



IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWP No. 2239 of 2021
Reserved on : 02.12.2025
Decided on : 29.12.2025

M/s Kundlas Loh Udyog

...Petitioner

Versus

Himachal Pradesh State Electricity Board Limited
(HPSEBL) and another

...Respondents

Coram
Hon'ble Mr. Justice Ajay Mohan Goel, Judge
Whether approved for reporting?¹ Yes

For the petitioner : Mr. R.L. Sood, Senior Advocate,
with M/s Manik Sethi and Vidur
Kapur, Advocates.
For the respondents : Mr. Amal Nair, Advocate (through
V.C.) with Mr. Shivom Vashisht,
Advocate.

Ajay Mohan Goel, Judge (Oral)

By way of this petition, the petitioner has, *inter alia*,
prayed for the following reliefs:-

- i. Set-aside the order dated 15.03.2021 passed by
the Respondent No. 2 as being arbitrary and without any
jurisdiction.
- ii. As the public money is involved and the same

¹Whether reporters of the local papers may be allowed to see the judgment?

should not be made to suffer due to the malafides of the erred officials, this Hon'ble Court may, if it pleases, direct the personal recoveries from the erred officials without prejudicing the right of the petitioner to get the timely payment/interest as per the law and order of the Ombudsman dated 05.03.2021."

2. The case of the petitioner is that on 27.06.2015, the respondent-Board raised a demand of Rs. 1,52,12,681/- from the petitioner on the grounds that during the scrutiny of the MRI energy data obtained from the energy meter installed in the premises of the petitioner with effect from August 2014 to May 2015, it was observed that energy meter was tampered to record the actual energy consumer during that period. According to the petitioner, after the receipt of the said demand, the petitioner agitated the same by way of various representations and when no response was received thereto, it approached the Consumer Grievance Redressal Forum in the month of August, 2015, against the said demand. The Consumer Forum dismissed the complaint of the petitioner on 20.12.2016 for want of jurisdiction. The petitioner thereafter approached the Divisional Commissioner by way of an Appeal

and the Divisional Commissioner after hearing the parties, dismissed the same on the ground of jurisdiction on 14.03.2019 by stating that the demand raised by the Board was not as per the provisions of Section 126 of the Electricity Act, 2003 and, therefore, the Divisional Commissioner could not adjudicate the same under Section 127 of the Electricity Act. The petitioner feeling aggrieved, again approached the learned Consumer Grievance Redressal Forum citing the order passed by the Divisional Commissioner, but the Consumer Grievance Redressal Forum dismissed the complaint of the petitioner on 20.08.2020 without going into the merits thereof by observing that the petitioner should approach the learned Divisional Commissioner as the issue was of tampering, as was alleged by the Board. It is further the contention of the petitioner that against order dated 20.08.2020, passed by the Consumer Grievance Redressal Forum, it again preferred an Appeal before the learned Ombudsman. During the pendency of the proceedings before the learned Ombudsman on 26.02.2021, respondent No.2 set aside their demand by withdrawing the notice.

3. It is further the contention of the petitioner that after withdrawal of the said demand relating to the alleged tampering of the meter, respondent No.2 again in order to harass the petitioner, issued provisional assessment notice dated 15.03.2021 for an amount of Rs.4,55,18,952/- on the same cause and feeling aggrieved, the petitioner has approached this Court against the same.

4. Learned Senior Counsel appearing for the petitioner submitted that the impugned order Annexure P-10 is non est in the eyes of law as the provisional assessment order was passed by the Authority without adhering to the provisions of Section 126 of the Electricity Act, which makes the provisional order void ab initio. Learned Senior Counsel took the Court through the provisions of Section 126 of the Electricity Act and submitted that the procedure prescribed therein was breached with impunity by the Assessing Authority. Learned Senior Counsel submitted that no inspection of any place or premises of the petitioner was carried out, no inspection of any equipment, gadget, machine, device found connected or used was carried out; no inspection of any record maintained by the

petitioner was done by the respondent-Board; and yet the notice stood issued of provisional assessment under Section 126 of the Electricity Act. Learned Senior Counsel submitted that the procedure prescribed in Section 126 of the Electricity Act was sacrosanct and as the procedure was not followed and the provisional assessment order was issued in violation of the Statutory Scheme of Section 126 of the Electricity Act, the impugned order was liable to be set aside.

5. On the other hand, learned counsel for the respondent-Board submitted that the petition was not maintainable for the reason that the impugned Annexure was only a provisional assessment order and the petitioner had a right to file objections thereto and thereafter, final assessment order was yet to be passed and as the petitioner had approached the Court without waiting for the passing of final assessment order, therefore, the petition was premature and not maintainable. Learned counsel also argued that the procedure prescribed in Section 126 of the Electricity Act was religiously followed and there was no breach thereof as alleged. Learned counsel also argued that learned Senior Counsel for

the petitioner was misreading and misinterpreting the provisions of Section 126 of the Electricity Act and Section 126(1) of the Electricity Act does not envisage that the record which can be perused by the assessing authority has to be in the possession of the concerned party only. As per him, the record in possession of the Electricity Board, could also be the basis of carrying out assessment under Section 126 of the Electricity Act. In order to substantiate his contention, learned counsel for the respondent relied upon the the judgment of Hon'ble Supreme Court of India in case titled ***Executive Engineer, Southern Electricity Supply Company of Orissa Limited (Southco) and another Vs. Sri Seetaram Rice Mill, (2012) 1 Supreme Court Cases 108.***

6. In rebuttal, learned Senior Counsel for the petitioner submitted that in light of the fact that the provisional assessment order on the face of it was bad and as the same was in violation of the statutory provisions of Section 126 of the Electricity Act ex facie, there was no need for the petitioner to wait for the issuance of the final assessment order. Learned Senior Counsel submitted that the petitioner had the right to

invoke the jurisdiction of this Court under Article 226 of the Constitution of India in such circumstances and, therefore, the contention of the respondent-Board that the petition was premature, was incorrect. Learned Senior Counsel further submitted that this Court could always intervene by exercising its extraordinary jurisdiction if the power exercised by the Authority was per se arbitrary and not in conformity with the statute and as in the present case, same was the case, therefore, the petition was maintainable.

7. I have heard learned Senior Counsel for the petitioner as well as learned counsel for the respondents and have also carefully gone through the impugned order as well as other documents appended with the petition as well as the reply filed by the respondent-Board.

8. When the case was listed on 27.11.2025, the following order was passed:-

"Heard in part. List for continuation on 02.12.2025. On the said date, learned senior counsel for the respondents shall produce the record demonstrating the site visit, the inspection report prepared, if any, and the compliance with the provisions of Section 126 as well as the H.P.

Supply Court Act, 2009.”

9. Thereafter, on 02.12.2025, the following order was passed:-

“Ms. Sunita Sharma, learned Senior Counsel, submits that she has instructions not to assist the Court in the matter.

Mr. Rakesh Kumar, Assistant Engineer, HPSEBL, Baddi, is present in the Court in person. He has made available for perusal of the Court the photocopy of MRI Data. What the Court had directed the respondents- oard on the last date was to produce the original inspection report, which has to be prepared by the Inspecting Body, but apparently, said record has not been produced by the Officer today.

On his request, list on 15.12.2025. Let complete record, in terms of order dated 27.11.2025, be produced by the next date of hearing.”

10. On 15.12.2025, the case was deferred for 19.12.2025, however, on subsequent dates, though it does not so stands recorded in the Court order, the Court was informed that the provisional assessment order was not passed on the basis of any site inspection of the premises of the petitioner or

on the basis of the record of the petitioner available with the respondent, but as per record available with the Board.

11. Before proceeding further, I shall refer to the the relevant statutory provisions which are necessary for the purpose of adjudication of this petition.

12. Section 126 of the Electricity Act, 2003 provides as under:-

“126: (Assessment): --- (1) If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorized use of electricity, he shall provisionally assess to the best of his judgement the electricity charges payable by such person or by any other person benefited by such use.

(2) The order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such manner as may be prescribed.

1 [(3) The person, on whom an order has been served under sub- section (2) shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who shall, after affording a reasonable opportunity of

hearing to such person, pass a final order of assessment within thirty days from the date of service of such order of provisional assessment of the electricity charges payable by such person.]

(4) Any person served with the order of provisional assessment, may,

accept such assessment and deposit the assessed amount with the licensee within seven days of service of such provisional assessment order upon him:

3[(5) If the assessing officer reaches to the conclusion that unauthorised use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorized use of electricity has taken place and if, however, the period during which such unauthorised use of electricity has taken place cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection.]

(6) The assessment under this section shall be made at a rate equal to 1 [twice] the tariff rates applicable for the relevant category of services specified in sub-section (5).

Explanation.- For the purposes of this section,-

(a) "assessing officer" means an officer of a State Government or Board or licensee, as the case may be, designated as such by the State Government;

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

13. Section 127 of the Electricity Act deals with the right of appeal of the parties which may be aggrieved by the assessment that may be carried out under Section 126 of the Act.

14. Section 50 of the Electricity Act provides for the Electricity Supply Code. This Section provides that the State Commission shall specify an Electricity Supply Code to provide for recovery of electricity charges, intervals for billing of electricity charges, disconnection of supply of electricity for non-payment, thereof, restoration of supply of electricity, measures for preventing tampering, distress of damage to electrical plant or electrical line or meter, entry of distribution licence or any person acting on his behalf for disconnecting supply and removing the

meter, entry for replacing, altering or maintaining electric lines or electrical plants or meter and such other matters.

15. Section 181 of the Electricity Act, 2003 deals with the power of the State Commission to make Regulations and sub-clause (x) and Section 181 (2) (x) confers the State Commission the power to frame the Supply Code by way of issuance of a Notification, consistent with the Act and the Rules framed thereunder.

16. In exercise of this power, the Statutory Body has framed the Himachal Pradesh Electricity Supply Code, 2009. The relevant extract of this Code, which is relevant for the purpose of the adjudication of the petition, is appended with the petition as Annexure P-7.

17. Chapter-VI of the 2009 Code deals with unauthorized use and theft of electricity and Clause 6.1 thereof deals with unauthorized use of electricity. Clauses 6.1.1 onwards of the same upto Clauses 6.1.7 provide 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 “unauthorized use of

electricity” as explained in Explanation (b) of the said section, promptly inspect such premises.² However increase in the connected load, without permission from the licensee, shall not be considered as unauthorized use of electricity under section 126 of the Act, if –

- (i) there is no change in applicable tariff category, or sub-category thereof, as a result of increase in connected load; and
- (ii) the actual demand (kVA) does not exceed the maximum limit arrived at by converting the sanctioned connected load (kW) into kVA, based on an assumed power factor of 0.9, by more than 10 kVA:

Illustration. - if the sanctioned connected load of the consumer is 360kW and actual demand is 410 kVA or less it shall not be considered as unauthorized use of electricity under the section 126 of the Act even if the sanctioned contact demand is less than 410 kVA, so long as the conditions under other clauses are adhered to; and

- (iii) there is no usage of electricity through a tampered meter; and
- (iv) the electricity is used only for the purpose for which the same was authorized; and
- (v) the electricity is used only for the premises or the areas for which the supply of electricity is authorized; and

(vi) the increase in connected load does not exceed the limit computed as under-

(a) 10 kW in case where the sanctioned connected load is upto 100 kW; and

(b) 10% of the sanctioned connected load subject to a maximum of 200 kW, in case where the sanctioned connected load is more than 100 kW: Provided that where the extension of connected load comes to the notice of the licensee, irrespective of the fact, whether or not, such extension is considered to be unauthorized use of supply under section 126 of the Act, it shall, apart from taking any other steps as may be necessary, give an option to the consumer to either get such extension(s) regularized by completing the formalities or to remove the extension(s) of the connected load. The licensee shall be entitled to disconnect the supply if the consumer does not take any steps in this direction even after service of a notice on him by the licensee. However, the licensee may disconnect the supply temporarily even without a notice if it reasonably believes that continuation of supply is likely to result in loss of human or animal life or injury to a human being or any animal or damage to property.]

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 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."

18. Thus, in terms of the above quoted provisions of the Supply Code, if on inspection of the premises, 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 seal, and also details of evidence substantiating the unauthorized use. Clause 6.1.3, which deals with this duty cast upon the Assessing Officer, further provides that the Assessing Officer will, wherever possible, photograph and videograph of such unauthorized use. Thereafter, Clause 6.1.4 provides that the

Assessing Officer will sign the Inspection Report and hand over a copy thereof to the person or his/her representative at the site. The person present at site may also sign the Inspection Report and in case of refusal to accept the report, 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.

19. Coming to the facts of this case, the impugned order dated 15.03.2021, Annexure P-10, reads as under:-

"From

*Assesing Officer Cum
Sr. Executive Engineer,
Electrical Division HPSEB Ltd. Baddi*

To

***M/S Kundlas Loh Udyog.
Village Balyana, PO Barotiwala
Distt. Solan (H.P)Pin code -174103.***

***Sub: Provisional order of assessment for
unauthorized use of electricity
under Section 126 of the Electricity Act-2003.***

Dear Sir,

*On scrutiny of consumer record & MRI records of
meter data in respect of your electricity connection
bearing k.no. 1122208426 having connected load 3999.9
Kw and 4442 KVA contract demand, it has been noticed*

that the energy meter installed in your premises has been tampered, to record the actual energy consumed during the period w.e.f August 2014 to May 2015.

On scrutiny of MRI data it was established that the secondary of the 66 KV current transformer has been sorted number of times. In addition to this the energy meter has been tempered numbers of time. Due to this, the actual energy consumed has not been recorded by the meter w.e.f August 2014 to May 2015.

The above facts clearly indicate that you have been found indulged in unauthorized use of electricity under Section-126 of Indian Electricity Act-2003.

"Unauthorized use of electricity' means the usage of electricity-

- i. By any artificial means; or*
- ii. By a means not authorized by the concerned person or authority or license; i*
- iii. Or Through a tampered meter; or*
- iv. For the purpose other than for which the usage of electricity was authorized; or*
- v. For the premises or areas other than those for which the supply of electricity was authorized."*

Accordingly undersigned, the Authorized Assessing Officer, in terms of Himachal Pradesh Govt. Gazette Notification No. MPP-A(3)/2003 dated: Shimla-2, the 19th May, 2005 has provisionally assessed the electricity charged under relevant two part tariff more than sanctioned load amounting to **Rs 4,55,18,952 /-** **(Four crore fifty five lakh eighteen thousand nine hundred fifty two only)** to be paid by you within 7 days for the above unauthorized act. Details of amount assessed are attached herewith.

(a) You are therefore advised to accept the provisional assessment and deposit the complete assessed amount with the Board within 7 days of service of this notice.

Or

(b) You may also file objection, if not satisfied with the provisional assessment made within 7 days of receipt of this notice. Your objections shall be considered and decided after affording opportunity of hearing to you. The final order of assessment shall be passed within 7 days of filling of such objection and hearing.

Your response may reach the undersigned within

the set out time, lest it shall be presumed that you have nothing to say in the matter. The HPSEBL Ltd shall thereafter be at liberty to take penal action against you as per law.”

20. Thus, a perusal thereof demonstrates that the provisional order of assessment was passed by the Authority for alleged unauthorized use of electricity, under Section 126 of the Electricity Act, based on the scrutiny of the consumer record and MRI records of meter data in respect of the electricity connection of the petitioner relating to the period between August, 2014 and May, 2015. Now, incidentally, the provisional assessment order was passed on 15.03.2021. The provisions of Section 126 of the Electricity Act, which have been quoted hereinabove, provide that the provisional assessment shall be made if on an inspection of any place or premises or after inspection of equipment, gadgets, machines, device 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”**. Therefore, for the purpose of invoking this particular provision and issuing a provisional

assessment thereunder, it is necessary that the same has to be on the basis of an inspection of the place or premises or after inspection of equipments, gadgets etc. or after inspection of record maintained by any person perusal whereof demonstrates that such person is indulging in unauthorized use of electricity.

21. In the present case, the assessment order is not based on the inspection of the record maintained by the petitioner. The provisional assessment order has been passed on the basis of the record available with the Electricity Board. In light of the language of Section 126 of the Electricity Act, a provisional assessment order cannot be issued on the basis of the record maintained by the Board. It has to be on the basis of records maintained by any person and this 'any person', by no stretch of imagination, can be the Board, as was argued by the learned counsel for the respondent-Board. This is for the reason that the provision of Section 126 of the Electricity Act itself is very clear that this section can be invoked by the assessing authority only if it finds that a person who maintains the record is found indulging in unauthorized use of electricity.

Therefore, obviously, the petitioner could have been issued a provisional assessment order under Section 126 of the Electricity Act only if upon the inspection of the record maintained by the petitioner, the assessing authority had come to the conclusion that it was indulging in unauthorized use of electricity. This not being the case, the provisional order is per se bad, beyond the scope of Section 126 of Electricity Act and obviously, thus, is an arbitrary exercise of power by the assessing authority and is liable to be quashed and set aside. This Court does not concur with the submissions made by the learned counsel for the respondent-Board that the present petition is not maintainable. In light of the fact that the provisional assessment order has been issued by the authority in complete breach of the statutory provisions of Section 126 of the Electricity Act, this Court has the jurisdiction to strike the same at this stage itself because the illegality in the act of the authorities is not going to be condoned or rectified by allowing the authority to pass the final assessment order on the basis of the response to the provisional assessment order filed by the petitioner.

22. Coming to the judgment relied upon by learned counsel for the respondent i.e. ***Executive Engineer, Southern Electricity Supply Company of Orissa Limited (Southco) and another Vs. Sri Seetaram Rice Mill (supra)***, in Para 26 of this judgment, Hon'ble Supreme Court while making out the distinction between Sections 126 and 135 of the Electricity Act, 2003, has specifically, *inter alia*, held that Section 126 of the Act would be applicable to the cases where there is no theft of electricity but electricity is being consumed in violation of the terms and conditions of supply leading to malpractices which may squarely fall within the expression "unauthorized use of electricity". Thereafter, Hon'ble Supreme Court has been pleased to hold that the assessment/proceedings would commence with the inspection of the premises by the assessing officer and recording of a finding that such consumer is indulging in unauthorized use of electricity. Hon'ble Supreme Court further held that then the assessing officer shall provisionally assess to the best of his judgment, the electricity charges payable by such consumer as well as pass a provisional assessment order in terms of Section 126 (2) of the

Electricity Act. Relevant paragraphs of this judgment are quoted hereinbelow:-

"26. In contradistinction to these provisions, Section 126 of the 2003 Act would be applicable to the cases where there is no theft of electricity but the electricity is being consumed in violation of the terms and conditions of supply leading to malpractices which may squarely fall within the expression "unauthorised use of electricity". This assessment/proceedings would commence with the inspection of the premises by an assessing officer and recording of a finding that such consumer is indulging in an "unauthorized use of electricity". Then the assessing officer shall provisionally assess, to the best of his judgment, the electricity charges payable by such consumer, as well as pass a provisional assessment order in terms of Section 126(2) of the 2003 Act.

27. The officer is also under obligation to serve a notice in terms of Section 126(3) of the 2003 Act upon any such consumer requiring him to file his objections, if any, against the provisional assessment before a final order of assessment is passed within thirty days from the date of service of such order of provisional assessment. Thereafter, any person served with the order of

provisional assessment may accept such assessment and deposit the amount with the licensee within seven days of service of such provisional assessment order upon him or prefer an appeal against the resultant final order under Section 127 of the 2003 Act. The order of assessment under Section 126 and the period for which such order would be passed has to be in terms of sub-sections (5) and (6) of Section 126 of the 2003 Act. The Explanation to Section 126 is of some significance, which we shall deal with shortly hereinafter. Section 126 of the 2003 Act falls under Part XII and relates to investigation and enforcement and empowers the assessing officer to pass an order of assessment."

23. Thus, it is evident from the judgment of the Hon'ble Supreme Court also that for coming into force of the provisions of Section 126 of the Electricity Act, the assessment/proceedings would commence with the inspection of the premises by an assessing officer. In the present case, the proceedings have not commenced with the inspection of the premises by an assessing officer. The provisional assessment is not based on the inspection of the record maintained by the petitioner Company. The provisional

assessment order is based on the record of the Electricity Board itself, which could not have formed the foundation of the invocation of Section 126 of the Electricity Act.

24. Therefore, in light of the above discussion, this petition is allowed. Provisional Order of Assessment dated 15.03.2021, Annexure P-10 is quashed and set aside. Consequences to ensue. No order as to cost. Pending miscellaneous application(s), if any, also stand disposed of accordingly.

(Ajay Mohan Goel)
Judge

December 29, 2025
(Shivank Thakur)