IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.2009 of 2017 a/w
CWP No.2010 of 2017 and
CWP No.2107 of 2017
Reserved on : 09.10.2026
Date of Decision : 16.10.2026

1. CWP No.2009 of 2017

H.P. State Electricity Board Ltd. and others

…… Petitioners

Vs.

M/s Life Vision Health Care

……Respondent

2. CWP No.2010 of 2017

H.P. State Electricity Board Ltd. and others

…… Petitioners

Vs.

Hotel "Abhilasha, Baddi, District Solan ……Respondent

3. CWP No.2107 of 2017

H.P. State Electricity Board Ltd. and others

…… Petitioners

Vs.

Baddi University of Emerging Science and Technology, Makhnumajra Baddi

……Respondent

Coram:

The Hon'ble Mr. Justice Bipin Chander Negi, Judge

Whether approved for reporting?[1]

[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

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For the petitioners : Ms. Sunita Sharma, Senior Advocate with Ms. Shivani and Mr. Shubham, Advocates, in all the petitioners.

For the respondent(s) : Mr. Bimal Gupta, Senior Advocate with Ms. Simran and Mr. Trigun Singh Negi, Advocates, in all the petitions.

Bipin Chander Negi, Judge

These three writ petitions have been taken up together for disposal, as a common question of law, arises for consideration. However, facts of each case are being discussed separately.

CWP No.2107 of 2017

2. By way of the present writ petition, a challenge has been laid to the impugned judgment dated 16.03.2017, passed by the learned Divisional Commissioner, Shimla Division (exercising the powers of the Appellate Authority under Section 127 of the Electricity Act, 2003) (hereinafter, for purpose of brevity referred to as "the 2003 Act"), whereby the appeal preferred by the present respondent has been allowed and the order passed/final assessment (Annexure P-4) dated 28.11.2013 done under Section 126 of the 2003 Act, by the Additional Superintending Engineer, Electrical Division, HPSEBL, Baddi, has been quashed and set aside.

3. The brief facts giving rise to the case at hand are that on 09/10.10.2013, a surprise inspection of the electrical connections of the present respondent under Electrical Sub-Division (ESD), Baddi was conducted. The same was conducted by the Senior Executive Engineer (FSU-III), Baddi, as is evident from the site inspection note dated

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10.10.2013, appended along with the writ petition as Annexure P-1. From the same, it is evident that the inspection had been done in the presence of the representatives of the present respondent.

4. Based on the aforesaid inspection, a provisional assessment order (Annexure P-3) dated 11.11.2013 had been prepared by the Additional Superintending Engineer. The same makes it evident that copy of the memorandum of inspection prepared post inspection had been handed over to the representatives of the present respondent. In pursuance to the same, personal hearing was afforded to the respondent on 18.11.2023, 21.11.2023 & 22.11.2023 and representation made by the respondent was taken on record on 27.11.2023. Subsequent thereto, the final assessment order (Annexure P-4) dated 28.11.2013 was also prepared by the Additional Superintending Engineer. In terms of the final assessment order, an amount of Rs.67,03,377/- was asked to be deposited by the present respondent on account of unauthorized load for the period from October, 2012 to September, 2013.

5. The aforesaid final assessment order was assailed by way of an appeal, which was registered as *Appeal No. 37 of 2014*. The same was preferred before the learned Divisional Commissioner, Shimla Division, Shimla (exercising the powers of the Appellate Authority under Section 127 of the Electricity Act, 2003). The principal contention raised therein was that the inspection in the case at hand, which formed the basis for the provisional assessment as well as the final assessment, had not been conducted by the Assessing Officer as contemplated under

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Section 126 of the Electricity Act, 2003. Other than the aforesaid, it was contended before the Appellate Authority that the final assessment under challenge was bereft of any reason. In the facts and attending circumstances of the case at hand, the contentions so raised by the present respondent were accepted. *Appeal No. 37 of 2014* was allowed and the final assessment (Annexure P-4) dated 28.11.2013 was quashed.

6. Section 126 of the Electricity Act, 2003 has been reproduced in the impugned judgment. Both Senior Counsels appearing for the parties agree that the provisions of Section 126 of the 2003 Act contemplate the following steps to be taken:

> *"(i) An assessing officer is to conduct inspection of a place or premises and the equipments, gadgets, machines, devices found connected or used in such place.*
>
> *(ii) The formation of a conclusion that such person has indulged in unauthorised use of electricity.*
>
> *(iii) The assessing officer to provisionally assess, to the best of his judgment, the electricity charges payable by such person.*
>
> *(iv) The order of provisional assessment to be served upon the person concerned in the manner prescribed, giving him an opportunity to file objections, if any, against the provisional assessment.*
>
> *(v) The assessing officer has to afford a reasonable opportunity of being heard to such person and pass a final order of assessment within 30 days from the date of service of such order of provisional assessment.*
>
> *(vi) The person, upon whom the provisional order of assessment is served, is at liberty to pay the said amount within seven days of the receipt of such order and where he files such objections, final order of*

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> *assessment shall be passed, against which such person has a right of appeal under Section 127 of the 2003 Act within the prescribed period of limitation."*

7. However, the divergence of view is qua the authority which has to conduct the inspection of the premises contemplated under Section 126 of the 2003 Act. Based on sub-section (1) of Section 126 of the 2003 Act, it is contended by the learned Senior Counsel appearing for the present respondent that the only conclusion that can be arrived at on a literal reading of the same is that the inspection of the premises contemplated under Section 126 of the 2003 Act (unauthorized use of electricity) can only be got conducted by the designated Assessing Officer and no other person is competent to do so. The aforesaid contention (literal reading) is sought to be supported by the well-settled position of law that when a particular procedure has been prescribed under a statute, then the same is to be mandatorily followed. In this respect, reference has been made to the decision of the Hon'ble Apex Court, in ***H.S. Rikhy (Dr) vs. New Delhi Municipal Committee***, ***AIR 1962 SC 554; Nazir Ahmad vs. King Emperor, 1936 SCC OnLine PC 41: (1935-36) 63 IA 372: (1936) 44 LW 583 ;Rao Shiv Bahadur Singh v. State of Vindhya Pradesh, AIR 1954 SC 322: 1954 Cri LJ 910***; ***State of U.P. v. Singhara Singh, AIR 1964 SC 358: (1964) 1 Cri LJ 263 (2); Babu Verghese v. Bar Council of Kerala, (1999) 3 SCC 422*** and more recently in ***Hussein Ghadially vs. State of Gujarat, (2014) 8 SCC 425: (2014) 6 SCC (Cri) 26.***

8. To buttress his contention, the learned Senior Counsel for the present respondent has drawn the attention of this Court to the

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definition of the expression "Assessing Officer" mentioned in sub-section (1) of Section 126 of the 2003 Act, as has been defined in the Explanation contained in Section 126 of the Act to mean an officer of the State Government or Board or licensee designated as such by the State Government.

9. Admittedly, in the case at hand, both the provisional assessment order and the final assessment order have been passed by the Additional Superintending Engineer. However, from a perusal of the site inspection note dated 10.10.2013, appended along with the writ petition as Annexure P-1, it is evident that the surprise inspection of the Electrical Sub-Division, Baddi, in the case at hand, was got conducted by the Senior Executive Engineer (FSU-III), Baddi. Nothing has been placed on record to demonstrate that the Senior Executive Engineer (FSU-III), Baddi, had been designated as an Assessing Officer, in terms of Section 126 of the 2003 Act.

10. In this respect, reference has also been made to the order dated 07.11.2025, passed by the Coordinate Bench of this Court in the present writ proceedings, wherein a reference has been made to Clause-6.1 of Chapter 6 of the Supply Code, which deals with unauthorized use and theft of electricity, framed under Section 50 and Clause (x) of Sub-section (2) of Section 181 of the 2003 Act, by the Himachal Pradesh Electricity Regulatory Commission to contend that inspection contemplated therein can only be got done by an Assessing Officer designated as such by the State Government, under Section 126 of the

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2003 Act. Further attention of this Court has been invited to the same to demonstrate the *prima-facie* view taken therein by the Co-ordinate Bench in this respect and to specifically point out the direction issued therein, which has till date not been complied with (under-lined portion of the order), thereby necessitating an adverse inference to be drawn. The order reads as under:

> *"Heard for some time. Learned Senior Counsel for the respondents has drawn the attention of the Court to Notification dated 26.05.2009, framed by the Himachal Pradesh Electricity Regulatory Commission, in terms whereof, in exercise of the powers conferred by Section 50 and Clause(x) of Sub-section(2) of Section 181 of the Electricity Act, 2003, the Himachal Pradesh Electricity Regulatory Commission after previous publication has issued the Himachal Pradesh Electricity Supply Code. This Court further stands informed that an amendment has been carried out in the said Code in the year 2015. Learned Senior Counsel has referred to Chapter-6 of the said Code which deals with unauthorized use and theft of electricity and submitted that a perusal of Clause-6 thereof clearly demonstrates that it is an Assessing Officer designated as such by the State Government, under Section 126 of the Electricity Act, who either suo motu or on receipt of information/complaint regarding unauthorized use of electricity as explained in Explanation-B of the said Section shall promptly inspect such premises. He, thus, submitted that the Code itself is crystal clear that the premises have to be visited by the Assessing Officer himself, though, he can visit the same alongwith a Team and as in the present case, as has been held by the Authority also, whose orders stand assailed by way of these petition, as the Assessing*

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Officer himself never visited the site, the present petitions being devoid of any merit, are liable to be dismissed.

On the other hand, learned Senior Counsel for the petitioners submitted that the site was visited by an Officer of the rank of Senior Executive Engineer, who was eligible to be designated as an Assessing Officer and, therefore, it cannot be said that the site has not been visited by an Assessing Officer.

Having heard the respective contentions of the learned Senior Counsel, this Court is of the considered view that prima facie from the perusal of the statutory provisions, as are contained in Section 126 of the Act read with Clause-6.1 of Chapter 6 of the Code, the site has to be visited by the Assessing Officer that is to say by the Officer in person, who is an Assessing Officer, who thereafter firstly shall issue the provisional assessment order and then, the final assessment order. Therefore, in order to ascertain as to whether the site was physically visited by the Officer, who issued the provisional notice and the final notice, learned Senior Counsel appearing for the Board is directed to file an affidavit to this effect explaining as to whether, it was the same Officer, who visited the site, who subsequently issued the provisional notice and final notice or not.

List on 24.11.2025."

In this respect, it would be appropriate to reproduce the relevant extract of the Supply Code referred supra in the order dated 07.11.2025. Relevant Clauses of the Supply Code read as under:

"***6. 1 Unauthorized use of electricity.-***

6.1.1 An "assessing officer", designated as such by the State Government under Section 126 of the Act will, suo-moto or on receipt of information/complaint regarding

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"unauthorized use of electricity as explained in Explanation (b) of the said section, promptly inspect such premises.

6.1.2 The assessing officer and other members of his team will at the time of inspection carry alongwith them their photo identity cards, which will, on demand, be shown to the person present at site before entering the premises.

6.1.3 If on inspection of the premises/area and/or scrutiny of the records, the assessing officer comes to the conclusion that the consumer is indulging in unauthorized use of electricity, he will prepare an inspection report inter-alia indicating connected load for unauthorized use of electricity, condition of meter and its seals and also details of evidence substantiating the unauthorized use. The assessing officer will wherever possible photograph/videograph the means of such unauthorized use.

6.1.4 The assessing officer will sign the inspection report and a copy handed over to the person or his/her representative present at site. The person present at site may also sign the inspection report. In case of refusal to accept the report, a copy of the inspection report will be posted at a conspicuous place in/outside the premises and another copy of the same shall be sent under registered post.

6.1.5 In case theft of electricity is detected by the assessing officer at the time of inspection under para 6.1.1, and in case the assessing officer is himself not an authorized officer, to be appointed by the State Government under Section 135 of the Act, an immediate reference reporting the facts will be made to the authorized officer for taking further action under para 6.2. The assessing officer will also take suitable measures to ensure that status of the means adopted for theft is

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maintained as in found condition' at the premises till investigation is initiated by the authorized officer.

6.1.6 The assessing officer will provisionally assess the amount payable by the person benefited by the unauthorized use of electricity as per procedure specified in Annexure- A.

6.1.7 The provisional assessment order will be issued within forty-eight hours of inspection and served upon the person in such a manner as may be prescribed by the State Government.

6.1.8 The person served with the order of provisional assessment may accept such assessment and deposit the assessed amount with the licensee within seven days of the service of the order on him."

11. How the provisions of the 2003 Act have to be interpreted is no longer *res-integra* in view of the authoritative pronouncement of the Apex Court in ***Southern Electricity Supply Co. of Orissa Ltd. v. Sri Seetaram Rice Mill, (2012) 2 SCC 108*****.** From a perusal of the objects and reasons of the 2003 Act, it is evident that in order to ensure better regulatory, supervisory, revenue recovery system, there is a definite concerted effort to prevent un-authorised use of electricity on the one hand and theft of electricity on the other. Provisions have been introduced in the 2003 Act in relation to over consumption of sanctioned electric load, which are not covered by the provisions relating to theft. The same are in sync with one of the principal considerations that weighed with the legislature while enacting this law, i.e., "revenue focus".

12. The provisions of Section 126, read with Section 127 of the 2003 Act, which deal with the unauthorized use of electricity, are a code in

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themselves. Right from the initiation of the proceedings by conducting an inspection, to the right to file an appeal before the appellate authority, all matters are squarely covered under these provisions.

13. Fiscal and penal laws are normally construed strictly but this rule is not free of exceptions. Having regard to the subject-matter of the offence and the object that the law seeks to achieve even penal statutes may not be given narrow and pedantic, literal and lexical construction. Section 126 of the 2003 Act has a purpose to achieve, i.e., to put an implied restriction on such unauthorized consumption of electricity. This defined legislative purpose cannot be permitted to be frustrated by interpreting a provision in a manner not intended in law. Therefore, the Apex Court in interpreting the provisions of Section 126 of the 2003 Act in its decision in ***Southern Electricity Supply Co. of Orissa Ltd. v. Sri Seetaram Rice Mill's case*** (supra), has applied the principle of purposive interpretation in preference to textual and the two maxims which have been applied for interpretation of the 2003 Act are *ex visceribus actus* (construction of the Act as a whole) and *ut res magis valeat quam pereat* (it is better to validate a thing than to invalidate it).

14. In ***W.B. State Electricity Distribution Co. Ltd. v. Orion Metal (P) Ltd., (2020) 18 SCC 588***, in the writ petition filed before the learned Single Judge of the High Court, one of the grounds was that the Assessing Officer, who prepared the provisional assessment, not being a party to the inspection team, had no authority to make the provisional assessment under Section 126(1) of the 2003 Act. In the writ petition, it

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was alleged that provisional assessment made was not in accordance with Section 126(1) of the 2003 Act, as such, such assessment cannot be given effect to.

15. The learned Single Judge of the High Court, on the ground that the appellant-Distribution Company has not produced any material to show that the Assessing Officer was part of the inspection team, had held that assessment and consequential demand made in the provisional assessment proceedings was not in accordance with Section 126(1) of the 2003 Act and quashed the same. While allowing the writ petition, the learned Single Judge had directed the State Government to appoint any member of the inspection team as an Assessing Officer to make fresh assessment.

16. Feeling aggrieved by the judgment of the learned Single Judge, the respondents/writ petitioners preferred an intra court appeal. The fresh assessment order, which was made in compliance of directions issued by the learned Single Judge, was also questioned in the appeal by filing an interlocutory application by the respondents. In view of the said interlocutory application, the Division Bench of the High Court allowed such application permitting the respondents to challenge the fresh assessment made pursuant to directions issued by the learned Single Judge, and finally allowed the appeal preferred by the respondents.

17. In the intra-court appeal, before the Division Bench, the respondents raised a ground that two parallel proceedings, i.e., the criminal complaint before the competent court and also assessment

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proceedings under Section 126(1) of the 2003 Act cannot go simultaneously. Precisely, it was the case of the respondents that once a complaint is filed alleging theft of energy under Section 135(1)(a) of the 2003 Act, no assessment is permissible under Section 126(1) of the Act. Before the High Court, the respondents also pleaded that the civil liability, if any, of the respondents can be determined only under sub-section (5) of Section 154 of the 2003 Act. While considering the scope of Sections 154, 135(1)(a) and 126 of the Act, the High Court held that when a criminal complaint is lodged alleging theft of energy by the consumer and when supply of electricity is disconnected on account of such offence alleged, only in cases where restoration of supply is sought by the consumer, agreeing to deposit the assessed amount of unmetered consumption, provisional assessment can be made under Section 126 of the 2003 Act. The High Court drew a distinction to exercise power under Section 126(1) of the 2003 Act, in cases where consumer seeks restoration of supply after disconnection and in cases where restoration of supply is not sought for. The High Court held that only in cases where restoration is sought after disconnection, authorities can resort to make assessment under Section 126(1) of the 2003 Act, otherwise, the civil liability can be determined by the Special Court only by following the procedure under sub-section (5) of Section 154 of the Act.

18. The Apex Court in ***W.B. State Electricity Distribution's case*** (supra), quashed the Division Bench judgment of the High Court and dis-approved the distinction made by the High Court. Further held that the

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expression “unauthorised use of energy” is of wide connotation includes “theft” as defined under Section 135 of the Act. Besides assessing the loss of energy by resorting to power under Section 126(1) of the 2003 Act in a case of theft under Section 135 of the Act, a complaint can also be lodged. Making assessment under Section 126(1) of the 2003 Act and power to determine civil liability under Section 154(5) of the Act, cannot be said to be parallel to each other. Both proceedings can operate parallelly. The relevant extract whereof reads as under:

> ***“15.*** *We also do not find any valid reason for making a distinction as made by the High Court in applying Section 126 of the Act. From the scheme of the Act, it appears that after inspection team notices unauthorised use of energy by tampering the meter, the authorities can disconnect the power supply immediately and make immediate assessment for loss of energy, by invoking power under Section 126(1) of the Act. The term “unauthorised use of energy” is of wide connotation. There may be cases of unauthorised use of energy, not amounting to theft, which are cases viz. exceeding the sanctioned load or using the electricity in the premises where its use is not authorised, etc. But at the same time, when there is an allegation of unauthorised use of energy by tampering the meter, such cases of unauthorised use of energy include “theft” as defined under Section 135 of the Act. The power conferred on authorities for making assessment under Section 126(1) of the Act and power to determine civil liability under Section 154(5) of the Act, cannot be said to be parallel to each other. In this regard, we are of the view that the High Court has committed an error in recording a finding, that both proceedings cannot*

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operate parallelly. In a given case where there is no theft of energy, amounting to unauthorised use of energy, in such cases no complaint of theft can be lodged as contemplated under Section 135 of the Act. In such cases for loss of energy, on account of unauthorised use of energy not amounting to theft, it is always open for the authorities to assess the loss of energy by resorting to power under Section 126(1) of the Act. In cases where allegation is of unauthorised use of energy amounting to theft, in such cases, apart from assessing the proceedings under Section 126(1) of the Act, a complaint also can be lodged alleging theft of energy as defined under Section 135(1) of the Act. In such cases, the Special Court is empowered to determine civil liability under Section 154(5) of the Act. On such determination of civil liability by the Special Court, the excess amount, if any, deposited by the petitioner, is to be refunded to the consumer. It is a settled principle that to prove the guilt of the accused in a criminal proceeding, authorities have to prove the case beyond reasonable doubt and the element of mens rea is also to be established. On the other hand, such a strict proof is not necessary for assessing the liability under Section 126(1) of the Act."

19. Learned Senior Counsel for the petitioner(s), has placed reliance upon the decision of the Bombay High Court, in ***Reliance Energy Ltd. and another vs. Chief Engineer (Electrical), PWD, (DB),*** decided on 27.07.2006, wherein keeping in view the interpretation to be given to the 2003 Act, stated supra in Paragraph-13, the fact that it is open to persons other than those notified under Section 126 of the 2003 Act to carry out an inspection in terms of Section 135(2), it was held that the

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Assessing Officer need not restrict himself to the inspection carried out by the designated officer, in terms of Section 126 of 2003 Act, but can rely upon record, inspection carried out by an officer authorized under Section 136(2) of the 2003 Act. The relevant extract reads as under:-

> *"7. We then come to the second issue as to whether it is only the assessing officer as set out in Section 126, who alone can inspect the premises and that the provisional assessment can only be made based on the investigation done by the Assessing Officer. It is no doubt true that Section 126 on the first blush, if literally read means that inspection must be done by the Assessing Officer. The Assessing Officer in the explanation to Section 126, means the officer of the State Government or Board or licensee, as the case may be, designated as such by the State Government. If we take this view, then it is only those officers as designated by the State Government who alone based on their personal inspection can make an order of provisional assessment. The other view which is possible is that the Assessing Officer himself need not do the inspection, but that inspection can be carried out by any other authorised person under the Act. If the Assessing Officer, however, seeks to rely on the inspection report prepared by such other authorised person, than the Assessing officer, though can make a provisional assessment, will have to direct the company to support the provisional assessment by evidence that there has been unauthorised use of electricity for the presumption to be created under Section 126(5). The person other than Assessing officer who carries out the inspection, apart from the report prepared by such person, should be made available to the respondents for testing the genuineness of the said evidence and or report, if the person, occupier or possessor of the*

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premises or place seeks such an opportunity. Under Section 135(1), it is open to the State Government to authorise any officer to enter, inspect, break open and search any place or premises where electricity has been or is being used unauthorizedly, and or search and seize and remove all such devices, instruments, wires and any other facilitator or article which has been or is being used unauthorised. As it is therefore, open to persons other than those notified under Section 126 to carry out an inspection in terms of Section 135(2). Courts while considering the provisions of the Act must take into consideration the object of the enactment. Considering the large number of consumers the company serves and the need for the generating companies to recover from persons who make unauthorised use of electricity, their legal dues. It will, therefore, be possible to read Section 126 to mean that the assessing officer need not restrict himself to the inspection carried out personally by the Assessing Officer as notified in the explanation to Section 126, but can rely on the record and inspection carried out by an Officer authorised under Section 135(2) of the Act in the discharge of his duties. The only limitation as set out by us earlier would be that in such a case, the report prepared by such other authorised officer will have to be made available to the consumer and its evidentiary value will have to be proved by the generating company by allowing such other authorised officer to be examined by the assessee if the assessee applies (sic). In these circumstances, in our opinion, to give effect to the object of the Act, it is possible to read into Section 126(1) that apart from the Assessing Officer, the inspection carried out by an Officer authorised by the State Government under Section 135(2) can also be the basis for making a provisional assessment under Section 126(1) of the Act."

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20. Similar view has been taken by the High Court of Kerala at Ernakulam, in ***Sulabha Marketing (P) Ltd. vs. Kerala State Electricity Board (DB),*** decided on 12.07.2017. The relevant extract whereof reads as under:-

> *"31. For the reasons stated herein before, we hold as follows:-*
>
> *(i) The presence of the assessing officer at the time of inspection and detection of unauthorised use of electricity in the premises of a consumer is not a mandatory requirement for initiating assessment proceedings under Section 126(1) of the Act."*

21. Reliance in this regard has also been placed upon the decision of the Hon'ble Gauhati High Court, in ***M/s Vridhi Iron Steels vs. Assam Power Distribution Company Ltd. and another (SB)***, decided on 04.04.2022, wherein purposive construction which would improve the workability of the statue to be more effective and purposive was given in view of the legislative scheme and the provisions of the Act of 2003. Besides it was held therein that an officer authorized by the State Government under Section 135 of the Act of 2003 can enter, inspect, seize etc. The materials which would come to light upon such inspection can be used for the purpose of provisional assessment or final assessment by the Assessing Officer as according to the court a conjoint reading of Section 135(2) and Section 126(1) of the Act of 2003 nowhere prohibits use of such materials for the purpose of provisional assessment or final assessment. Other than the aforesaid the court observed that by holding that the Assessing Officer has to be present during the

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inspection in order to pass the assessment order would limit the operation of Section 126 of the Act of 2003, as Section 126 does not specifically state so and would amount to adding words to the legislation which the legislature never intended. The relevant extract reads as under:-

> *"22. Now at this stage, it is relevant to take into consideration the contention as submitted by the counsel of the Petitioner that the same Assessing Officer has to be a part of inspection team, make the provisional assessment and the final order of assessment. Explanation (a) to Section 126 does not confine the term "Assessing Officer" to a particular post to be held but it defines the term "Assessing Officer" to mean an Officer of the State Government or Board or Licensee, as the case may be, designated as such by the State Government The notification dated 29/11/2004 whereby the State Government had designated the various officers not below the rank of Executive Engineer to be the Assessing Officer is not a subject matter of challenge before this Court. The Supreme Court had in Sri Seetaram Rice Mill(supra) held that a purposive construction as opposed to textual construction has to be given in view of the legislative scheme and the provisions of the Act of 2003. Furthermore, a construction which will improve the workability of the statue to be more effective and purposive should be adopted to any other interpretation which may lead to undesirable result. If this Court has to accept that it is the same Assessing Officer who is a part of the inspection team, can make the provisional assessment and pass the final order of assessment, then it will result in a construction which would impair the workability of the statute. Just for example, if a particular Assessing Officer 'A' makes an inspection and thereupon passes the provisional assessment order but for some*

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reason the said Assessing Officer 'A' on account of superannuation or transfer or death is not able to pass the final order of assessment then applying the contention made by the petitioner, it would result in unworkability of the provisions of Section 126 (3) of the Act of 2003 which empowers the Assessing Officer to make the final order of assessment. It is also relevant to take note of that the Respondent APDCL Authority has large numbers of consumers and restricting the Assessing Officer to be the same person who would make the inspection, the provisional assessment and final order of assessment, it would result in an unworkable situation thereby impairing the very object behind enactment of the Act of 2003. Considering the above, this Court is therefore of the opinion that an assessment can be made in terms with Section 126 of the Act of 2003 by the person who has been designated as such by the State Government in terms with Explanation (a) of Section 126 of the Act of 2003.

23. The said aspect of the matter can also be looked at from another angle. A reading of Section 126 (I) stipulates that if on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used or after inspection of records maintained by any person, the Assessing Officer comes to the conclusion that such person is indulging in unauthorized use of electricity, he shall provisionally assess to the best of his judgment the electricity charges payable by such person or by any other person benefitted by such use. The materials to be used by the Assessing Officer is not limited only to inspection of records maintained by any person but also includes an inspection of any place or premises or after inspection of equipments, gadgets, machines, devices etc found connected or used. The three sub clauses of Sub-Section

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(2) of Section 135 of the Act of 2003 clearly shows that an officer authorized by the State Government can enter, inspect, search, seize etc and on the basis of the exercise of the powers under Section 135(2) of the Act of 2003. The materials which would come to light can be used for the purpose of provisional assessment or final assessment by the Assessing Officer as a conjoint reading of Section 135(2) and Section 126(1) of the Act of 2003 nowhere prohibits use of such materials for the purpose of provisional assessment or final assessment. Accordingly the Assessing Officer for the purpose of carrying out the provisional assessment as well as the final assessment can use such materials which would come into light on the basis of the inspection carried out under Section 135 (2) of the Act of 2003. The necessary corollary therefore follows that the Assessing Officer for making the provisional assessment or the final assessment need not be a part of the inspection team as the Assessing Officer can carry out the proceedings under Section 126 of the Act of 2003 on the basis of such materials. As already stated, the Act has to be read as a whole to give effect to the legislative intent and this Court is of the opinion that the materials which had come to light by virtue of exercise of powers under Section 135(2) of the Act of 2003 can be used for the purpose of assessment under Section 126 of the Act of 2003. It is however, clarified that when such materials are used for the purpose of carrying out the provisional assessment, the consumer shall be entitled to challenge the veracity of the materials in the objection filed under Section 126(3) of the Act of 2003 and for the purpose may place evidence before the Assessing Officer countering such materials.

24. Further to the above, it is also pertinent to note that Explanation (a) to Section 126 of the Act of 2003 defines the term "Assessing Officer" to mean an officer

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designated by the State Government whereas Section 135 (2) empowers only those officers who have been authorized by the State Government. In certain circumstances, it may result that the person who had been designated as an Assessing Officer may not be authorized to make the inspection under Section 135 (2) and vice versa. To limit the operation of Section 126 of the Act of 2003 by holding that the Assessing Officer has to be present during the inspection in order to pass the assessment order, that too when Section 126 does not specifically states so, would amount to adding words to the legislation which the legislature never intended. Apart from that, to limit the Assessing Officer to make an assessment only on the basis of inspection being carried out by the Assessing Officer himself would make the provision of Section 126 of the Act of 2003 highly ineffectual or unworkable which would be going against the legislature intent as already noted herein above."

22. In light of the view taken by the Apex Court, three High Courts cited supra, with which I concur, reliance placed on Clause-6.1 of Chapter 6 of the Supply Code, which deals with unauthorized use and theft of electricity, framed under Section 50 and Clause(x) of Sub-section (2) of Section 181 of the Electricity Act, 2003, by the Himachal Pradesh Electricity Regulatory Commission, to contend that inspection contemplated therein can be got done only by an Assessing Officer designated as such by the State Government, under Section 126 of the 2003 Act is not the correct position of law. Especially, once it is held that the provisions of the 2003 Act have not to be read literally, but in terms of parameters discussed supra in Paragraph-13, then the provisions of

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Supply Code framed under the 2003 Act are also required to be read/ interpreted purposively rather than textually. Moreso, when the acts of the present respondent are bound to throw out of gear the entire supply system undermining its efficiency, efficacy, not only causing stress on the installations of the Board but considerably affecting other consumers who will experience voltage fluctuations, keeping in view the "revenue focus", which was the principal consideration that weighed with the legislature while enacting the law in the case at hand.

23. In so far as the plea of the respondent qua the final assessment order being bereft of any reasons is concerned, the same is incorrect as from a bare perusal of the final assessment done in the case at hand, it is evident that there exist reasons for passing of the same after hearing and considering the reply filed by the present respondent.

24. For the reasons stated supra, the writ petition is allowed and impugned judgment passed by the Divisional Commissioner is set-aside and the final assessment is restored. Pending miscellaneous application(s), if any, shall also stand disposed of.

CWP No.2009 of 2017

25. In the connected case of M/s Life Vision Healthcare, the provisional assessment order (Annexure P-1) is dated 23.08.2014, and the final assessment order (Annexure P-3) is dated 01.10.2014. Both the orders have been passed by the Additional Superintending Engineer, Electrical Division, HPSEBL, Baddi.

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26. From a perusal of the record and the impugned order, it is evident that the provisional assessment order was framed solely on the basis of energy consumption data. Hence, it is evident that the provisional assessment, in the said case, had not been done by the Assessing Officer upon an inspection of the premises. Interestingly, in the case at hand, payment of penalties by the present respondent for alleged excess usage is admitted, however, the amount raised in this regard in the provisional assessment (Annexure P-1) dated 23.08.2014 is disputed and a re-calculation thereof is sought. In the final assessment (Annexure P-3) dated 01.10.2014, the amount charged in the provisional assessment is duly justified by reason.

27. Reasons for imposition in the case at hand are discernible from Paragraphs-2&6 of Annexure P-3 dated 01.10.2014, hence, it is incorrect to state that for imposition made in the case at hand, there existed no reason. Accordingly, for the reasons stated in *CWP No.2107 of 2017,* the writ petition is allowed and impugned judgment passed by the Divisional Commissioner is set-aside and the final assessment is restored.

28. Pending miscellaneous application(s), if any, shall also stand disposed of.

CWP No.2010 of 2017

29. In the case of Hotel Abhilasha, a surprise inspection of the electrical connections under Electrical Sub-Division, HPSEBL, Baddi, was conducted on 29.10.2007, 30.10.2007, 02.11.2007 to 08.11.2007 of numerous premises, (including those of the present respondent), by the

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Additional Superintending Engineer (FSU-III), Baddi, as is evident from Annexure P-1, i.e., letter dated 17.01.2008.

30. In the said case, a show cause notice dated 20.06.2008 was issued to the present respondent for the period-April, 2007 to March, 2008 for an unauthorized use of load by the respondent. The said notice was issued by the Senior Executive Engineer, Electrical Division, HPSEBL, Parwanoo, and has been appended along with the petition as Annexure P-2.

31. From a perusal of the show cause notice, it is evident that the Senior Executive Engineer, Electrical Division, HPSEBL, Parwanoo, had been designated as the Assessing Officer for the purpose of assessment under Section 126 of the Electricity Act, 2003. In pursuance to the show cause notice, a reply dated 04.07.2008 was filed by the respondent denying any unauthorized use of electricity during the inspection period by the raiding party. It was further contended that the premises had never been inspected. The same was duly considered, as is evident from Annexure P-4 dated 02.08.2008, specifically Paras-2-6 thereof. Subsequently, the Assistant Executive Engineer, Electrical Sub-Division, Baddi, issued a supplementary energy bill dated 06.11.2009 demanding an amount of Rs. 4,55,368/- from the respondent.

32. Herein again, the contention raised was that the mandatory provisions of Section 126 of the Electricity Act, 2003, had not been complied with, as the inspection of the premises was never carried out by the designated Assessing Officer and that no reasons for the imposition

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made in the case at hand are discernible. From the aforesaid factual position, it is apparent that the inspection in the case at hand was carried out by the Additional Superintending Engineer (FSU-III), Baddi, as is evident from the letter dated 17.01.2008 (Annexure P-1). No material has been placed on record to show that the Additional Superintending Engineer (FSU-III), Baddi, who conducted the inspection in the case at hand, was designated as an Assessing Officer, in terms of Section 126 of the 2003 Act.

33. Reasons for imposition in the case at hand are discernible from Paragraphs-2-6 of Annexure P-4 dated 02.08.2008, hence, it is incorrect to state that for imposition made in the case at hand there existed no reason. Accordingly, for the reasons stated in *CWP No.2107 of 2017,* the writ petition is allowed and impugned judgment passed by the Divisional Commissioner is set-aside and the final assessment is restored.

34. Pending miscellaneous application(s), if any, shall also stand disposed of.

(Bipin Chander Negi)
Judge

October 16, 2026 **(KS)**

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