

(2005) 03 GUJ CK 0052
In the Gujarat High Court

Case No : Special Civil Application No's. 16838, 14046, 16157, 16915, 16721, 15528, 15544, 15682, 16255 and 16733 of 2004 and 283, 334, 374, 393, 397, 955, 1989, 2409, 2617 and 2654 of 2005

Plasto Precursors

APPELLANT

Vs

Gujarat Electricity Board

RESPONDENT

Date of Decision : 10-03-2005

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 357, 357(5), 6
Electricity Act, 2003 — Section 126, 126(4), 126(5), 127, 135
General Clauses Act, 1897 — Section 6

Citation : (2005) 2 GLR 993

Hon'ble Judges : Jayant Patel, J

Bench : Single Bench

Advocate : Nitin K. Mehta, for Petitioner No. 1-2, for the Appellant; R.V. Acharya, for the Respondent

Judgement

Jayant Patel, J.—In all the group of petitions points for which hearing has taken place, are common and therefore they are being dealt with by this common judgment. The contentions as sought to be raised by the learned counsel appearing on behalf of the respective parties to the extent they are relevant shall be dealt with hereinafter while dealing with the connected point.

2. It appears that the Electricity Act, 2003 (hereinafter referred to as "the New Act") has come into force vide notification, dated 10.6.2003 of the Govt. of India for the whole of the country. However, in the Act itself there are powers with the State Govt as per section 172(b) to declare that any or all the provisions contained in the new Act shall not apply in the State for such period not exceeding six months from the appointed day as may be stipulated in the notification. It further appears that in exercise of aforesaid power for Gujarat State notification, dated 4.6.2003 has been issued by the State Govt declaring that all the provisions of the new Act shall not apply in the State for a period of

six months from the appointed day, i.e.10.6.2003. Therefore, accordingly, it can be said for the Gujarat State the new Act was not made applicable upto 10.12.2004. As per section 185(1) of the new Act, the Indian Electricity Act, 1910 (hereinafter referred to as "Old Act"), the Electricity (Supply) Act, 1948(hereinafter referred to as "the old Supply Act") and Electricity Regulatory Commission Act, 1998(hereinafter referred to as "the Regulatory Commission Act") are repealed. However, the Ld. counsel appearing for the Electricity Board (hereinafter referred to as "the Board") Mr. Ramachandran and Ms. Bhaya, Mr. Majmudar and Mr. Pujara who normally appears for Ahmedabad Electricity Company and was permitted to intervene in the present proceedings contended that as per section 172(b) all licences, authorisations, approvals, clearances and permissions granted under the provisions of repealed laws shall continue for a period of one year and such licences, authorisations, approvals, clearances and permissions are deemed to be permissions under the Act and therefore it has been contended on behalf of respondent Board and the Electricity Company that the new Act would in reality come into force after a period of one year from 10.12.2003, i.e. 10.12.2004 and not prior thereto. Whereas the learned counsel appearing for the petitioners/consumers contended that the said clause applies to the extent of licences, authorisations, approvals, clearances and permissions granted under the old Act for a period of one year and it can not be construed that the implementation of the Act would not come into effect for a period of one years.

Clause (b) of section 172 of the new Act reads as under:

"172(b) all licences, authorisations, approvals, clearances and permissions granted under the provisions of the repealed laws, may for a period not exceeding one year from the appointed date or such earlier period; as may be notified by the Appropriate Government, continue to operate as if the repealed laws were in force with respect to such licences, authorisations, approvals, clearances and permissions, as the case may be, and thereafter such licences, authorisations, approvals, clearances and permissions shall be deemed to be licences, authorisations, approvals, clearances and permission under this Act and all provisions of this Act shall apply accordingly to such licences, authorisations, approvals, clearances and permissions."

3. On plain and simple reading of the aforesaid transitory provisions, it appears that all licences, authorisations, approvals, clearances and permissions granted under the provisions of repealed Act may continue for a period not exceeding one year from the appointed date, and such continuation is as if the repealed laws were in force, but such operation of repealed law in force is with respect to such licences, authorisations, approvals, clearances and permissions. Therefore, the functioning by the Board and the Electricity Company under the licences, authorisations, approvals, clearances and permissions under the old Act can continue to be in force upto 10.12.2004 but the operation of the old Act would continue with respect to such licences, authorisations, approvals, clearances and

permissions only and not for any other purposes which are not connected with the licences, authorisations, approvals, clearances and permissions granted under the old Act. The question which may incidentally be required to be considered for the applicability of Part XII in the new Act and Part XIV of the new Act to the functioning by the Board and the Electricity Company under licences, authorisations, approvals, clearances and permissions granted under the old Act and the Part IV of the new Act deals with the matters of granting licence to generate the electricity power, Part V provides for the matters pertaining to the transmission of electricity. Part VI provides for the distribution of electricity. Part VII provides for matters pertaining to tariff of the electricity. Part VIII provides for matters regarding works of licensees generating and distributing the electricity. There are provisions made for constitution and functions of Central Electricity Authority under Part IX and for constitution, powers and functions of Central Commission under Part X. It further provides that under the old Act there were separate provisions made for the electricity and under the old Supply Act there were separate provisions made for regulating the supply of electricity and separate provisions were made for regulations made under old Regulatory Commission Act. It appears that under the new Act there is consolidation of law relating to generation, transmission, distribution, trading and use of electricity and generally for taking measures conducive to development of the electricity industry and therefore as the functioning of the Electricity Board and the Electricity Company under the licences, authorisations, approvals, clearances and permissions under the repealed laws, namely, the Old Act, Old Supply Act and old Regulatory Commission Act were made applicable and their functioning was subject to control of the authorities under the old Act, old Supply Act and old Regulatory Commission Act to the extent so far as they relate to the generating the electricity and supply of electricity to the consumers, charging of tariff, the terms and conditions for regulating the said tariff and the issues directly or indirectly connected therewith are concerned as they were under the old enactments, namely, old Act, old Supply Act and old Regulatory Commission Act and as now they are consolidated under the new Act, it would be reasonable to construe the operation of the repealed laws qua the rights governing the power of the Electricity Company vis-a-vis the rights of the consumers as per the repealed laws for a period of one year from the appointed day, i.e. upto 10.12.2004. The aforesaid view is supported by the decision of this court (Coram: R.R. Tripathi, J) in Appeal From Order No. 197 of 2004 decided on 30.6.04 reported in AIR 2005 NOC 75(Gujarat) whereby the view taken at para 6 is that repealed laws would continue to apply for a period of one year, i.e. upto 10.12.2004.

4. Further, there is one additional reason in all the group of petitions and the same is that all the petitioners before this court themselves have accepted the position that the conditions of supply as framed under the repealed laws have continued to remain in operation and thus have invoked the jurisdiction of the Appellate Committee constituted under the Conditions of supply and therefore

now they can not be heard as sought to be canvassed on behalf of the petitioners that the appellate committee had no jurisdiction to decide the appeal, but the matter should have been examined under the provisions of sections 126 and 127 of the new Act for the purpose of assessment of the electricity charges, may be for alleged malpractices or for alleged thefts. Therefore, considering the above, I find that though the new Act has come into force on 10.12.2003, but for governing the terms and conditions of supply of electricity the assessment of electricity charges, applicability of terms and conditions, recovery of tariff, penal charges, hearing by the appellate committee etc. which are integral part of the conditions of supply, the provisions of Old Act and old Regulatory Commission Act shall continue to operate upto 10.12.2004 in respect of licences, authorizations, approvals, clearances and permissions granted for generating and for supplying the electricity to the licensing company for supply of electricity to its consumers.

5. The next aspect which may be required to be considered is that the position after the Act came into force i.e. after 10.12.2004, in any case all the provisions of the Act have come into force with effect from 10.12.2004, and therefore, from 10.12.2004 the provisions of old Act , old Supply Act and old Regulatory Commission Act shall cease to apply as stated hereinafter. As per subsection (2) of section 185 notwithstanding such repeal, anything done any action taken or purported to have been done or taken under the repealed laws shall be deemed to have been done or taken under the corresponding provisions of the new Act. Further, as per subsection (3) of section 185 of the new Act, the provisions of certain enactments specified in the schedule not inconsistent with the provisions of this Act shall continue to apply to the States in which such enactments are applicable. In the schedule of enactments at Sl. No. 9 The Gujarat Electricity Industry (Reorganisation and Regulation) Act, 2003 (hereinafter referred to as the Gujarat Electricity Act) is provided. Subsection (5) of section 185 provides that "save as otherwise provided in subsection (2) the mention of particular matters in that section shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeals.

Section 6 of General Clauses Act, 1897 reads as under:

"6.Effect of Appeal: -- Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not---

(a) revive anything in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder, or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed, or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed, or

(e) affect any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed."

Therefore, barring applicability of subsection (2) of section 185, the mention of any particular matter under the provisions of this Act shall not be held to prejudice or affect the applicability of section 6 of the General Clauses Act in respect of repealed Act. Therefore, while considering the saving of the repealed Act, it is required to be considered whether any different intention is apparent under the new Act. Therefore, proper approach would be as to whether under the new Act, the rights and liabilities are taken away or not. So far as the savings of repealing clauses are concerned, different situation would prevail for the remedial measures provided under the new Act, vis-a-vis, the measures, if any, provided under the old Act. It further appears that in view of section 185(2) read with section 185(3) and read with section 185(5) in the matters where there is inconsistency, the provisions of new Act will prevail and such inconsistency can be examined to the extent of the rights conferred by the statute, legislation itself and subordinate legislation arising from contractual obligations, in all cases the former would prevail to the later.

6. The learned counsel for the petitioners submitted that in view of the new Act, the assessment for electricity charges can only be made u/s 126 and the appeal can be heard u/s 127 and it was also submitted that as per section 126(5) the assessment can not exceed for three months in case of residential and agricultural purposes and for six months for all other cases and in such assessment the rate can not exceed 1 and 1/2 tariff applicable of the relevant category as per section 126(6) of the new Act. The learned counsel appearing for the Board and the Electricity Company, on the other hand, submitted that as per the new Act unless the Electricity Code is framed by the Commission, the rate prescribed of tariff which would also include for recovery of penal charges would continue to remain in operation. It was also submitted that since as per section 185(3) the conditions framed under the Gujarat Act, 2003 are saved, the assessment can be made as per the conditions of supply which, in the submission of learned counsel appearing for the Board and the Electricity Company, are having statutory force. It was also submitted that in any case the assessment u/s 126 would apply to only unauthorised use of electricity which is defined as per clause (b) of Explanation of Section 126 and it would not apply to the theft cases which are governed by the provisions of section 135 of the Act. It was also submitted on behalf of the Board and the Electricity Company that as per section 154(5), the special court has power to determine the civil liability against the consumer or a person in terms of money for theft of energy and as

provided under subsection (5) such liability shall not be less than the amount equivalent to two times of the tariff rate applicable and therefore in the matter of theft cases, it is open to the Board and the Electricity Company to recover the charges of electricity exceeding the amount of 2 times tariff rate since as per subsection (6) of Section 154 of the Act the balance amount is to be refunded with interest. It was therefore submitted on behalf of the Board and the Electricity Company that it would not be proper to hold that the theft cases would also be covered under sections 126 and 127 and if such an interpretation is made, any person would commit theft of electricity and thereafter shall pay the amount for three months in case of domestic purpose and for six months in case of other uses only at the rate of 1 and 1/2 times and consequently would result into not having deterrent effect against theft cases. It was also submitted on behalf of the Board that section 56 would apply only in case of disputes in respect of electricity bill other than unauthorised use or theft cases. The learned counsel appearing for respondent Electricity Company had relied upon the decision of the learned single judge of the Delhi High Court in the matter of Sohanlal v. North Delhi Power Ltd. and Ors in Writ Petition (C) No. 649/04 and allied matters dated 31.5.04 and the decision of this court (Coram: D.N. Patel, J) in the matter of Leenaben, W/o Sohanlal v. Ahmedabad Electricity Company dated 6.9.04 in Special Civil Application No 10007/04 with SCA No. 10008/04 and also decision of this court (Coram: D.N. Patel, J) in the matter of Ahmedabad Electricity Co v. Ramesh D. Devani dated 15.10.04 in SCA No. 8325/04 for contending that the theft cases would not be covered u/s 126 and 127 and for interpretation of section 56 of the New Act for contending that the civil court will not have any jurisdiction in view of section 154 of the new Act.

7. There is no dispute on the point that the conditions of supply in respect of supply of electric energy to the consumer by the respondent Board and the Electricity Company are framed and sanctioned by the competent authority under the repealed Act. It has been submitted that the matter has been thereafter provided under Gujarat Electricity Act. Even if it is considered that the conditions of supply continue to operate in view of section 185, same can not continue to operate if found inconsistent with the provisions of this Act. Therefore, same, at the most, may continue to operate to the extent found not inconsistent with the provisions of this Act and the operation of such conditions of supply and also the provisions of old Act can not be to the extent of nullifying the effect of the new Act. The conditions of supply of the Board and the Electricity Company interalia provide for the malpractices or theft of energy. The malpractice and the theft of electric energy in the conditions of supply of the respondent Board are defined under Clause (33) as under:

"33(A) Malpractice and Theft of Energy:

Malpractice:

Malpractice shall mean contravention by the consumer of any of the provisions of the I.E. Act 1910 Electricity (Supply) Act, 1948 or Indian Electricity Rules, 1956

or of any other law governing the supply and use of Electricity and the rules framed thereunder as also the contravention of any of the provisions of the Board's "Conditions and Miscellaneous Charges for Supply of Electrical Energy" or any of the terms and conditions of the contract governing the supply of electricity by the Board the consumer and shall in particular include the following cases;

(a) The supply of electricity by a consumer to any other person whose supply has been disconnected by the Board for any other reason.

(b) Exceeding the contracted load by a consumer without the specific permission of the Board.

(c) Unauthorised addition, alteration and/or extension to the consumer's electrical installation without the permission of the Board,

(d) Using supply by a consumer from the service which has been disconnected by the Board for any reason.

(e) Supply of energy to any other person without the permission of the Board.

33(B) Theft of Energy

Any consumer who dishonestly abstracts, consumes or uses any energy shall be deemed to have committed theft within the meaning of the Indian Penal Code and the existence of artificial means for such abstraction for such abstraction shall be prima facie evidence for such dishonest abstraction."

8. In case of Ahmedabad Electricity Company, the malpractice is defined under Condition No. 22 and theft of electric energy is defined under Condition No. 23 as under:

22. Malpractice:

(a) Malpractice shall mean contravention by the consumer of any of the provisions of the Act the Electricity (Supply) Act, 1948 or Indian Electricity Rules, 1956 or of any other law governing the supply and use of Electricity and the rules framed thereunder as also the contravention of any of the provisions of the Licencee's "Conditions of Supply and Miscellaneous Charges" or any of the terms and conditions of any agreement governing the supply of electricity by the Licensee to the consumer and shall in particular include the following cases;

i) Supply of electricity by a consumer without the permission of the licensee to any other person or premises whose supply to service has been disconnected by the Licensee and subsequently removed.

ii) The drawal of power by the consumer in excess of his contract demand without the specific permission of the Licensee.

iii) Unauthorised addition or alteration of, or extension to the consumer's electrical installation without the permission of the Licensee.

iv) The use of Licensee's supply by the consumer under a higher method of charging than that under which the supply was originally made available to the consumer.

v) Capacitors once installed when found to have been removed from the installation.

b) In the cases of unauthorised additions, alterations or extensions carried out by low voltage and medium voltage consumers to their electrical installations without the permission of the Licensee, the Licensee shall be entitled to recover from the consumer additional charges retrospectively for such unauthorised additions, alterations or extensions as prescribed under item No. 12 of Part II of these Conditions of Supply together with incidental charges. Payment of such charges shall not entitle the consumer to continue to use unauthorised load in future as a matter of right.

c) Without prejudice to the rights of the Licensee to initiate legal proceedings against any person found to be committing any of the malpractices mentioned above, the Licensee shall be entitled to disconnect the supply of such a consumer. The supply shall not however be reconnected unless the consumer has qualified for reconnection by removing the cause of disconnection and settled the charges as per item (b).

23.a) Theft of Energy--Malicious wastage or

Licensee's work:

Under the Indian Electricity Act, 1910 the following acts are offences which are punishable with imprisonment or fine or both as prescribed under different sections as follows:

b) Without prejudice to the Licensee's rights to initiate legal proceedings against any consumer or person found to be committing any of the offences mentioned under sub-item (a) above, the Licensee shall be entitled to disconnect the supply of a consumer or person and to recover from him such charges as are assessed by the Licensee as provided for under item No. 11 of Part II of these Conditions of Supply and Miscellaneous Charges. The supply of disconnection on the ground of offences mentioned under sub-item (a) subject to review by Competent Authority or until the amount so assessed against theft of energy is paid by the consumer, whichever is later.

9. In case of respondent Board the payment for energy dishonestly used or abstracted or maliciously wasted or diverted are provided under Condition 34 which provides for $A \times B \times C/D$ formula for Low Tension consumers and $M \times H \times C$ formula for High Tension consumers. The maximum period of assessment provided in both the cases is six months. Different tariff rates have been provided for unauthorised load from 1.5 times to 2 times + 2.5 times fixed charges etc. In case of Ahmedabad Electricity Company also maximum period of assessment is not exceeding six months, but different tariff rates have been

provided for assessment in case of malpractice and theft cases from 1.5 times to 2.5 times. In conditions of both the Board and the Electricity Company in case of malpractice as well as theft cases no notice is provided for before disconnection. However, the consumer, if pays a particular percentage of the assessed amount can be made entitled for reconnection of electricity subject to finalisation of the decision by the appellate committee. The procedure in respect of Board and the Electricity Company as per the conditions of supply are the provisional assessment to be made by the officers of the Board or the Electricity Company as the case may be, and disconnection, thereafter right of appeal to the appellate committee comprising of the officers of the Board and others and right of reconnection if 20% or 30% as the case may be of the provisional bill is paid subject to the final decision of the appellate committee. The method of charging tariff in case of malpractice and theft cases are different to the procedure in respect of both the cases of disconnection and electricity supply and right of reconnection, adjudication by the appellate committee is similar as per condition of supply except the theft case when found second time and in those cases the right of reconnection is not on payment of 20% or 50% of the assessed amount as the case may be, but on payment of full amount if theft case is found second time. The interest chargeable is also provided. However, pertinent aspect in both the conditions of supply in case of respondent electricity company and the board which are framed in exercise of delegated power and it is have its operation in the field of contractual rights between the parties, namely, the Board or Electricity Company, as the case may be, with the consumer and even if it is considered as that the conditions of supply are having statutory force the same can be said as subordinate legislation and can not have overriding effect over the legislative provisions of any enactment, if ultimately found to be inconsistent with the provisions of the new Act or can not operate so as to nullify the effect of new Act. Therefore, no conditions of supply framed under the old Act or Gujarat Electricity Act would operate if they are found inconsistent with the provisions of the new Act, more particularly, because such conditions are operating in the field of contractual relations between the electricity company and the consumer and in any case even if statutory but as a subordinate legislation it can operate over the statutory provisions of the new Act.

10. The aforesaid takes me to examine the scope and ambit of the assessment under sections 126 and 127 of the Act. Both the aforesaid provisions read 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 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 subsection (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 provisional order of assessment may, accept such assessment and deposit the assessed amount with the licensee within seven days of service of such provisional assessment order upon him:

(5) 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 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 assessment under this section shall be made at a rate equal to one and half times the tariff payable for the relevant category of services specified in subsection (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

(ii) through a tampered meter; or

(iv) for the purpose other than for which the usage of electricity was authorised.

127. Appeal to the appellate authority--(1) Any person aggrieved by the final order made u/s 126 may, within 30 days of the said order, prefer an appeal in such form, verified in such manner and be accompanied by such fee as may be specified by the State Commission, to an appellate authority as may be prescribed.

(2) No appeal against the order of assessment under subsection (1) shall be

entertained unless an amount equal to one third of the assessed amount is deposited in cash or by way of bank draft with the licensee and documentary evidence of such deposit has been enclosed along with the appeal.

(3) The appellate authority referred to in subsection (1) shall dispose of the appeal after hearing the parties and pass appropriate order and send copy of the order to the assessing officer and the appellant.

(4) The order of the appellate authority referred to in subsection (1) passed under subsection (3) shall be final.

(5) No appeal shall lie to the appellate authority referred to in subsection (1) against the final order made with the consent of the parties.

(6) When a person defaults in making payment of assessed amount, he, in addition to the assessed amount, shall be liable to pay, on the expiry of thirty days from the date of order of assessment, an amount of interest at the rate of sixteen per cent per annum compounded every six months."

The meaning provided for the "unauthorised use of electricity" as per the explanation to the section 126 can be said as inclusive and not exhaustive. The legislature has provided for certain unauthorised dues of electricity and thereby it can not be read that any other mode of unauthorised use of electricity shall not be included in the meaning of word "unauthorised use of electricity". Further use of electricity through tampered meter or a through a means not authorised by the concerned person, authority or licensee or through any artificial means can be said as to cover the cases of all the use of electricity for which there is no authority. Whether a person himself has tampered with the meter or the meter was got tampered or tampered meter was already there when the person occupied the place at which there is no use of electricity, will not make any difference so far as the quantum of electricity and consequently the assessment because it is the quantity of electricity which is unauthorisedly used to be considered for the assessment u/s 126 of the new Act and such an assessment is not dependent upon the element of mens rea or guilt. As such the element of mens rea or guilt will have the relevance only at the time of conducting criminal trial u/s 135 and other provisions of the new Act. Further, as per section 147 of the new Act the penalties provided are in addition to any liability in respect of payment of compensation. Even otherwise also whenever any offence is committed, the civil liability is always in addition to punishment for the offence and not derogation thereto. Therefore, the distinction as sought to be canvassed by the learned counsel appearing for the Board and the Electricity Company that whenever the unauthorised use of electricity is by tampering of the meter, it should be separately classified as theft case and outside the scope and ambit of section 126 of the new Act can not be accepted. The distinction as sought to be canvassed by taking support to provisions of section 154(5) and 154(6) also can not be accepted for the reasons stated hereinafter. Section 126 of the Act is essentially for assessing the charges of the electricity which is unauthorisedly

used subject to applicability of tariff rates provided u/s 126(6). As per the scheme of the new Act the Board or the licensee has no authority to directly recover the penalty since the customer has committed theft as per licensee when such theft is yet to be established in Special Court. After the new Act came into force supply of electricity is made free subject to National policy. The relations between the consumer and the licensee are to be standardised as per Electricity Supply Code and tariff rates as may be prescribed by appropriate authority but both the consumer and the licensee are bound by the statutory provisions of new Act and can exercise power to that extent only. If any additional penalty is to be recovered than provided by the new Act, it can be said as compensatory and not penalty which can be imposed by any statutory or sovereign authority. Even if one goes by general proposition, the theft of electricity can be said as unauthorised use of electricity because the person who used the electricity is not so authorised to use of electricity by the manner or through the method for committing the theft and therefore it can be said that all cases of theft of electricity would also be included in the case of unauthorised use of electricity, but the reverse is not true, namely, that all unauthorised use of electricity are not necessarily the theft of electricity, but all cases of theft electricity are also unauthorised use of electricity. Such case of theft shall get included when such theft is through tampered meter and there is relationship of consumer with the licensee company. As such, the scope and ambit of Part XII, and more particularly, Sections 126 & 127 of the Act, as stated above, operate in the field of assessment of electricity charges payable by the person or by any other person benefited by such unauthorised use of electricity and they operate qua the recovery of charges of electricity and not pertaining to the imposition of punishment for the offence of theft of electricity etc which are provided under Part XIV of the new Act. Therefore, even in case of use of electricity through tampered meter, (which are canvassed as theft cases by the learned counsel for the Board and the Electricity Company) the Board or the Electricity Company can assess the charges of electricity payable by the person concerned who is benefited by such unauthorised u/s 126 of the new Act. The only mode which may be available after the Act came into force to the Board or the Electricity Company for recovery of electricity charges for unauthorised use of electricity is u/s 126 of the new Act.

11. The learned counsel appearing for the Board and the Electricity Co made an attempt to distinguish the intention of the legislature for excluding the cases of theft under the provisions of section 126 of the new Act by taking support to the provisions of section 154 of the Act providing for the power of special court to determine the civil liability against the consumer or person concerned in terms of money for theft of electric energy, and it was submitted that as per section 154(5) such liability shall not be less than the amount equivalent to two times of the tariff rate for the period of 12 months exceeding the date of detection of theft. Therefore, it was submitted that in view of section 154(6) as there are provisions made for directing of the refund of the amount the legislature has

conceived the situation of assessment of money by the electricity company from the consumer pertaining to the alleged theft cases by charging the tariff either two times or exceeding two times and therefore it was submitted that as against the same section 126(6) provides for collection of rate equivalent to 1 and 1/2 times tariff and therefore the theft cases would not be covered u/s 126 of the new Act even if the electricity company has to assess and recover the amount by its own assessment. It was further submitted that to the extent there is no inconsistency with the statutory provisions vis-a-vis the conditions of supply and the conditions of supply qua the assessment of theft cases would continue to operate which inter alia provides for charging of two to two and half times tariff from the consumer for the period of six months.

12. The basis of the contention appears to be attractive, but upon the close scrutiny, it appears that the same can not be accepted for the reasons as stated hereinafter. Fastening of the civil liability when a person commits offence pertaining to the property or inflicts injury to the body of the victim is not a principle unknown in the field of criminal jurisprudence. Such can be traced under Criminal Procedure Code. Section 357 of the Cr.P.C. inter alia provides for ordering for payment of assessment. Such can be either by payment from fine recovered if the fine is imposed. If the fine is not imposed as per section 357(3) the court may while passing the order against the person also direct to pay by way of compensation, such amount, as may be specified in the order when the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced. As per section 357(5) of Cr.P.C. at the time of awarding the compensation in a subsequent civil suit relating to the same matter, the civil court shall determine the sum paid or recovered as compensation under this Code, meaning thereby the person would be entitled to set off if the criminal court has awarded the compensation in the event the civil court is also to decide for awarding of compensation. Therefore, merely because section 154(5) provides for power to special court to determine the civil liability, it can not be said that for assessment of electricity charges of such theft cases there will not be any applicability of section 126 of the new Act nor can it be said that as under subsection (5) of section 154 of the new Act there are powers with the special court to fix the civil liability which shall not be less than the amount equivalent to two times the tariff and While making the assessment u/s 126 of the new Act as such is not permitted, therefore, the tariff amount can be recovered at the rate of two times tariff or exceeding two times the tariff rate as per conditions of supply prevailing prior to new Act came into force. The determination of civil liability by the special court is in addition to the power of the special court to impose punishment, but such powers of fixation of civil liability can not be read in isolation but can be read as in relation to the offence of theft for which the trial has taken place before the special court as per the provisions of section 154 of the Act. The domain purpose of constitution of special courts is for speedy trial of the offences referred to in sections 135 to 139 of the new Act and for conducting procedure of special court the provisions of

Cr.P.C., 1973 are to apply unless there is express provision made under Part XV of the new Act for conducting of trial by the special court. Since as per the provisions of section 154(5) and (6) of the new Act express provision is made enabling the court to determine the civil liability and if the liability is so determined the amount is made recoverable as if it were a decree of civil court. Section 154(5) of new Act would apply to the powers of the special court but the basic feature of the special court as is apparent from section 155 of the Act and the same is that of a court of sessions and the person conducting the prosecution is deemed as public prosecutor and therefore as such special court can be classified as a criminal court as per section 6 of Cr.P.c. read with section 155 of the new Act and as such the special court can not be said as a civil court whose procedure is governed by the Code of Civil Procedure. The attempt made by the learned counsel for the Board and the Electricity Company to distinguish the situation on the ground that even the amount is to be returned with interest as per section 154(6) and the language used is "deposited" and therefore it has reference to the amount paid as per the conditions of supply for theft cases is illfounded because firstly as per the conditions of supply for theft cases the amount is not to be treated as deposit but are shown as recoverable after finalisation by the Appellate Committee constituted as per conditions of supply. Secondly, the reference of the word "deposited" must be traced in the provisions of the new Act. The proviso of section 56 and section 126(4) of new Act provides for deposit of the amount. Therefore, the amount deposited which is referred to in section 154(6) will be such amount as deposited by the person concerned u/s 126(4) of the new Act concerned because for the reasons stated hereinafter section 56 of the new Act will have no applicability to the pilferage of electricity. Section 154(6) provides for refund because if civil liability fixed is of less in comparison to deposit made finality will be attached to the amount as may be fixed by the Special Court. Further, section 154(5) of the Act provides for the civil liability for the tariff rates not less than two times but the period is of 12 months or the exact period whichever is less and therefore if the exact period is less than six months or three months in case of respective category, it is possible that the amount may be lesser than the amount provisionally assessed and deposited u/s 126(4) and therefore to meet with such contingencies provision is made u/s 154(6) of the new Act for refund. But, if civil liability fixed by the Special Court is more than the amount deposited u/s 126(4) only section 154(5) would apply and section 154(6) would have no applicability. Therefore, the aforesaid contention can not be accepted.

13. The learned counsel appearing for the Board and the Electricity Co also made an attempt to submit that even if there is no conviction for the offence of theft cases as per section 135 of the new Act the special court may determine the civil liability in view of section 154(5) of the Act and it was submitted that the exercise of power u/s 154(5) of the Act is not dependent upon the conviction for the charge of theft. I am afraid such a contention can be accepted in view of the reasons recorded hereinabove. When the status of the special court is that of a

criminal court as per Cr.P.C, it can not exercise the power even u/s 154(5) of the new Act as if it is conducting the civil matter like that of a civil court by applying the procedure as provided under Cr.P.C. When any criminal court is given jurisdiction to decide the civil liability also for the offence, which in the present case, is of theft of electric energy it will be guided by the same principles as they are applicable to the criminal court. In view of the language used by the legislature under subsection (5) of section 154 "for theft of energy" and in the explanation to subsection (5) and (6) of section 154 " due to the commission of an offence referred to in sections 135 to 139" unless the finding is recorded by the special court that there is theft of electric energy or there is a commission of offence of theft of electric energy the power of special court u/s 154(5) would not be attracted. Whether there is conviction with imprisonment or fine or anyother penalty is imposed upon the accused by the special court or not is a different aspect, but in the absence of special court coming to conclusion that there is theft of electric energy or commission of offence of theft of electric energy the civil liability may not be fixed by the special court. I find it proper to leave the matter at that stage.

14. Section 126(1) of the Act provides for that if the assessing officer comes to conclusion that the person is indulging into 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. Subsection (2) of section 126 provides for service of provisional assessment. Subsection (3) of section 126 provides for entitlement of a person concerned to file objections against the provisional assessment and the power of the assessing officer to pass final order of assessment of the electricity charges payable after affording a reasonable opportunity of hearing to such person. Subsection (4) of section 126 provides for opportunity to the person concerned to accept the provisional assessment made and to deposit the assessed amount with the licensee within seven days from the service of such provisional assessment order. However, the proviso to subsection (4) of section 126 provides that in case the person deposits the amount as per provisional assessment, he shall not be subjected to any further liability or any action by any authority, whatsoever. Therefore, the proviso to subsection (4) of section 126 of the new Act is an exception to subsection (3) of section 126 of the new Act which provides for objection, hearing and passing of final order. Further, the word "further liability or any action by any authority whatsoever" means to convey no further liability or any action both by any authority and it does not convey for no further liability or any action by the special court. Therefore, even if in respect of tampered meter provisional assessment order is served and the criminal complaint is filed against the concerned consumer for theft of electricity u/s 135 of the new Act, criminal proceedings would continue and the special court can conduct trial for offence and may also determine civil liability u/s 154(5) of the new Act. But, if the civil liability is determined by the special court u/s 154(5), the provisions of section 154(6) would apply for refund also if such contingency so arises. But such civil

liability fixed by the special court is due to commission of offence of theft and not for unauthorised use of electricity. However, the amount, in case, is deposited by the person concerned u/s 126(4) who is also accused before special court and ultimately for civil liability in such cases finality is given to the decision of the special court u/s 154(5) read with section 154(6) of new Act because such deposit made as per the provisional assessment made u/s 126(4) would be finalised only as per section 154(6) of the new Act to the amount deposited by the consumer and such amount deposited is as per section 126(4) of the new Act and not the amount paid by the consumer as per conditions of supply in theft cases as sought to be canvassed by the learned counsel appearing for the Board and the electricity company. As such, as per conditions of supply for theft cases the amount is shown as leviable or payable therefore can be treated as deposited as sought to be canvassed by the learned counsel on behalf of the Board and the electricity company.

15. It further appears that if the amount is already deposited as per section 126(4) there shall be no further civil liability concerning to such unauthorised use of electricity by any authority like pertaining to reconnection, breach of conditions of contract for supply of electricity etc. Similarly, no action by any authority means all civil actions like disconnection of supply if not disconnected or if supply is disconnected and the amount is deposited u/s 126(4), the consumer will be entitled to reconnection etc but all such prohibitions and protections are by or against all the authority and not by or against court/special court and in any case such proviso does not operate as bar to any criminal liability or action for committing crime/offence by the consumer/person concerned.

16. Subsection (5) of section 126 provides that 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 had continued 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 in case of all other categories, unless the onus is rebutted by the person, occupier or possessor of such premises or place. Subsection (6) of section 126 provides for assessment u/s 126 at a rate equal to 1 and 1/2 times the tariff rate applicable for the relevant category of services specified in subsection (5). Therefore, there is inbuilt mechanism provided for assessment u/s 126 of the Act. In view of the procedure provided for assessment u/s 126 of the Act, the conditions of supply to the extent they are inconsistent with the provisions of section 126 would not continue to operate. As per the conditions of supply as prevailing prior to 10.12.2004 after the provisional assessment the consumer had the right to prefer appeal before the appellate authority of the Board or the Electricity Co, as the case may be, and thereafter the decision of the appellate authority was made as final. Whereas, as per the scheme of section 126 the mode of assessment will be of making provisional assessment, giving opportunity to file objections and thereafter to give opportunity to deposit the assessed amount and then to

finalise the assessment. Further subsection (6) of section 126 provides for the assessment at the rate equal to 1 and 1/2 times the tariff applicable and therefore the conditions of supply providing for charging of tariff exceeding 1 and 1/2 times may be in case of malpractices or may be in case of tampered meter also said as theft of electric energy would not continue to operate since the rate is prescribed as per subsection (6) of section 126. In the event the cases are governed prior to 10.12.2004 it may be governed by the conditions of supply. However, in the case of inspection after 10.12.2004 where the conditions of supply are providing for charging of rate exceeding 1 and 1/2 times tariff rates applicable would be inconsistent with section 126(6) of the Act and consequently in contravention to the statutory provisions and therefore shall not continue to operate even if the provisions of the Gujarat Electricity Act are saved because as observed earlier the saving is to the extent not inconsistent with the provisions of the new Act. It may be that for the purpose of making provisional assessment, the method and manner as provided in conditions of supply may be applicable excluding the applicability of the tariff rates for the purpose of such assessment and the tariff rates applicable would be only 1 and 1/2 times as per section 126(6) of the Act.

17. It was sought to be contended on behalf of the Board and the Electricity Company that as per subsection (5) of section 126 the maximum period of assessment is for three months in case of domestic and agricultural services and for six months in case of other categories unless it is rebutted by the person concerned and therefore even if the person has committed theft of electric energy he can get away from the further action including that of prosecution if he deposits the amount as per the provisional assessment. Therefore, the theft cases should be excluded from the applicability of section 126 of the Act. The aforesaid contention is illfounded because as observed above, even if the amount of provisional assessment is deposited u/s 126(4) of the new Act, the same does not operate as bar to criminal prosecution or criminal liability nor civil liability to be determined by the special court as per section 154(5) of the new Act. Therefore, in a case when the provisional assessment for unauthorised use of electricity through tampered meter is made and the amount deposited u/s 126(4) of the new Act and the prosecution is also launched or complaint is filed for theft then, in that case, in the event theft is proved, the special court can also determine the civil liability at the rate not less than twice tariff rates for the period of twelve months or actual period. Therefore, one who has committed theft of electric energy would not be better placed under the new Act in comparison to old Act. As such, as per new Act, theft cases are made more strict to have deterrent effect because as per new Act more punishment by minimum period and minimum fine etc are provided and additionally the power is also given to special court to determine the civil liability which is in any case in addition to punishment for offence.

18. However, under the scheme of new Act, the procedure of assessment is regularised as per section 126 read with section 127 of the new Act. The

provisional assessment for unauthorised use of electricity including for tampered meter can be provided by the Electricity Supply Code as per section 50 of the new Act because such Electricity Supply Code can provide for recovery of electricity charges, disconnection of supply, restoration of supply of electricity for nonpayment thereof, restoration of supply of electricity, tampering, distress or damage to electric plant, electric lines or meter, removal or replacement of meter etc. But, no condition or terms can be included in the Electricity Supply Code which in contravention to express provisions of the new Act. In the same manner, until such electricity supply code is specified the conditions of supply to the extent not inconsistent with the express provisions of the new Act can continue to operate. Hence, for recovery of the electricity charges, even for unauthorised use including through tampered meter which are said as theft cases for the purpose of provisional assessment, the method, manner and calculation as provided in conditions of supply in absence of electricity supply code can be made applicable. But, as per scheme of new Act u/s 126 different treatment for assessment is provided for broadly three categories, namely, agricultural, residential and all other categories. Similar difference is also given while permitting compounding of the offences u/s 152 of the new Act, namely, industrial service, commercial service, agricultural service and other services by providing different sum of money. Therefore, the new Act for recovery of electricity charges as final assessment as per section 126(5) provides for maximum period of statutory presumption differently for agricultural and residential category of three months and for all other categories of six months unless rebutted by the person concerned for lesser period. Therefore, any conditions of supply providing for billing period of more than three months or six months for agricultural and residential category or all other categories, as the case may be, can be said as in contravention to express provisions of section 126(5) of the new Act. Similar will be the situation for charging tariff rate of 1.5 times the applicable tariff rates. Therefore, after new Act came into force final assessment u/s 126(5) can at the most be for a period of three months for agricultural and residential categories and of six months for all other categories but in all categories the applicability of the assessment has to be at 1.5 times tariff rate applicable as per section 126(6) of the new Act. If the legislature has expressly so provided it would not be for the court to carve out an exception to the chargeability of tariff rates for unauthorised use of electricity through tampered meter by distinguishing on the ground that criminal complaint of theft is also filed or is pending or the criminal prosecution is initiated or is pending. Therefore, the aforesaid contention of the learned counsel for the Board and the Electricity company can not be accepted.

19. Section 127 of the Act provides for appeal to the appellate authority against the final order and u/s 126. Subsection (2) of section 127 provides for no entertainment of appeal unless the amount equal to 1/3rd of the assessed amount is deposited with the licensee. Subsection (3) of section 127 provides for disposal of appeal after hearing the parties and to pass appropriate orders.

Subsection (5) of section 127 provides for no appeal if the final order of assessment is made with the consent of parties. Subsection (6) provides for liability to pay interest at the rate of 16% p.a. to be compounded on every six months if the payment is not made as per the assessed amount within 30 days from the date of the order of assessment. Therefore, it appears that a full-fledged appellate authority is provided for maximum of assessment and the appellate authority is clothed with the power to pass appropriate orders. It is well settled that the authority which has power to pass the final order has the power to pass interim orders also but the condition precedent for entertaining the appeal is the deposit of amount equal to 1/3rd of the assessed amount and in the event if the payment is not made within 30 days from the date of final order, it would also attract the liability to pay the interest at the rate of 16% p.a. compounded on every six months. Therefore, on conjoint reading of sections 126 and 127 of the new Act, it appears that there is inbuilt mechanism provided for the assessment of electricity charges for unauthorised use and while making the assessment the assessing officer after the provisional assessment as per the conditions of supply subject to tariff rates, after observing the principles of natural justice, as contemplated under subsection (3) of section 126 has to finalise the assessment and the order of assessment made u/s 126 of the New Act may be modified or reversed or confirmed by the appellate authority. As the subsection (3) of section 126 itself provides for filing of objections by the person concerned and of affording reasonable opportunity of hearing as per subsection (3) of section 126 of the new Act the applicability of principles of natural justice is expressly provided. However, the scope and degree of principles of natural justice may vary from facts of each case, but suffice it to say that the assessing officer as well as appellate authority would be functioning as a quasi judicial authority in the matter of finalisation of assessment and of deciding the appeal.

20. The reliance was placed by the learned counsel for the Board and the Electricity Co upon the decision of the Delhi High Court in the case of Sohanlal (supra) for excluding the cases of theft of electric energy under the scheme of sections 126 and 127 of the New Act. In view of the observations made hereinabove, with respect, I can not agree with the view expressed by the Delhi High Court for a separate method and manner of making assessment of theft cases. If the legislature specifically provides for detailed procedure to be followed for unauthorised use of electricity, which can be said of inclusive of theft cases, there is no reason to exclude the cases of theft cases from the method and manner of making assessment u/s 126 and for hearing of the appeal u/s 127. Further, while comparing the distinction of language of section 135 of the Act, more particularly, at paras 41 and 42 of the said decision the Delhi High court has not considered that whether the meter is tampered by the person himself or somebody else has tampered the meter, so far as the consumption of electricity is concerned, it would be through tampered meter which even otherwise also is included in the unauthorised use of electricity. Therefore, said decision of the Delhi High Court is of no help to the respondent Board and the electricity

company nor the said decision can be read as laying down the proposition to the jurisdiction of the civil court after the conclusion of proceedings u/s 127 of the Act.

21. The reliance placed by the learned counsel for the respondent Board and electricity company upon the decision of this court (Coram: D.N. Patel, J) in case of Leenaben, W/o Sohanlal v. Ahmedabad Electricity Co (supra) to contend that the case of theft of electric energy can be said as covered by the conditions of supply and not under sections 126 and 127 of the New Act is illfounded in as much as in case of Leenaben(supra) the action of disconnection had taken place and the petitioner had challenged the action on the ground that procedure under sections 126 & 127 of the new Act is not followed and it was contended that no notice has been given before disconnection as required u/s 56 of the Act. The principal challenge was the action of disconnection and not the assessment of electricity charges, therefore the court held that no notice of disconnection is required to be given in the case of theft of electric energy u/s 56 of the Act. Such is not in the present case and therefore said decision can not be made applicable to the facts of the present case. Further, the decision is rendered by this court on 6.9.04, i.e. the day on which new Act for the rights of consumer and the Electricity Company did not come into force because as observed earlier the rights as per new Act shall stand governed after 10.12.2004. Therefore, also the said decision can not be said as ratio laying down any proposition of law as per new Act, as sought to be canvassed by the learned counsel for the Board and the Electricity Company.

22. It was contended on behalf of the petitioners that even if the finality is attached to the order of the appellate authority u/s 127 the civil court will have the jurisdiction if the action is in breach of statutory provisions or is against the principles of natural justice or ultravires the power under the Act. Whereas, on behalf of the respondent Board and the electricity company it was submitted that the civil court will have no jurisdiction whatsoever in view of section 145 of the Act.

Section 145 of the Act reads as under:

"145. Civil Court not to have jurisdiction:--

No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an assessing officer referred to in section 126 or an appellate authority referred to in section 127 or the adjudicating officer appointed under this Act is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

On plain reading of the aforesaid section, the jurisdiction of the civil court is excluded for entertaining any suit or proceeding in respect of any matter which the assessing officer referred to in section 126 or the appellate authority referred

to u/s 127 or adjudicating officer appointed under this Act has to determine. It is further expressly provided that no injunction shall be granted by any court or any authority in respect of any action taken or to be taken in pursuance of powers conferred or under this Act. Therefore, there is express provision for excluding the jurisdiction of the civil court in respect of the matters, which the assessing officer has to decide u/s 126 or the appellate authority has to decide u/s 127 of the Act. It has been further expressly provided that no injunction shall be granted in respect of any action taken or to be taken in pursuance of powers conferred under this Act. Therefore, pending the procedure of assessment u/s 126 and pending the decision by the appellate authority or the adjudicating officer, as the case may be, no injunction can be granted by the civil court. Further, the jurisdiction of the civil court is expressly excluded in respect of the matters to be decided by the assessing officer u/s 126 or the appellate authority u/s 127 or the adjudicating officer u/s 143, but it can not be held that even if the action is ultravires the powers u/s 126 or 127, or if the action is in breach of the statutory provisions of the Act, the jurisdiction of the civil court shall stand excluded. In any event, it is apparent that until the decision is rendered by the assessing officer or by the appellate authority or the adjudicating officer under this Act, the jurisdiction of the civil court stands expressly excluded. However, if the decision is taken by the appellate authority finally upon the assessment made and if as per the consumer exercise of power is ultravires the provisions of the Act or in breach of the statutory provisions of the Act, at that stage, but after final decision u/s 127 of the new Act the jurisdiction can not be said to be as excluded. Reference may be made to the decision of the Apex Court in the matter of Dhruv Green Field Ltd. Vs. Hukam Singh and Others, , more particularly the observations made at page 2844 and the decision of the Full Bench of Punjab & Haryana High Court in case of Ranbaxy Laboratories Vs. Punjab State Electricity Board and Another, and more particularly the observations made at para 28(3) of the said decision which has been made after taking into consideration the decision of the Apex Court in the case of Punjab State Electricity Board and Another Vs. Ashwani Kumar, upon which the reliance is placed by the learned counsel appearing for the respondent Board and the Electricity CO to contend that the civil court will have no jurisdiction whatsoever. In view of the above, jurisdiction of the civil court will normally stand excluded in respect of matters which the assessing officer has to decide u/s 126 or the appellate authority has to decide u/s 127 of the new Act, but after the decision, if the provisions of the new Act have not been complied with and/or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure, the civil court will have jurisdiction, but only to that extent and it will in any case not grant injunction against any authority exercising power under the Act.

23. The reliance placed upon the decision, dated 15.10.04 of this court (coram: D.N.Patel,J) in case of Ahmedabad Electricity Company Ltd v. Ramesh D. Devnani(Special Civil Application No. 8325/04) by the learned counsel for the

Board and the Electricity Company to contend that the civil court has no jurisdiction whatsoever and only the special court will have the jurisdiction is illfounded in as much as in the said case the court has considered the matter at the stage where before the assessment finalised by the assessing officer u/s 126 the suit was entertained and the injunction was granted by the Ahmedabad City Civil Court directing for reconnection. Further, the decision is rendered by the court on 15.10.2004 i.e. the day on which the new Act for the rights of consumer and the Electricity Company did not come into force because as observed earlier the rights as per the new Act shall stand governed after 10.12.2004. Therefore, the said decision can not be said as ratio laying down any proposition of law as per new Act as sought to be canvassed by the learned counsel for the Board and the Electricity Company. So far as the position prevailing prior to 10.12.2004 is concerned the jurisdiction of the civil court was not expressly excluded by the old Act and it was rather sought to be excluded by the conditions of supply. In view of the decision of the Division Bench of this court in the case of Kiran Industries Vs. Gujarat Electricity Board and Another, after the determination by the appellate committee of the Board/Electricity Company the consumer can approach the competent civil court by way of suit in the matter and the matters pertaining to the interim relief shall stand governed by the principles laid down by the division of this court in the aforesaid decision. Mr. Pujara, Ld. counsel for the petitioner made an attempt to submit that in view of subsequent decision of the Apex Court in the case of Punjab State Electricity Board and Another Vs. Ashwani Kumar, the judgment of the Division Bench of this court in the case of Kiran Industries, Mehsana (supra) may not hold the field. I am afraid such contention can be accepted. Further the decision of the Apex Court in the case of Punjab State Electricity Board (supra) is considered by the Full Bench of the Punjab & Haryana High court in the case of Ranbaxy Laboratories Vs. Punjab State Electricity Board and Another, and it is held that the decision rendered by the Supreme Court in the matter of Ashwinkumar (supra) is on its own facts and and the civil court will have the jurisdiction to entertain and try the suit of civil nature against the Board and therefore the said contention of Mr. Pujara can not be accepted. It deserves to be recorded that as per the settled legal position remedy of suit is no bar for power of this court to entertain a petition under Article 226 of the Constitution, but if the matter is such where fact finding inquiry is required to be undertaken, then, in such cases, for the cases governed by the position prior to 10.12.2004, the proper remedy will be civil suit, since this court can not conveniently undertake such fact finding inquiry by allowing the party to lead evidence under Article 226 of the Constitution.

24. It was also submitted on behalf of the Ld. counsel appearing for the petitioners that as per the provisions of section 154(6) there is reference to the amount so deposited by the consumer and the provision is made for refund of the amount by the Board or the licensee. Therefore, such deposit must be treated as deposit as supported by the proviso to section 56 of the new Act which provides for no disconnection if the amount is deposited under protest

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. Whereas, the learned counsel appearing for the respondent Board and the electricity company contended that the word "amount so deposited" is with reference to the amount deposited by the consumer in respect of theft cases and the assessment made and confirmed in respect of theft cases as per the conditions of supply and therefore it presupposes the prevailing conditions of supply enabling the Board or the electricity company to charge higher amount than the amount at the rate of 2 and 1/2 times the tariff rate and therefore it was submitted that the section 56 can not be made applicable in respect of theft cases or the unauthorised use of electricity.

25. Bare perusal of section 56(1) shows that except the proviso, the other part of subsection (1) of section 56 is more or less the same as it was u/s 24 of the old Act except minor difference in the period of notice which under the new Act is made as 15 days. The proviso is added under the new Act in section 56(1) against disconnection of electricity supply. But such would apply when there is dispute between the consumer and the licensee. However, as such, the dispute would be for the bill of electricity or for the functioning of meter or lines etc, but other than the cases which would fall under unauthorised use of electricity including through tampered meter which are said as the cases of theft of electric energy. Reference may be made to the decision of the Apex Court in the matter of M.P. Electricity Board, Jabalpur and others Vs. Harsh Wood Products and another, more particularly, the observations made at para 8 of the said decision whereby it is held by the Apex Court that section 24 of the old Act does not apply to the demand on detection of pilferage and it would apply to the cases regular supply made and when prior demand for payment of electricity charges with a notice of seven days is given and there is failure to make the payment. Therefore, the contention of the learned counsel for the petitioners can not be accepted to the extent that the word "amount so deposited" u/s 156(6) has the reference to the deposit made by the consumer u/s 56 of the Act.

There is an additional reason for nonapplicability of section 56 of the Act in cases of unauthorised use of electricity including through the tampered meter which are said as cases of the theft of electricity and the same is that section 50 of the new Act provides for Electricity Supply Code to be framed or specified by the State Commission. Section 50 of the new Act, inter alia, provides that the electricity code shall be for providing for recovery of electricity charges, intervals for billing of electricity charges, disconnection of supply of electricity for nonpayment thereof, restoration of supply of electricity, tampering, distress or damage to electric plant, electric lines or meter, entry of distribution licensee or any person acting on his behalf for disconnecting supply and removing the meter, entry for replacing, altering or maintaining electric lines or electric plant or meter. Therefore, the Electricity Supply Code may provide for disconnection of supply of electricity or restoration of supply of electricity in case of tampering or

damage to the electric lines or meter and it may also provide for replacing, altering or maintaining electric lines or meter. Therefore, the case of disconnection of electricity supply and restoration of electricity supply in case of tampering the electric lines or the meters can be said as separate aspects which may be provided in the Electricity Code as per section 50 of the new Act but subject to rider that such specification is not in contravention to express provisions of new Act and therefore section 56 of the Act providing for no disconnection can be made applicable in the matters pertaining to the cases other than that of pilferage of electricity which would normally be included in unauthorised use of electricity including through tampered meter which is said as theft of electricity.

26. It was also contended on behalf of the learned counsel for the petitioners that if section 56 of the new Act has no applicability in case of unauthorised dues of electricity or theft cases, and then in that case there will be immediate disconnection and neither section 126 nor 127 provides for reconnection or restoration of electricity supply pending the determination under sections 126 & 127 of the new Act. Therefore, such power be read by the court either with the assessing officer or with the appellate authority in such cases for directing the reconnection. On behalf of the respondent Board and the electricity company it was submitted that even for unauthorised use of electricity as well as for theft cases unless there is 100% payment of provisional assessment pending the finalisation of assessment or finalisation of appeal by the appellate authority, the consumer will not get right of reconnection nor the Board or the electricity company can not be compelled to reconnect the electricity supply by the assessing officer or by the appellate authority, as the case may be.

27. As observed earlier, the electricity code which may be framed u/s 50 of the Act by the State Commission may provide for disconnection in case of unauthorised dues of electricity including through tampered meter which are said as theft cases and it may also provide for restoration of supply of electricity in the case of tampering or distress or damage to the electric lines or the meter. However, if such Code is so framed by the State Commission, it would prevail, but, until such Electricity Supply Code is specified by the State Commission as there is no inconsistency, the right of disconnection with the Board and the Electricity Company and the right of restoration of the electricity supply with the consumer pending the finalisation of assessment shall be governed by the existing provisions of conditions of supply which have been framed under old Act or Gujarat Electricity Act, as the case may be. It is an admitted position that uptil now, the electricity supply code is not specified by the State commission. Therefore, after provisional assessment as per the conditions of supply is served upon the person concerned u/s 126 of the Act if he deposits the full assessed amount he shall not be subjected to any further liability or any action whatsoever and therefore in any case he would be entitled for restoration of electricity supply. But, in the event the provisional assessment is not acceptable to the person concerned and he is desirous to file objections, he may file objections as

per subsection (3) of section 126, but after the provisional assessment is served upon him, if he is desirous of getting the electricity supply restored, he would be required to deposit the amount as required under the prevailing conditions of supply for restoration of electricity supply in case of malpractice and also theft cases. But, after the assessment is so finalised by the assessing officer as per section 126 of the Act, pending the appeal before the appellate authority u/s 127 unless any interim order is passed by the appellate authority after entertaining the appeal against disconnection, may be on condition or otherwise, as the facts and circumstances of each case may require the consumer or the person concerned would be required to deposit the amount with the Board or the electricity company, as the case may be, pending appeal in case if he so desires to continue with the electricity supply. It is hardly required to be stated that even if the interim order is passed, such interim order shall be qua the assessment u/s 126 of the Act, and therefore, in any case, consumer would be required to pay the regular bill of electricity for electricity consumption pending finalisation of assessment by the assessing officer u/s 126 and pending hearing of appeal by the appellate authority u/s 127 of the new Act.

28. In view of the above observations and discussion, the conclusions can be drawn as under:

(i) The Electricity Act, 2003 for the Gujarat State has come into force on 10.12.2003. However, the rights of respondent Board and the Electricity CO on one hand and of the consumer on the other and shall stand governed by the conditions of supply as they existed prior to the new Act came into force upto 9.12.2004 and from 10.12.2004 onwards the conditions of supply would not continue to operate to the extent of inconsistency as observed in this judgment qua the method and manner of final assessment order made u/s 126 of the new Act and also for the tariff rates and for right of appeal and decision in appeal as per section 127 of the new Act.

(ii) The scope and ambit of assessment under sections 126 and 127 of the new Act is applicable in case of unauthorised use of electricity including through tampered meter, which are described as malpractices or theft of electricity in the existing conditions of supply etc. However, the amount deposited u/s 126(4) of the new Act does not operate as bar to any criminal liability or action for committing crime/offence by the consumer person concerned.

(iii) In case of dispute between the consumer and the licensee other than the unauthorised use of electricity including through tampered meter which is said as cases of theft, the consumer would be entitled to protection as provided by proviso to section 56 of the new Act, but in case of unauthorised use of electricity including through tampered meter which is said as the theft case, for disconnection of electric supply and for restoration of electricity supply, the provisions, as may be made in the Electricity Supply Code, which may be specified by the State Commission u/s 50 of new Act would be applicable and until such Electricity Supply Code is framed, such right of the licensee or the

consumer for disconnection or restoration of the electricity pending assessment u/s 126 of new Act and the appeal u/s 127 of new Act shall stand governed by the conditions of supply framed under the old Act or under Gujarat Electricity Supply Act as the case may be.

(iv) The conditions of supply as existed prior to 10.12.2004 shall continue to apply if they are not inconsistent with the provisions of new Act or in the matters specified under the new Act including the Electricity Supply Code which may be specified by the State Commission u/s 50 of the new Act. However, no matters can be specified under the Electricity Code in contravention to express provisions of the new Act.

(v) The power of Special court u/s 154(5) to determine the civil liability is consequent upon the finding of theft of energy in such criminal cases. The reference made u/s 154(6) of the Act to the word "amount so deposited by the consumer or the person" is in respect of the amount so deposited in the proceedings of assessment including the provisional assessment u/s 126 of the Act or the amount so deposited pending the appeal or after finalisation of the appeal u/s 127 of the Act.

(vi) The jurisdiction of the civil court for the period prior to 10.12.2004 shall stand governed for the period during which the rights of the respondent Board and the Electricity Co on one end and of the consumer on the other end is governed by the conditions of supply as they existed prior to the new Act came into force and therefore the decision of the Division Bench of this court in case of Kiran Industries (supra) for the jurisdiction of the civil court after the determination by the appellate committee of the Board/Electricity Co shall continue to apply till the new Act came into force, i.e. 9.12.2004 (date of inspection).

(vii) In view of section 145 of the new Act, the jurisdiction of the civil court is excluded for matters where the assessing officer has to decide u/s 126 or the appellate authority has to decide u/s 127 of the Act or the adjudicating officer has to decide u/s 143 of the new Act, but, after the decision is rendered by the assessing officer or the appellate authority or the adjudicating officer, as the case may be, the civil court will have the jurisdiction only in those cases where the provisions of the new Act have not been complied with or the assessing officer or the appellate authority have not acted in conformity with the fundamental principles of judicial procedure. In any case, in all cases, the civil court shall not grant injunction in respect of any action taken or to be taken in pursuance of the powers conferred by or under the new Act.

29. In view of the aforesaid conclusions, the findings/observations concerning the respective petition would be as under:

(i) In Special Civil Application No. 16838/04, the prayers are for quashing the order, dated 21.10.04 passed by the Appellate Committee and for direction of reconnection and restoration of electricity supply to the petitioner by the

respondent-Board. The date of inspection is 19.1.04 and therefore the position shall stand governed for the period prior to 10.12.2004.

(A) In view of the reasons recorded hereinabove, it can not be concluded that the Appellate Committee of the Board had no authority to hear the appeal as sought to be canvassed on behalf of the petitioner by Mr. Mehta nor can it be concluded that the impugned decision of the appellate committee is bad in law in view of the provisions of the new Act

(B) So far as the contentions raised by Mr. Mehta on the other aspects for challenging the order passed by the Appellate Committee is concerned, on the basis that the appellate committee had jurisdiction to entertain the appeal, the present petition is not entertained. However, it would be open to the petitioner to challenge the decision of the Appellate Committee in accordance with law by resorting to appropriate proceedings before appropriate court.

(C) Hence, Special Civil Application No. 16838/04 is not entertained and shall stand disposed of accordingly with liberty to the petitioner to challenge the decision of the appellate committee in accordance with law as aforesaid. Notice discharged. In the facts and circumstances, there shall be no order as to costs.

(ii) In Special Civil Application No. 393/05 the petitioner has challenged the decision of the appellate committee. The date of inspection is of 8.6.04. In view of the reasons recorded hereinabove, the position as prevailing for the period prior to 10.12.2004 shall continue to apply. It can not be said that the assessment is in contravention to provisions of section 126(6) of the new Act nor can it be said that the decision of the appellate committee is without jurisdiction since new Act can not be made applicable to the facts and circumstances of the case. Therefore, for the challenge to the order of the appellate committee on the position of law prior to 10.12.2004 is concerned, it would be open to the petitioner to challenge the decision of the Appellate Committee in accordance with law by resorting to appropriate proceedings before appropriate court.

(A) Hence, Special Civil Application No. 393/05 is not entertained and shall stand disposed of accordingly with liberty to the petitioner to challenge the decision of the appellate committee in accordance with law as aforesaid. Notice discharged. In the facts and circumstances, there shall be no order as to costs.

(iii) In Special Civil Application No. 283/05, the challenge is to the decision of appellate committee dated 23/24.11.04. The date of inspection/detection is 16 & 22.10.03.

(A) In view of the reasons recorded hereinabove, it can not be said that the decision of the Appellate Committee of the Board is bad in law and without jurisdiction in view of the provisions of the new Act.

(B) So far as the challenge to the decision of the appellate committee on the position of law prevailing prior to 10.12.2004 is concerned, the present petition is not entertained. However, it would be open to the petitioner to challenge the

decision of the Appellate Committee in accordance with law by resorting to appropriate proceedings before appropriate court.

(C) Hence, Special Civil Application No. 283/05 is not entertained and shall stand disposed of accordingly with liberty to the petitioner to challenge the decision of the appellate committee in accordance with law as aforesaid. Notice discharged. In the facts and circumstances, there shall be no order as to costs.

(iv) In Special Civil Application No. 334/05, the challenge is to the decision of appellate committee dated 22.11.04. The date of inspection/detection is 17.12.03.

(A) In view of the reasons recorded hereinabove, it can not be said that the decision of the Appellate Committee of the Board is bad in law and in contravention to the provisions of the new Act as sought to be canvassed by Mr. Dagli, Ld.Advocate for the petitioner. However, the case of the petitioner shall stand governed by the position of law as prevailing prior to 10.12.2004.

(B) So far as the challenge to the decision of the appellate committee on the position of law prevailing prior to 10.12.2004 is concerned, the present petition is not entertained. However, it would be open to the petitioner to challenge the decision of the Appellate Committee in accordance with law by resorting to appropriate proceedings before appropriate court.

(C) Hence, Special Civil Application No. 334/05 is not entertained and shall stand disposed of accordingly with liberty to the petitioner to challenge the decision of the appellate committee in accordance with law as aforesaid. Notice discharged. In the facts and circumstances, there shall be no order as to costs.

(v) In Special Civil Application No. 374/05 the challenge to the order of the appellate committee, dated 4.11.04 and the petitioner has also prayed for other incidental reliefs for getting opinion from the manufacturer as to whether seals are genuine or duplicate. The date of inspection is 20.3.2003.

(A) In view of the reasons recorded hereinabove, it can not be said that the decision of the appellate committee is bad in view in view of the provisions of new Act. However, for the challenge to the decision of the appellate committee on the grounds as may be available to the petitioner for the position of law prior to 10.12.2004 is concerned and for relief thereto, it would be open to the petitioner to resort to appropriate proceedings before appropriate court.

(B) Hence, Special Civil Application No. 374/05 is not entertained and shall stand disposed of accordingly with liberty to the petitioner to challenge the decision of the appellate committee in accordance with law as aforesaid. Notice discharged. In the facts and circumstances, there shall be no order as to costs.

(vi) In Special Civil Application No. 397/05, the challenge is to the decision of the appellate committee, dated 9.12.2004 and the date of inspection is of 25.8.04.

(A) In view of the reasons recorded hereinabove, it can not be said that the

decision of the appellate committee is bad and illegal in view in view of the provisions of new Act. However, so far as the challenge to the decision of the appellate committee on the the position of law prevailing prior to 10.12.2004 is concerned, it would be open to the petitioner to resort to appropriate proceedings before appropriate court.

(B) Hence, Special Civil Application No. 397/05 is not entertained and shall stand disposed of accordingly with liberty to the petitioner to challenge the decision of the appellate committee in accordance with law as aforesaid. Notice discharged. In the facts and circumstances, there shall be no order as to costs.

(vii) In Special Civil Application No. 955/2005, the date of inspection of unauthorised use of electricity is 22.1.2005 and, therefore, in view of the conclusions recorded hereinabove, as the date of inspection and the detection of unauthorised use of electricity, which is said as theft case through tampered meter is after 10.12.2004, the provisions Section 126 for provisional and final assessment shall be applicable and for appeal provisions of Section 127 of the New Act shall be applicable. The restoration of electricity supply is already ordered by this Court as per the order dated 3.2.2005 upon petitioner depositing 30% of the provisional bill and, therefore, now as the assessment is to be finalised u/s 126 of the New Act, the respondent Electricity Company is directed to undertake the procedure for finalisation of the assessment through the Assessing Officer as designated by the State Government. It has been submitted that the amount of 30% is not deposited, and therefore, the reconnection is not effected, However, pending the assessment u/s 126 if the petitioner deposits the amount as per the conditions of supply, which may be deposited on the basis of provisional assessment, he would be entitled for reconnection. After the decision of the Assessing Officer u/s 126 for final assessment, the petitioner will have further remedy of preferring appeal before the Appellate Authority and hence, as the assessment u/s 126 is yet to be finalised and thereafter the petitioner has alternative remedy of preferring appeal u/s 127 of the Act, the present petition is further not entertained at this stage and shall stand disposed of accordingly.

(viii) In Special Civil Application No. 14046 of 2004, the challenge in the petition is to quash and set aside the action of the Ahmedabad Civil Court of entertaining the Civil Suit No. 2674 of 2004 and of granting ex-parte ad-interim injunction for maintenance of status-quo with respect to electricity consumption of the petitioner. The suit has been filed pertaining to the inspection on 30.8.2004 and the disconnection is also on the same date. The respondent herein, who is plaintiff in the suit has preferred the suit at a stage where appeal is yet to be preferred against the provisional assessment as per the conditions of supply. As such, the case would stand governed by the position as prevailing prior to 10.12.2004, but in view of the decision of the Division Bench of this Court in case of "Kiran Industries" (supra), Civil Court, having regard to Section 41H of Specific Relief Act ought not to have granted interim injunction/interim relief and, therefore, the impugned order dated 13th October, 2004 passed by Ahmedabad

City Civil Court below Notice of Motion No. 2199/2004 in Civil Suit No. 2674/2004 is quashed and set aside. The petition shall stand allowed only to the aforesaid extent. Rule partly made absolute accordingly. Considering the facts and circumstances, there shall be no order as to costs.

(ix) In Special Civil Application No. 16157 of 2003 the challenge is for the assessment dated 30th October, 2004 issued by the respondent Company. The date of inspection is of 30th October, 2004 and the position shall stand governed by the law prevailing prior to 10.12.2004 qua the rights of the petitioner vis-a-vis the respondent Electricity Company. Therefore, the petitioner may prefer the appeal before the Appellate Committee of the respondent Company within a period of two weeks from today and if the petitioner is desirous to have the restoration of the Electricity Supply, petitioner may deposit the requisite amount as per the conditions of supply prevailing prior to 10.12.2004 and on such deposit, the electricity supply shall be restored to the petitioner within 48 hours from the date of such payment. However, such restoration of the electricity supply shall be subject to the decision which may be taken by the Appellate Committee and in any case, without prejudice to the rights of the petitioner to challenge the decision of the Appellate Committee as may be permissible in law. The petition shall stand disposed of accordingly.

(x) In Special Civil Application No. 1989 of 2005 the date of inspection is 10.2.2005 and, therefore, the position as prevailing after 10.12.2004 as per the New Act shall apply. In pursuance of the interim order passed by this Court on 16.2.2005, reconnection is ordered as per the conditions of supply on depositing 50% of the provisional assessment. However, in view of the reasons recorded hereinabove the provisions of Section 126 and 127 of the New Act for final assessment and of preferring appeal shall be applicable and, therefore, now as the assessment is to be finalised u/s 126 of the New Act, the respondent Electricity Company is directed to undertake the procedure for finalisation of the assessment through the Assessing Officer as designated by the State Government. After the decision of the Assessing Officer u/s 126 for final assessment, the petitioner will have further remedy of preferring appeal before the Appellate Authority. Hence, as the assessment u/s 126 is yet to be finalised and thereafter the petitioner has alternative remedy of preferring appeal u/s 127 of the Act, the present petition is further not entertained at this stage and shall stand disposed of accordingly.

(xi) In Special Civil Application No. 16721 of 2004, the date of inspection is 22.12.2004 and, therefore, the position as prevailing after 10.12.2004 as per the New Act shall apply. The reconnection is subject to the deposit of Rs.50,000/= plus Rs.2,15,000/= by the petitioner as per order dated 24.12.2004 read with order dated 30.12.2004. The same shall continue as per the conditions of supply since the amount is deposited. In the event if amount deposited is falling short as per conditions of supply for reconnection the petitioner shall deposit the shortage of the amount within three weeks from today. However, in view of the

reasons recorded hereinabove the provisions of Section 126 and 127 of the New Act for final assessment and of preferring appeal shall be applicable and, therefore, now as the assessment is to be finalised u/s 126 of the New Act, the respondent Electricity Company is directed to undertake the procedure for finalisation of the assessment through the Assessing Officer as designated by the State Government. After the decision of the Assessing Officer u/s 126 for final assessment, the petitioner will have further remedy of preferring appeal before the Appellate Authority and hence, as the assessment u/s 126 is yet to be finalised and thereafter the petitioner has alternative remedy of preferring appeal u/s 127 of the Act, the present petition is further not entertained at this stage and shall stand disposed of accordingly.

(xii) In Special Civil Application No. 16915 of 2004, the date of inspection is 24.12.2004 and, therefore, the position as prevailing after 10.12.2004 as per the New Act shall apply. The reconnection is on payment of Rs.1 lac and if any amount is falling short as per the conditions of supply for entitlement of reconnection, the petitioner will be required to deposit the amount within three weeks from today. However, in view of the reasons recorded hereinabove the provisions of Section 126 and 127 of the New Act for final assessment and of preferring appeal shall be applicable and, therefore, now as the assessment is to be finalised u/s 126 of the New Act, the respondent Electricity Company is directed to undertake the procedure for finalisation of the assessment through the Assessing Officer as designated by the State Government. After the decision of the Assessing Officer u/s 126 for final assessment, the petitioner will have further remedy of preferring appeal before the Appellate Authority and hence, as the assessment u/s 126 is yet to be finalised and thereafter the petitioner has alternative remedy of preferring appeal u/s 127 of the Act, the present petition is further not entertained at this stage and shall stand disposed of accordingly.

(xiii) In Special Civil Application No. 15682 of 2004, the date of inspection is 25.10.2004 and, therefore, the matter shall stand covered by the position as prevailing prior to 10.12.2004 and, therefore, the provisions of Sections 126 and 127 of the New Act cannot be made applicable to the facts of the present case. As the reconnection is ordered on condition to deposit 50% of the amount by interim order by this Court on 7.12.2004, the petitioner may prefer appeal before the Appellate Committee of the respondent Company within a period of two weeks from today and thereafter the petitioner will have remedy to challenge the decision of the Appellate Committee as may be permissible in law before appropriate Court. In view of the above, the petition is not further entertained and shall stand disposed of accordingly.

(xiv) In Special Civil Application No. 15544 of 2004, the date of inspection is 17.11.2004 and, therefore, the matter shall stand covered by the position as prevailing prior to 10.12.2004 and, therefore, the provisions of Sections 126 and 127 of the New Act cannot be made applicable to the facts of the present case. As the reconnection is ordered on condition to deposit 50% of the amount by

interim order of this Court on 3.12.2004, the petitioner may prefer appeal before the Appellate Committee of the respondent Company within a period of two weeks from today and thereafter the petitioner will have remedy to challenge the decision of the Appellate Committee as may be permissible in law before appropriate Court. In view of the above, the petition is not further entertained and shall stand disposed of accordingly.

(xv) In Special Civil Application No. 15528 of 2004, the date of inspection is 20.11.2004 and, therefore, the matter shall stand covered by the position as prevailing prior to 10.12.2004 and, therefore, the provisions of Sections 126 and 127 of the New Act cannot be made applicable to the facts of the present case. If the petitioner is desirous to get reconnection of the electricity supply the same may be restored if the requisite amount is deposited by the petitioner for claiming reconnection as per the conditions of supply, subject to the final decision of the Appellate Committee as per the position prevailing prior to 10.12.2004. The petitioner may prefer appeal before the Appellate Committee of the respondent Company within a period of two weeks from today and thereafter the petitioner will have remedy to challenge the decision of the Appellate Committee as may be permissible in law before appropriate Court. In view of the above, the petition is not further entertained and shall stand disposed of accordingly.

(xvi) In Special Civil Applications No. 16733 of 2004, No. 2617 of 2005, No. 2654 of 2005, and No. 2409 of 2005, the inspection dates are prior to 10.12.2004 and, therefore, the position prevailing prior to 10.12.2004 shall be applicable and for examining the petitioners' contentions raised in these petitions, a fact finding inquiry is required to be undertaken, which cannot be conveniently undertaken by this Court while exercising power under Article 226 of the Constitution of India and, therefore, in view of the decision of Division Bench of this Court in case of "Kiran Industries" (supra) the petitioners may prefer Civil Suit for challenging the decision of the Appellate Committee of the respondent Board before appropriate Civil Court and hence, the present petitions are not entertained and disposed of accordingly.

(xvii) In Special Civil Application No. 16255 of 2004, the inspection date is on 27.6.2004 and, therefore, the matter shall stand covered by the position as prevailing prior to 10.12.2004 and, therefore, the provisions of Sections 126 and 127 of the New Act cannot be made applicable to the facts of the present case. As the reconnection is ordered on condition to deposit the entire amount by interim order of this Court on 17.12.2004, the petitioner may prefer appeal before the Appellate Committee of the respondent Company within a period of two weeks from today and thereafter the petitioner will have remedy to challenge the decision of the Appellate Committee as may be permissible in law before appropriate Court. In view of the above, the petition is not further entertained and shall stand disposed of accordingly.

After the pronouncement of the judgment, the learned counsel for the petitioners,

whose cases are governed by the position prior to 10.12.2004, request that as the liberty has been given by this court to resort to appropriate proceedings before appropriate court, some reasonable time may be granted to the petitioners and till then statusquo may be maintained. Considering the facts and circumstances qua those matters where the position is covered as per law prevailing prior to 10.12.2004, statusquo as prevailing qua the supply of electricity shall be maintained for a period of one week from today.

2. Mr. Pujara, Ld.counsel appearing for the Ahmedabad Electricity Co which is respondent in the group of petitions requested that the operation of this judgment be stayed for some time qua the assessment of theft cases as per section 126 of the new Act as the electricity company is desirous to approach the higher forum. Considering the facts and circumstances of the case as the assessment u/s 126 is yet to be made, no serious prejudice will be caused and therefore the said request is not granted.