

K.S.E.B. Vs. Najeeb

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SooperKanoon Citation : sooperkanoon.com/729868

Court : Kerala

Decided On : Dec-08-2004

Reported in : 2005(1)KLT406

Judge : K.S. Radhakrishnan and; M.N. Krishnan, JJ.

Acts : [Indian Electricity Act, 1910](#) - Sections 24, 24(1), 39, 39A, 42 and 44; [Electricity Act, 2003](#) - Sections 2(7), 50, 56, 56(2), 126, 126(5), 126(6), 127, 135, 138, 145, 152, 185 and 185(2); Electricity (Supply) Act, 1948 - Sections 5(1) and 79; [Electricity Regulatory Commissions Act, 1998](#); General Clauses Act - Sections 6, 24, 30(1), 30(2) and 185; [Prevention of Corruption Act, 1947](#) - Sections 482; [Prevention of Corruption \(Amendment\) Act, 1988](#) - Sections 30 and 30(2); [Indian Penal Code \(IPC\), 1860](#) - Sections 116; Indian Electricity Regulation - Regulations 42 and 43; Electricity Supply Code

Appeal No. : W.A. No. 2005 of 2004

Appellant : K.S.E.B.

Respondent : Najeeb

Judgement :

K.S. Radhakrishnan, J.

1. Whether unauthorised use of electricity has to be assessed under Section 24(1) of [Indian Electricity Act, 1910](#) read with Regulation 42(d) of the Regulations Relating to Conditions of Supply of Electrical Energy or under Section 126 of the [Electricity Act, 2003](#) is the question that has come up for consideration in this case.

2. Writ Petition was preferred Seeking a writ of certiorari to quash Ext.P7 mahazar prepared by the Vigilance and the Anti-Power Theft Section of the Electricity Board and Ext.P8 bill dated 5.10.2004 issued pursuant thereto contending that the invoice has been issued against the provisions of Section 126 of the [Electricity Act, 2003](#). Learned Single Judge ordered reconnection with a direction to dispose of the appeal. Aggrieved by the judgment the Kerala State Electricity Board and its Assistant Executive Engineer have come up with this Appeal.

3. M/s. Chicago Builders and Real Estate Pvt. Ltd. has constructed a seven storied commercial complex with a revolving restaurant. Premises at the time of construction was having 3 phase connection with 5 KW in the name of one Janaki, vide consumer No. 7485. The building was completed on 10.10.1999 as per records maintained in the Office of the Corporation of Kochi. Certain portions of the commercial complex were leased out/sold immediately after construction. Chicago Revolving Restaurant is functioning in the top floor. Najeeb Associates is functioning in the 4th floor. UTI Bank, Sharekhan, Pinnacle, Aviva etc. are functioning in the same complex.

4. The Anti-Power Theft Squad of the Electricity Board had inspected the premises of the petitioner on 30.5.2001 and found that the petitioner was using additional load of 35 KW over and above 5 KW sanctioned. Petitioner was then served with a notice No. CGE/APTS/7/01-02/45 dt. 31.5.01 by Assistant Executive Engineer directing him to regularise the load by submitting application in proper form with connected documents failing which it was ordered that future bills would be issued at penal rate as per Regulation 42(d) of Conditions of Supply of Electrical Energy. He was also informed that revised bill would be issued for previous six months as per rules. Later bill dated 5.6.2001 for Rs. 3,97,901/- was served on him for the use of unauthorised additional load of 35 KW; which was challenged in

O.P.18433/01. Petitioner had also filed another O.P.19022/01 challenging the bill dt. 15.6.01 for Rs. 1,72,041/-. During the year 2002, petitioner directly or through his agents filed O.P. 12083/02 O.P. 13509/02 challenging the various bills. During the year 2003, petitioner filed WP(C). 17394/03, WP(C).24217/03, WP(C). 27098/03, WP(C).30392/03, WP(C).40782/03 challenging the various bills issued to him. Petitioner also filed WP(C).4209/04, WP(C).9976/04 and WP(C). 12091/04 challenging the various bills issued to him during the year 2004. Appeals preferred by him before the Assistant Executive Engineer and Deputy Chief Engineer against some of the electricity bills were also dismissed. On dismissal of the various appeals by Assistant Executive Engineer, Deputy Chief Engineer, a letter dated 29.4.2004 was issued directing him to pay an amount of Rs. 13,61,885/- which was the balance amount by February, 2004. Petitioner was informed that unless the amount is paid the supply would be disconnected. Aggrieved by the letter petitioner filed WP(C). 16215 of 2004. Learned Single Judge of this Court in WP(C). 16215 of 2004 then directed the petitioner to furnish bank guarantee for the amount of Rs. 13,61,885/- failing which it was ordered that service connection would be disconnected. Consequently, bank guarantee was furnished by the petitioner.

5. Original Petition No. 13509 of 2002, WP(C) Nos. 4209, 9976, 12091 and 16215 of 2004 later came up for consideration before this Bench. Considering the entire facts and circumstances of the case we thought it would be appropriate that the petitioner's grievance be examined by the Deputy Chief Engineer afresh including the validity of the orders passed by the Assistant Executive Engineer in the appeals preferred by him. Consequently we disposed of those Writ Petitions on 15th November, 2004 permitting the writ petitioner to make a comprehensive representation with regard to all his grievances within a period of three weeks from the date of the judgment by registered post acknowledgment due. Deputy Chief Engineer was directed to dispose of the appeal within one month after giving an opportunity of being heard to either side. It was further ordered that till a declaration is taken by the Deputy Chief Engineer the bank guarantee furnished would be kept alive. On failure to file representation it was ordered that the board would be entitled to encash the bank guarantee. Facts would indicate that till February 2004 a total amount of Rs. 13,61,885/- was stated to be due from the

petitioner. WP(C). 6917 of 2004 is also being disposed of today.

6. Petitioner was admittedly having only a connected load of 5KW. Petitioner has constructed a multi storeyed shopping complex in seven floors at Rajaji Road, Ernakulam with a connected load of 5 KW. A revolving restaurant is functioning on the top floor. Various other establishments are also functioning in the said complex. Certain portions of the commercial complex were leased out or sold immediately after construction. Construction was reported to be completed on 10.10.1999. From July 1994 to November 2000 the average consumption of Consumer No. 7485 was 70 units per month and no meters were burnt during the said period. From November 2000 onwards current consumption increased to 300 units from November 2000 to January 2001, 7000 units from January 2001 to March 2001 and 8000 units from March 2001 to May 2001. Anti-Power Theft Squad inspected the petitioner's premises on 30.5.2001 and found out that there was an additional load of 35 KW and they issued letter dated 31.5.2001. Consequently as we have already indicated he was served with bill for Rs. 3,97,901/- imposing penal charges. Eversince the completion of the construction petitioner was using three phase connection provided in the name of Janaki with consumer No. 7485. The other two connections are single phase connections. Naturally, the requirements of the commercial complex would be much more than the requirement of the domestic consumer with 3 phase connection. As a result of this the meter installed in the premises of consumer No. 7485 was burnt on 9 occasions due to overload, on 13.9.2001, 8.11.2001, 1.12.2001, 7.3.2002, 8.3.2002, 4.5.2002, 6.4.2004, 27.5.2004 and on 14.6.2004. The mahazar dt.2.10.2004 and the list made available to us by the Assistant Executive Engineer would indicate that petitioner has installed 285 numbers of lights, three halogen lamps, 103 computers, three printers, 34 fans, 1 exhaust fan, 206 C.F.lamp, 26 power plugs, 6 ordinary plugs, 73 spot lamps, 13 split air conditioners, 11 window air conditioners, 6 centralised air conditioners with three 21 Amp, 24900 Kcal, one 13 Amp, 16500 Kcal, one 7.5 tonne, one 5 tonne, one 2 tonne. Then two lift pumps, one revolving restaurant motor, two pumps, one neon sign board, three fridges, 2 freezers, one cooler, four ovens, one display board, 46 KVA UPS, two photostat Machine, three coffee maker, one teller machine, one fax machine (one 4 in one), three CD players, two televisions and 162 feet tube set and so on. The

total connected load would come to 294480 Watts.

7. The Assistant Executive Engineer in the additional affidavit filed in the Writ Appeal stated as follows:--

'It is submitted that with 5 KW if all the installations are continuously used for 10 hours maximum consumption will be 1500 units. If all the installations with 5 KW were continuously utilised for 24 hours without any break the maximum consumption will come to 3600 units. It is thus obvious that the 1st respondent was making use of more than 5 KW but was paying charges for 5 KW for the period 2/02 to 4/03 on the pretext of litigation. The 1st respondent ought to have paid penal charges upto the date of regularisation as per Board Order dated 20.10.1998. The first respondent has regularized unauthorized load to 40 KW on 24.9.2004 by passing additional cash security. From 4/03 upto 24.9.04 the 1st respondent was charged the normal tariff rates for the connected load of 40 KW. If the 1st respondent has made use of 40 KW for 10 hours the maximum consumption will come to 12,000 units. During this period the 1st respondent has consumed more than 19,000 units. The hotels and leased out units are only functioning for fixed hours. The pattern of the consumption of the 1st respondent also shows that the 1st respondent was making use of more than 40 KW'.

The Board submits that petitioner is in the habit of providing electricity clandestinely to other tenants in the building complex without the permission of the Board which would amount to theft of energy. Board produced annexures 6, 7, 8 and 9 to establish that contention. Letter dated 16.6.2001 issued by the UTI Bank to the Assistant Executive Engineer, bill dated 16.8.2004 given by Aviva to the petitioner, Annexure 5(b) letter dated 5.10.04 issued by the UTI Bank to the Board, Annexure 5(c) bill dated 16.8.2004 raised by the petitioner in favour of Pinnacle Innovative Technologies, Annexure 5(d) bill raised by the petitioner in favour of one Sharekhan according to the Board, would indicate that petitioner is diverting electricity to his tenants and indulging sale of electricity causing loss to the Board and unlawful gain to the petitioner. Diesel generator sets installed according to the Board, cannot function continuously and no consumer of commercial complex is using diesel generator sets for supplying electricity to the premises except by way

of stand by arrangement. Further it was reported by the Assistant Engineer, Electrical Section that when the meter was changed on 4.5.2002 petitioner threatened him, he had in turn submitted report No. ES/CGE/02-03/31 dt.22.2.2003 to Assistant Executive Engineer for immediate inspection which was produced as Annexure III. The report reads as follows:--

'Before May 2002, the consumption of the above premises is between 2000-3000 units. On 4.5.2002, the digital electronic meter was installed and full sealings were done, the consumption raised upto between 8000-10000 units till 12/2002. When we had changed the meter on 4.5.2002, the owner of the building, C. Najeeb, M.D. Chicago Builders had threatened me and abused me on those days of matter had brought to the notice of the then Dy.Chief Engineer, Bharathy Madam and the Exe. Engineer Sri. John Daniel Sir. So I request that an immediate inspection may please be arranged'.

The Assistant Engineer also vide his report dt. 16.10.2003 Annexure 3(b) reported to the Superior Officer that meter was burned many times due to overload and an inspection conducted in February, 2003, it was noticed that one limb of the meter was not recording the consumption. The Sub Engineer had also conducted an inspection in the petitioner's concern on 16.4.2004 and he prepared a mahazar on the said date. It was stated that the CT Box cover of the meter was removed. Reset button seal was also removed and also noticed that the meter was not properly functioning. It is also reported that the matter was brought to the knowledge of the petitioner, but he refused to sign the said report.

8. The Executive Engineer then wrote to the Assistant Executive Engineer vide his letter No. DB33/2001-2002 dt. 22.9.2004 which reads as follows:

'Please refer to the above. The meter bearing Sl.No. 02123469/5A, class 1 accuracy was tested in our meter testing lab after physical verification. The following defects were noticed during physical verification.

1. TMR seal is not found on the optical port.
2. TMR seal on the reset button is not found.

3. The ABB company seal at the bottom of the cover is broken and TMR seal is not found.
4. TMR seal at the top of the cover is not found, where the company seal is intact.
5. ABB paper seal is broken.

When the voltage and current were applied to the meter during the test, the meter display only ER 00101 in this error mode meter will not function any further. Hence, the accuracy of the meter could not be found out.

The CTs. were physically verified before subjecting to test. The name plate details of one CT-SL.No. B2703, class 1, burden 5VA, 100/5A of Kalpamake. The other two CTs are without name plate details. All the three CTs are of 100/5A ratio as per test result'.

Petitioner it was stated had only 5 KW was using more than 40 KW unauthorisedly. Petitioner though had applied for 250 KVA transformer in the year 2000 the sanction from the Electrical Inspector was obtained only on 27.2.2004. Required documents were furnished by the petitioner already vide his letter dated 24.9.04, till that time he was having only 5 KW. As per Board order dt.31.10.1992 Regulation 42(d) would apply to unauthorised additional load used. The Board has also later amended C1.42(d) vide Board order No. 1292/02/(Plg.Com.4206/01) dated 18.9.2002. Further as per Board order No. 3225/98 dt.20.10.1998 regularisation of the connected load will be given effect to only from the date of collection of security deposit. Petitioner paid the security deposit only on 24.9.2004.

9. Petitioner's premises was again inspected by the Vigilance and Anti-Power Theft Squad of the Electricity Board on 2.10.2004. It was a usual inspection by the Vigilance as well as Anti-Power Theft Squad of the Department of Kerala State Electricity Board. Inspection started at 7 p.m. and ended at 3 p.m. A detailed mahazar was prepared which is produced as Ext.P7 along with the O.P. Mahazar would indicate that there was no display in the meter of the petitioner's premises. It was noticed that the meter terminal cover was removed. Inspection revealed that

in the second phase there was no supply. It was also revealed that the potential coil supply wire to the second phase was seen removed without any connection to the second phase, with the result, in the second phase there was no current supply to the potential coil. This has obstructed the normal functioning of the meter. Documents produced along with the affidavit would show the tampered situation of the meter. On inspection it was also noticed that in the building complex Chicago Revolving Restaurant, Aviva Life Insurance Company, Najeeb Associates, UTI Bank & ATM Counter, Franklin Templeton Investment etc. are functioning. Few of the establishments are found closed. Inspection also revealed that from consumer No. 7485, petitioner had diverted energy to three establishments by name Aviva Life Insurance Company, UTI Bank and another establishment with sub meter No. 746934. Inspection also revealed that wire has been drawn from the room in which meter was installed dangerously with insulated wires and current has been unauthorisedly diverted. In short the report would show that petitioner is unauthorisedly tapping energy and also diverting energy to his tenants without permission of the Board. On the basis of the above mahazar the Board has issued Ext.P8 bill demanding an amount of Rs. 49,44,870/-.

10. We have perused Annexure XIII statement submitted by the Board and we are convinced that preparation of the bill is in accordance with the mahazar and also in compliance with Regulation 42(d) of the Conditions of Supply of Electrical Energy. Petitioner filed Ext.P11 appeal before the Deputy Chief Engineer against Ext.P8 bill. Learned Single Judge directed reconnection and ordered disposal of the appeal. In the facts and circumstances of the case we are of the view the direction given by the learned Judge for reconnection without any condition cannot be sustained.

11. Counsel appearing for the Writ Petitioner Sri. Tom K. Thomas submitted that the bill issued is not in consonance with the new [Electricity Act, 2003](#). Counsel also submitted the Conditions of Supply of Electrical Energy would not apply after coming into force of the [Electricity Act, 2003](#). Counsel also referred to Section 126 of the [Electricity Act, 2003](#) and contended that Regulation 42(d) is in conflict with Section 126 and consequently Board is not justified in billing at three times the rate applicable to the respective tariff for the previous six months from the date of

detection of misuse. Counsel submitted going by Section 126 of the [Electricity Act, 2003](#) the Board could make assessment only at a rate equal to one and half times the tariff applicable for the relevant category. We are mainly concerned with the question whether we should interfere with Ext.P8 bill raised by the Board on the basis of mahazar dt.2.10.2004 prepared on a joint inspection conducted by the Vigilance Department and Anti-Power Theft Squad of the Board. Petitioner's premises were inspected by the Anti-Power Theft Squad on two previous occasions, one on 30.5.01 and another on 16.4.2004. Bills were raised after having noticed that petitioner had tampered with the meter and the appeals preferred are pending consideration before the Deputy Chief Engineer. The Board has also stated in the affidavit that theft of energy was also detected at the residence of the petitioner on 4.3.1998 and the supply was disconnected and the supply was subsequently regularised on the payment of penal charges by the petitioner. Board in the affidavit filed by Assistant Executive Engineer has categorically stated that petitioner is habitually indulging in such practice at his residence and also at his commercial complex. We have gone through the Writ Petition at length and also the previous cases, apart from vague allegations against the Electricity Board and its officials there is no allegation of ill-motive or mala fide alleged against the Assistant Executive Engineer or against the Vigilance Department or Anti-Power Theft Squad who had inspected the petitioner's premises.

12. We will therefore examine whether Ext.P8 bill was issued following the procedure laid under the [Electricity Act, 2003](#). Ext.P8 is a demand notice cum disconnection notice issued under Section 24(1) of the [Indian Electricity Act, 1910](#). [Indian Electricity Act, 1910](#) had already been repealed by the [Electricity Act, 2003](#). [Electricity Act, 2003](#) has also repealed the Electricity (Supply) Act, 1948 as well as [Electricity Regulatory Commissions Act, 1998](#). Section 185 of the [Electricity Act, 2003](#) is the repeal and saving clause. Section 185(2) is the saving clause. Contention was raised that the Regulations Relating to Conditions of Supply of Electrical Energy framed by the Kerala State Electricity Board in exercise of the powers conferred under Section 79(j) of the Electricity Supply Act, 1948 is not saved by Section 185(2) of the [Electricity Act, 2003](#) and therefore Regulations would not apply from 10.6.2003 the date on which [Electricity Act, 2003](#) came into

force. Consequently contention was raised neither Section 24 of the [Indian Electricity Act, 1910](#) nor the Regulations 42(d) of Conditions of Supply would apply.

13. Counsel appearing for the Board Sri. P. Santhalingam on the other hand, contended that the Regulations relating to Conditions of Supply of Electrical Energy framed by the Kerala State Electricity Board under Section 79(j) of Electricity Supply Act, 1948 have been saved by Section 24 of the General Clauses Act and therefore the action taken by the Board officials is on order. Counsel submitted till Electricity Supply Code is framed by State Commission under Section 50 of the [Electricity Act, 2003](#), the Regulations relating to Conditions of Supply of Electrical Energy would apply since saved by Section 24 of the General Clauses Act.

14. Parliament felt the necessity for a comprehensive legislation in the matter of generation, transmission and distribution of electrical energy in the country and a new legislation, [Electricity Act, 2003](#), regulating the electricity supply industry in the country was therefore enacted which replaced the existing laws, preserved its core features other than those relating to the mandatory existence of the State Electricity Board and the responsibilities of the State Government and the State Electricity Board with respect to regulating licensees. The object of the Act states that the Act was enacted to consolidate the laws relating to generation, transmission, distribution, trading and use of electricity and generally for taking measures conducive to development of electricity industry, promoting competition therein, protecting interest of consumers and supply of electricity to all areas, 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 matter connected therewith or incidental thereto. Section 2(7) defines the expression 'Board' which means a State Electricity Board, constituted before the commencement of the [Electricity Act, 2003](#) under Sub-section (1) of Section 5 of the Electricity (Supply) Act, 1948. Part VI of the Act deals with distribution of electricity. Section 56 of the Act deals with disconnection of supply in default of payment. The parallel provision in the [Indian Electricity Act, 1910](#) was

Section 24. If theft of energy is detected Board used to raise the bill in accordance with Regulation 42(d) read with Section 24(1) of the Indian Electricity Act. By virtue of Section 42(d) Board is entitled to raise the bill at three times the rate applicable to the respective tariff for the previous six months from the date of detection of misuse. That is how Ext.P8 bill has been raised in the instant case. So far as Section 24 is concerned, the section directs only 7 clear days notice. However Section 56 of the [Electricity Act, 2003](#) provides not less than 15 clear days notice in writing. We may extract both the provisions for comparison. Section 56 of [Electricity Act, 2003](#) reads as follows:

Disconnection of supply in default of payment-- (1) Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:

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

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

(b) the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months, whichever is less, pending disposal of any dispute between him and the licensee.

(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this Section shall be recoverable after the period of two years from the date when such sum became first due unless such

sum has been shown continuously as recoverable as arrear for electricity supplied and the licensee shall not cut off the supply of the electricity'.

Section 24 of [Indian Electricity Act, 1910](#) reads as follows:

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

(2) Where any difference or dispute which by or under this Act is required to be determined by an Electrical Inspector, has been referred to the Inspector before notice as aforesaid has been given by the licensee, the licensee shall not exercise the powers conferred by this section until the Inspector has given his decision.

Provided that the prohibition contained in this sub-section shall not apply in any case in which the licensee has made a request in writing to the consumer for a deposit with the Electrical Inspector of the amount of the licensee's charges or other sums in dispute or for the deposit of the licensee's further charges for energy as they accrue, and the consumer has failed to comply with such request'.

Section 56 also stipulates that supply of electricity shall not be cut off if such person deposits under protest an amount equal to the sum claimed from him or the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months whichever is less, pending disposal of any dispute between him and the licensee. Section 56(2) says that notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer under this section shall be recoverable under the period of two years from the date when such sum became

first due unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied and the licensee shall not cut off the supply of the electricity. Regulation 42 is supplementary to the provisions of Section 24 of the [Indian Electricity Act, 1910](#). Regulation 42 is extracted below for easy reference:

'42. Misuse of Energy:

(a) The consumer shall not keep connected to the Board's supply system any apparatus which the Board deems to interfere with or affect supply injuriously to other consumers.

(b) Consumers availing three phase supply should keep their load balanced. The maximum difference in current in any two phases should not be more than 5%.

(c) The consumer shall not make such use of the supply given to him by the Board as to act prejudicially to the Board in any manner whatsoever.

(d) If the consumer exceeds the contracted load without prior permission of the Board or energy supplied for a specific purpose under a particular tariff is used without the Board's knowledge and approval for a different purpose not contemplated in the contract for supply and for which higher tariff is applicable coming under misuse of energy within the meaning of the I.E. Act, 1910. Misuse of energy will be billed at three times the rate applicable to the respective tariff for the previous six months from the date of detention of misuse unless there are convincing reasons for adopting different periods and supply disconnected without notice. The imposition of this higher rate will not relieve the consumer from any penalties imposed by law.

(e) If any time the consumer exceeds his contracted load without prior permission of the Board, the Board have the right to disconnect the supply and recover the damages caused, if any from him on account of his exceeding the contract load'.

Section 24 read with Section 42 would clearly show that there is ample power conferred on the Board to issue Ext.P8 bill on the basis of the mahazar after detecting theft in the premises. Regulation 43 also authorises the Board to

disconnect supply without notice. Theft of energy shall also be billed at three times the rate applicable in the respective tariff for a period of six months from the date of detection of theft unless there are convincing reasons for adopting a different period. Regulation 44 also authorises the Board to discontinue supply on giving not less than 24 hours notice in writing if there is reason to believe that the consumer is contravening any of the provisions of the Act, Rules or the conditions of supply or committing a breach of his agreement with the Board. Section 39 of the [Indian Electricity Act, 1910](#) also stipulates that whoever dishonestly abstracts, consumes or uses any energy shall be punishable with imprisonment for a term which may extend to three years, or with fine which shall not be less than one thousand rupees or with both; and if it is proved that any artificial means or means not authorised by the licensee exist for the abstraction, consumption or use of energy by the consumer, it shall be presumed, until the contrary is proved, that any abstraction, consumption or use of energy has been dishonestly caused by such consumer. Section 39-A of the Indian Electricity Act 1910 states that whoever abets and offence punishable under Section 39 or Section 44 shall, notwithstanding anything contained in Section 116 of the Indian Penal Code (45 of 1860), be punished with punishment provided for the offence.

15. Part XIV of the [Electricity Act, 2003](#) deals with offences and penalties. Section 135 says that whoever, dishonestly taps, makes or causes to be made my connection with overhead, underground or under water lines or cables, or service wires or service facilities of a licensee; or 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 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, 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. Section 138 of the Electricity Act also is a penal provision against those persons who interfered with meters or works of licensee which also be punishable with imprisonment for a term which may extend to three years or with fine which may extend to ten thousand

rupees, or with both. We are informed that penal provision Section 135 of the [Electricity Act, 2003](#) has already been invoked against the petitioner.

16. We will now examine whether there is a conflict between Section 126 of the [Electricity Act, 2003](#) and Section 24 of the [Indian Electricity Act, 1910](#), read with Regulation 42 of the Regulations Relating to Conditions of Supply of Electrical Energy. Section 126 of [Electricity Act, 2003](#) reads as follows:

'126. Assessment:--

(1) If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in 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 a notice has been served under Sub-section (2) shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who may, after affording a reasonable opportunity of hearing to such person, pass a final order of 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;

Provided that in case the person deposits the assessed amount, he shall not be subjected to any further liability or any action by any authority whatsoever.

(5) If the assessing officer reaches to the conclusion that unauthorised use of electricity has taken place, it shall be presumed that such unauthorised use of

electricity was continuing for a period of three months immediately preceding the date of inspection in the case of domestic and agricultural services and for a period of six months immediately preceding the date of inspection for all other categories of services, unless the onus is rebutted by the person, occupier or possessor of such premises or place.

(6) The amendment under this section shall be made at a rate equal to one-and-half times the tariff applicable for the relevant category of services specified in Sub-section (5).

Explanation:- For the purpose 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.

But for regulation 42 of the Conditions of Supply of Electrical Energy framed under Section 79(j) of the Electricity (Supply) Act, 1948 Section 24 of the [Indian Electricity Act, 1910](#) as such would not apply in the case of theft of energy detected by Anti-Power Theft Squad. Question is after having repealed [Indian Electricity Act, 1910](#) the provisions of Regulations relating to Conditions of Supply of Electrical Energy, especially, regulation 42 would still apply and consequently the said provision would lend support to Section 56 of the [Electricity Act, 2003](#) so as to support Ext.P8 bill raised in this case. Further question is whether Regulation 42 of Regulations Relating to Conditions of Supply of Electrical Energy framed under the repealed Act is in conflict with Section 126 of the [Electricity Act, 2003](#), in the event of which whether Regulation 42 would be saved by Section 185 read with Section 24 of the General Clauses Act. Contention was raised that Section

185 refers only to Section 6 of the General Clauses Act and therefore Section 24 of the General Clauses Act would not apply. This contention is no more available in view of the decision of the Apex Court in *State of Punjab v. Harnek Singh*, AIR 2002 Section C. 1074. In that case investigation was commenced by the Inspectors of Police on the notification issued under the [Prevention of Corruption Act, 1947](#). The said Act was repealed by Prevention of Corruption Act, 1988. On repeal of 1947 Act accused filed petitions under Section 482 for quashing FIR registered on the ground that investigation had not been conducted by authorised officers under 1988 Act. Apex Court held that the proceedings are not liable to be quashed. Applying Section 24 of the General Clauses Act, the Apex Court held by notifications issued under 1947 Act authorising Inspectors of Police in Special Inquiry Agency of Vigilance Department, Punjab Government to investigate cases registered under the said Act are saved under saving provisions of re-enacted 1988 Act. In that case also contention was raised that Section 24 of the General Clauses Act was not saved. Apex Court held as follows:

'We do not find any force in the submission of the learned counsel appearing for the respondents that as reference made in Sub-section (2) of Section 30 of 1988 Act is only to Section 6 of General Clauses Act, the other provisions of the said Act are not applicable for the purposes of deciding the controversy with respect to the notifications issued under the 1947 Act. We are further of the opinion that the High Court committed a mistake of law by holding that as notifications have not expressly been saved by Section 30 of the Act, those would not ensure or survive to govern any investigation done or legal proceeding instituted in respect of the cases registered under the 1988 Act. There is no dispute that 1988 Act is both repealing and re-enacting the law relating to prevention of corruption to which the provisions of Section 24 of the General Clauses Act are specifically applicable. It appears that as Section 6 of the General Clauses Act applies to repealed enactments, the Legislature in its wisdom though it proper to make the same specifically applicable in 1988 Act also which is a repealed and re-enacted statute. Reference to Section 6 of General Clauses Act in Sub-section (1) of Section 30 has been made to avoid any confusion or mis-understanding regarding the effect of repeal with regard to actions taken under the repealed Act. If the legislature had intended not to apply the provisions of Section 24 of the General Clauses Act to

the 1988 Act, it would have specifically so provided under the enacted law. In the light of the fact that Section 24 of the General Clauses Act is specifically applicable to repealing and re-enacting statute, its exclusion has to be specific and cannot be inferred by twisting the language of the enactments. Accepting the contention of the learned counsel for the respondents would render the provisions of 1988 Act redundant inasmuch as appointments, notifications, orders, scheme, rules, bye-laws, made or issued under the repealed Act would be deemed to be non-existent making impossible the working of the re-enacted law impossible. The provisions of the 1988 Act are required to be understood and interpreted in the light of the provisions of the General Clauses Act including Section 6 and 24 thereof.

The provisions of [Electricity Act, 2003](#) are therefore required to be understood and interpreted in the light of the provisions of the General Clauses Act including Section 6 and 24 thereof. Regulations Relating to Conditions of Supply of Electrical Energy therefore would apply so far as it is not inconsistent with the provisions of the re-enacted Act, that is, [Electricity Act, 2003](#). Regulations which are not inconsistent with Section 126 and other related provisions would apply till Electricity Supply Code is framed under Section 50 of the [Electricity Act, 2003](#).

17. The Calcutta High Court in Nabin Agarwal v. C.E.S.C. Ltd., AIR 2004 Cal. 227, had occasion to consider the scope of Section 56 of the [Electricity Act, 2003](#). The finding of the Calcutta High Court that the amount has to be demanded in accordance with Section 56 of the new Act after assessment under Section 126 is not correct. Section 56 and 126 are independent provisions. Section 56 is a general provision giving power to the Board to disconnect electricity supply if any person neglects to pay the electricity bill. Section 126 applies in altogether different situation, when a person is indulging in unauthorised use of electricity. Further under Section 56 power is conferred on the licensee or the generating company, while under Section 126 the power is conferred on the assessing officer designated by State Government. The further reasoning of the Calcutta High Court, that Section 50 of the Act does not seem to empower the State Commission to frame Code providing for disconnection on the ground of unauthorised user of electricity within the meaning of Section 126 or Section 135 of the [Electricity Act, 2003](#) is also not correct. Section 50 is a comprehensive provision which enables

the State Commission to make provision for disconnection of supply for tampering of electric meter and also on various other grounds enumerated therein. Regulations relating to Conditions of Supply of Electrical Energy framed under Section 79(j) would therefore apply, but to the extent it is not inconsistent with the provisions of the New [Electricity Act, 2003](#) and till Electricity Supply Code is framed by the State Commission.

18. We have therefore to examine whether Regulations 42(d) is in any inconsistent with Section 126 of the [Electricity Act, 2003](#). Under Section 126 the assessing officer has to be designated by the State Government. As per Section 126 '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. The assessing authority on the basis of an inspection or after the inspection of records maintained by any person comes to the conclusion that any 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 benefitted by such use. Before final order of assessment is made, he must give an opportunity to file objection and should also hear the person who is alleged to have indulged in unauthorised use of electricity. 'Unauthorised use of electricity' means the usage of electricity by any artificial means, or by a means not authorised by the concerned person or authority or licensee or through a tampered meter or for the purpose other than for which the usage of electricity was authorised. So far as this case is concerned we are of the view Section 126 of the Electricity Act would squarely apply since the provisions of Section 126 are more beneficial to the consumer compared to Regulation 42 even though the Assessing Officer has not been designated by the State Government.

19. In our view the Board officials could exercise the power of the Assessing Officer till State Government designates the Assessing Officer. Electricity is being public property such a direction is highly necessary in public interest. Further the consumers like the petitioner have already declared while availing of the supply that they would be bound by the Regulations of Conditions of Supply and have agreed that regulation forms an integral part of their agreement. Board official could therefore follow the procedure laid down under Section 126. Regulation

42(d) stipulates that misuse of energy will be billed at three times the rate applicable to the respective tariff for the previous six months from the date of detection of misuse. Section 126(6) stipulates that the assessment under this section shall be made at a rate equal to one-and-half times the tariff applicable for the relevant category of services specified in Sub-section (5). Section 126(5) stipulates that if the Assessing Officer reaches the conclusion that unauthorised use of electricity has taken place, it shall be presumed that such unauthorised use of electricity was continuing for a period of three months immediately preceding the date of inspection in case of domestic and agricultural services and for a period of six months immediately preceding the date of inspection for all other categories of services. Provisions of Regulation 42(d) and Section 126(6) to that extent is inconsistent and provision of Section 126 would prevail. The State Government has also not designated the Appellate Authority so far, therefore, in an appropriate case this Court's jurisdiction under Article 226 can be invoked. Further Section 145 of the Act states that Civil Courts have been barred from entertaining suits or proceedings in respect of matters which the assessing officers refers to in Section 126 or the Appellate Authority referred to in Section 127 or an adjudicating officer appointed under the Act has to be determined. Unless authorities are designated the consumer would be left with no remedies. In this connection reference may be made to the decision of the Apex Court in *Power Crisis in NCT of Delhi v. U.O.I. and Ors.*, 2004 AIR SCW 5917, by which Apex Court gave certain directions to implement the provisions of the Act.

20. We have already indicated that the Board has no power to charge three times as provided under Regulation 42(d) but only at the rate equal to one-and-half times the tariff applicable for a period of three months in the case of domestic and agricultural services and for a period of six months for all other categories of service immediately preceding the date of inspection. The bill Ext.P8 therefore has to be reduced to Rs. 24,97,435/-. Procedure laid down under Section 126 has not been complied with before issuing Ext.P8 Resultantly, we are inclined to direct the officers of the Board to give an opportunity to the petitioner to submit his objections to the assessment made by the Board under P8 and also afford an opportunity of being heard. Details of the bill prepared has already been furnished before this Court vide Annexure XIII. So all the details are now available for the

writ petitioner to file his objections against the assessment made by the Board. Under such circumstances we are inclined to give one week's time to the petitioner to file his objections as against Ext.P8 bill, in the event of which Board would hear the petitioner and pass appropriate orders in accordance with the provisions of Section 126 of the [Electricity Act, 2003](#) within a period of three weeks thereafter.

21. We are informed that proceedings under Section 135 has already been initiated against the petitioner with which we express no opinion, but proceedings will go on in accordance with law. Electricity supply has already been disconnected. Considering the entire facts and circumstances of the case and taking note of the reports submitted by APTS on the basis of inspection conducted on various occasions and the fact that theft was detected at the petitioner's residence on earlier occasion we are not inclined to order reconnection without any condition. We therefore order that if the petitioner pays an amount of Rs. 10 lakhs to the Board towards Ext.P8 bill the power supply would be restored. Recovery of balance amount would depend upon the order to be passed after assessment is made in accordance with Section 126 of the [Electricity Act, 2003](#). The appeal is allowed as above and judgment of the learned Single Judge is set aside. We are also inclined to give the following direction to the Board and the State Government.

(1) The Regulation relating to Conditions of Supply of Energy framed under Section 79(j) of Electricity Supply Act would apply to the extent it is not inconsistent with the provisions of [Electricity Act, 2003](#).

(2) Regulation 42(d) is inconsistent with Section 126(6) of the [Electricity Act, 2003](#) hence the latter provision will prevail. Procedure laid down under Section 126 is more beneficial to the consumers hence the Board is bound to follow Section 126, not Section 24 read with Regulation 42(d) in the case of unauthorised use of electricity.

(3) The Board Officials could exercise the power under Section 126 till State Government designates the assessing officer.

(4) The State Government is directed to designate an officer of the State Government or Board to be assessing officer, for the purpose of Section 126 of the Electricity Act.

(5) The State Government is directed to issue appropriate notifications for the purpose of appointing the authorities under Section 127, 135 and 152 of the [Electricity Act, 2003](#).

(6) State Commission if not already constituted be constituted and they will specify Electricity Supply Code as provided under Section 50 of the [Electricity Act, 2003](#).

Writ Appeal is disposed of with the above directions. Communicate the order to the Chief Secretary to the Government and to the Secretary, K.S.E. Board, Thiruvananthapuram for compliance. Action taken report to be submitted within one month.

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