Yes