
(2012) 04 AHC CK 0153
In the Allahabad High Court
Case No : C.M.W.P. No. 67180 of 2008

Sanjay Rizvi

APPELLANT

Vs

Managing Director, Kanpur Electricity Supply and Others

RESPONDENT

Date of Decision : 20-04-2012

Acts Referred:

Constitution of India, 1950 — Article 14
Electricity Act, 2003 — Section 126, 127, 136

Citation : AIR 2012 All 163 : (2012) 3 AWC 3525

Hon'ble Judges : V.K. Mathur, J; R.K. Agrawal, J

Bench : Division Bench

Advocate : Govind Krishna, for the Appellant; Mridul Tripathi, Counsel, for the Respondent

Final Decision : Disposed Of

Judgement

V.K. Mathur, J.—We have heard Shri Govind Krishna, Learned Counsel for the petitioner and Smt. Mridul Tripathi representing respondent Nos. 1 to 6. Facts of the case stated in brief are that the petitioner is carrying on business of repairing of pumps and diesel generating sets and had obtained commercial electricity connection No. CNO/5083/011552 from respondents and was regularly depositing bills. An inspection was made by respondent Nos. 4 to 6 on 30.3.2008 in his premises. It is alleged that though the Inspecting Authority did not find any irregularity with regard to use of the electricity by the petitioner, however, respondent Nos. 4 and 5, who were annoyed because the petitioner had not succumbed to their earlier illegal demands, recorded incorrect conclusion in the inspection memo and noted an estimated amount of Rs. 1,40,000 which the petitioner allegedly had paid lessor to the actual consumption and also imposed Rs. 2,80,000 penalty upon the petitioner and further demanded reply within 24 hours on 31.3.2008. The petitioner has stated that he never misused or stole the electricity at any point of time, therefore, in order to apprise the correct facts he requested for the verification of electricity meter installed in the premises through Meter Reader Instrument Software (M.R.I.) and mentioned this fact in

the inspecting memo itself. Copy of the inspection memo containing the request of the petitioner for M.R.I. has been filed as Annexure-1 to the writ petition. The petitioner also submitted detailed reply before the respondents on 31.3.2008 contending that the inspection memo contains incorrect facts and he has never stolen the electricity line and as such he is not liable to deposit the huge amount, as directed therein. The petitioner has further contended that while framing the provisional assessment the prescribed procedure has not been followed. Copy of the reply dated 31.3.2008 has been submitted as Annexure-2. The respondents, however, wrongly directed respondent No. 7 to lodge an F.I.R. u/s 136 of the Electricity Act, 2003 and the same was lodged on 31.3.2008 at P.S. Juhi, district Kanpur Nagar at Case Crime No. 117 of 2008. To avoid harassment and humiliation the petitioner deposited Rs. 1,10,000 with the respondent No. 3 on 11.4.2008. Thereafter, respondent No. 3 informed about the said deposit to the Investigating Officer vide letter dated 17.5.2008. In spite of the aforesaid deposit the police officials continued threatening the petitioner and in this view of the matter the petitioner was compelled to deposit the remaining amount of penalty of Rs. 1,70,000 on 19.5.2008. It has been contended that the petitioner was not obliged to deposit the said amount as he had not committed any offence or irregularity. Photocopies of deposit of amount have also been filed. It is further contended that the petitioner met respondent Nos. 1 to 3 several times and requested them for the verification of the meter through M.R.I. and also requested that the provisional assessment, which has been illegally drawn, may be withdrawn and suitable orders with regard to the actual consumption of the electricity by the petitioner may be passed after taking into consideration the bills already deposited by him. The petitioner submitted representations in this regard on 18.4.2008, 2.7.2008 and 7.8.2008, but no remedial measures were taken by the respondents.

2. Further contention is that it was incumbent upon the respondents to have at least verified the electricity meter which was taken into possession by them through the procedure of M.R.I. and its non-verification renders the entire order per se illegal. The respondents have not disposed of the application/representations submitted by the petitioner. The act of the respondents is indicative that exorbitant amount of penalty has been imposed deliberately and purposely. The correct procedure was not adopted while making the inspection and preparing the inspection memo. Therefore, the petitioner has prayed that a writ in the nature of mandamus be issued against the respondents directing them to refund the penalty amount of Rs. 2,80,000. He has further prayed that the respondents be mandated to dispose of the applications/representations submitted by the petitioner and get the electricity meters verified through M.R.I. He has also sought directions in the nature of mandamus directing respondent Nos. 1, 2 and 3 to pay damages for inconvenience caused to him on account of their harassing attitude.

3. In the counter-affidavit of Shri A.K.S. Chauhan, Executive Engineer it has been stated that the petitioner was caught using unfair means for consumption of

electricity and was guilty of theft and respondent Nos. 4 to 6 have got no personal ill will towards the petitioner. During the checking the irregularity had been detected and deposit of Rs. 1,40,000 had rightly been asked for by the authorities to be paid. It has been clarified that the amount of Rs. 2,80,000, which has been described as penalty in the writ petition, is infact compounding fees to be imposed upon the petitioner by the State Government, so that the petitioner may save himself from criminal action. Since the petitioner was found guilty of theft of electricity, therefore, as per the provisions of Electricity Act, 2003 and the Electricity Supply Code, 2005 the assessment as well as the compounding has been calculated and informed to the petitioner. It has been admitted that the meter has been sealed and taken for further testing. In the counter-affidavit it has been further averred that while calculating the provisional assessment the prescribed procedure has been strictly followed. Till the filing of the F.I.R. the petitioner had not paid any amount towards compounding, in this view of the matter, the F.I.R. has been lodged against him. Deposit of Rs. 1,10,000 on 11.4.2008 and deposit of Rs. 1,70,000 on 19.5.2008 has been admitted. No exorbitant penalty has been imposed upon the petitioner and prima facie he is guilty of theft. The meter is stated to have been sealed and taken into possession by the respondents. Further testing of the meter will be carried out and the assessment will be made based upon the same. The ingredients required for establishing the theft are established in the case of the petitioner and the respondents have complied with the directions of the Hon''ble Court's judgment rendered in Ashok Kumar and others v. State of U.P. and others, 2008 (6) ADJ 660. The respondents are not concerned with the refund of Rs. 2,80,000 which is compounding fees prescribed by the State Government.

4. Supplementary counter-affidavit of Shri S.K. Verma was filed subsequently in the light of the order of the court dated 23.11.2011 whereby counsel for the respondent K.E.S.Co. was directed to obtain instructions as to whether M.R.I., as prayed by the petitioner, was done. It has been contended that the meter installed in the premises of the petitioner was a China Make meter in which there were provisions for recording M.R.I., but due to unavailability of M.R.I. and Softwares in K.E.S.Co. it could not be recorded, It has been averred that subsequently installation of China made meters was stopped and the M.R.I. and Softwares for recording M.R.I. is still not available in K.E.S.Co. It has been contended that the Electricity Test Division of K.E.S.Co. has submitted a letter in the form of report before the respondent explaining the method of commission of theft of electricity by the petitioner in China Make meter. Copy of this letter/report dated 3.2.2012 has been filed as Annexure S.C.A.-1 to the affidavit. Further contention is that the representation of the petitioner has been decided on 3.2.2012 and the copy of the decision on representation has been filed as Annexure S.C.A.-2.

5. In the rejoinder-affidavit, in reply to the supplementary counter-affidavit, the petitioner Sanjai Rizvi has stated that the request for M.R.I. test was made by the petitioner on 30.3.2008, as is evident from Annexure-1 to the petition and

the respondents even after a lapse of about 4 years have not provided the same to the petitioner. This fact indicates that there was no unauthorised use of electricity by the petitioner. The testing report with regard to the inspection dated 30.3.2008 has been issued on 3.2.2012 (during pendency of writ petition) which is signed by the Executive Engineer on 2.2.2012 and is addressed to the Executive Engineer of Electricity Distribution Division, Govind Nagar. K.E.S.Co., Kanpur Nagar which clearly shows that the document has been manufactured by the respondents just to save their skin. Incorrect conclusion has been drawn by the respondents on the basis of alleged testing of another meter bearing No. 0307021459 whereas the number of meter of the petitioner which was taken into custody at the time of the alleged checking was 0307014542 infact no effort has been made by the respondents to check the meter taken into custody, which was installed in the premises of the petitioner. Further the method adopted for alleged testing is absolutely incorrect because of the fact that the meter installed in the premises for carrying on the business was of such nature that a three phase power supply was required for it. The perusal of office memo No. 117 dated 3.2.2012 issued by respondent No. 3 establishes the fact that the petitioner has been made victim of the false allegations against him. This fact is further fortified from the facts that after the inspection dated 30.3.2008 the double meter has been installed in the premises of the petitioner and consumption of the electricity thereafter has almost remained same as is evident from the bills, the records whereof is available with the respondents.

6. Shri Govind Krishna, Learned Counsel for the petitioner has submitted that respondent Nos. 4 to 6 were exerting undue pressure for extraction of illegal money from the petitioner and when they did not succeed, the inspection was made in order to harass the petitioner, who never indulged in theft of electricity. Infact no irregularity was found by the Inspecting Team with regard to the use of electricity by the petitioner, however, in the inspection memo incorrect conclusion was recorded and exorbitant provisional assessment to the tune of Rs. 1,40,000 showed as amount paid less and Rs. 2,80,000 was wrongly imposed as penalty, which was subsequently deposited under duress to save further humiliation. The petitioner never misused or steal the electricity line at any point of time and he insisted for verification of electricity meter installed in the premises through Meter Reader Instrument Software, M.R.I. and made a note demanding M.R.I. in the inspection memo itself. While calculating the provisional assessment the prescribed procedure was not adopted and the representations/applications made on various dates were not paid any heed and finally in order to save their skin the representation of the petitioner was disposed of arbitrarily in a prejudicial manner on 3.2.2012.

Learned Counsel has further submitted that M.R.I. of the meter installed in the premises was not carried out by the respondents despite several requests and specific order of the Court dated 23.11.2011. In the supplementary counter-affidavit It has been contended by the respondents that a report has been received by the Electricity Test division explaining the method of the commission

of theft of electricity by the petitioner In China Make meter and though the provisions of recording M.R.I. was available in the meter installed at the premises of the petitioner, however, due to unavailability of M.R.I. and software in K.E.S.Co. it could not be recorded. In this view of the matter, Learned Counsel has vehemently argued that without verification of the alleged theft through M.R.I. and in view of the fact that all the installations in the premises were of such nature that they could be run only through three phased supply it was practically impossible that any theft could have been made or attempted by the petitioner. The allegation that theft had been made could not be substantiated. The petitioner is also entitled to get Rs. 2.80,000 from the respondents even if it was compounding fees realisable by the State Government instead of penalty because the payment had been made due to the fact that the F.I.R. had been lodged on totally baseless grounds due to ill will of the respondents against the petitioner falsely and the petitioner was compelled due to their illegal act to deposit the said amount. Further the provisional assessment is exorbitant and it should also be corrected. Reliance has been placed on a Division Bench judgment of this Court in Ashok Kumar and others v. State of U.P. and others, 2008 (6) ADJ 660.

Learned Counsel for the petitioner has however fairly stated that only a bulb was connected with the supply line before the meter so that petitioner could know as to whether supply was coming or not.

7. Smt. Mridul Tripathi, Learned Counsel for the respondents has submitted that the checking was duly made and the petitioner was found prima facie guilty of theft. The M.R.I. of the meter, which was seized from the premises of the petitioner, could not be made because though there was a provision for the M.R.I. test but M.R.I. and software for the meter was not available with K.E.S.Co. and because of this difficulty further installation of China Make meter was stopped. A stimulation test of an old meter China Make was carried out in the lab wherein the incoming neutral was removed and outgoing neutral was also removed from the cut out and the R phase of: meter was joint through a bulb with the neutral and the R phase was run on one kilowatt load through a separate neutral. The report shows that the current of 5 amperes and almost zero voltage was recorded while the electricity consumption was not recorded in this test. In this view the petitioner deliberately isolated the neutral and he connected the phase to the neutral of the meter and ran the load by joining an additional neutral and thereby committed theft.

Learned Counsel has further contended that the application/ representation of the petitioner has been disposed of after due consideration. The petition is not maintainable as alternative remedy u/s 127 of the Electricity Act is available to the petitioner against the provisional assessment. The amount of compounding fees is leviable by the State Government and as such the same cannot be refunded in any event by the respondents. Reliance has been placed on a Division Bench judgment of this Court decided on 24.3.2011 in Writ-C No. 8747

of 2012, *Abhinav Seva Sansthan Mahavidyalaya v. U.P. Power Corporation Nigam Ltd.*, and others.

8. It is not disputed that M.R.I. of the meter which was installed in the premises of the petitioner at the relevant time could not be undertaken. We have been informed that meter reading and other performance data recorded in the meter is downloaded by an instrument known as Meter Reading Instrument (M.R.I.) and the said data can be interpreted through the base computer system and through a memory chip installed in the meter data up to a period of 10 years can be retained and this data can be retrieved through M.R.I. The special software in the energy meter detects and reports conditions of tampers and fraud like missing potential, reversal of current imbalances or by pass etc. along with data and time and the meter works accurately irrespective of the phase sequence of the supply. Through supplementary-affidavit of Shri S.K. Verma it has been submitted that since the meter installed in the premises of the petitioner was a China Make meter wherein the provision for recording the M.R.I. was provided, however, due to unavailability of Software or M.R.I. in K.E.S.Co. it could not be recorded. The Electricity Test Division of K.E.S.Co. has filed a report explaining in brief the method of commission of theft to the respondents in China Make (sic)ers. In the instant case only provisional assessment has been made as according to the version of respondents taken in counter-affidavit final assessment will be made after M.R.I. test.

9. The argument of Learned Counsel for the petitioner that the prescribed procedure was not adopted at the time of the inspection and without any justification an amount of Rs. 1,40,000 was provisionally assessed as the amount which has been paid lesser by practising theft and the figure is arbitrary and without any basis carries weight and it has to be seen whether the amount shown to be less paid is justified or not. Technically assistance of M.R.I. might have been of great value in this regard, but since no M.R.I. of the meter installed at the premises could be undertaken, then it has to be seen whether test of a similar type of meter may be helpful. Further the question whether in the absence of M.R.I. can the final assessment of the amount alleged to have been paid less may be ascertained correctly?

10. The effect of alleged non-observance of the prescribed procedure for inspection and the preparation of provisional bill, affording opportunity of hearing etc. are also of vital significance. We are of the considered view that the entire controversy may be properly looked into by persons having technical know how or background better than Judges, who do not have proper technical know how.

11. In the case of *Whirlpool Corporation*, the Apex Court has held that alternative remedy would not operate as a bar where the writ petition seeks enforcement of any of the fundamental rights; or where there is violation of principles of natural justice; and where the order or the proceedings are wholly without jurisdiction or the vires of an Act is challenged.

In the case of Harbanslal Sahnia and another, the Apex Court has reiterated the aforesaid principles as laid down in Whirlpool Corporation's case.

In the case of A.B.L. International Ltd. (supra), the Apex Court has held that in an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable and merely because some disputed questions of fact arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule and a writ petition involving a consequential relief of monetary claim is also maintainable. The Apex Court has further held that the Court has imposed upon itself certain restrictions in exercise of this power. Thus, unless action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and justifiable reasons, this plenary right of the High Court to Issue a prerogative writ will not normally be exercised to the exclusion of other remedies available.

In the case of Sanjana M. Wig the Apex Court has held that when an action of the party is dehors the terms and conditions contained in an agreement as also beyond the scope and ambit of the domestic forum created therefore, the writ petition may be held to be maintainable.

In the case of Popcorn Entertainment the Apex Court has reiterated the principles laid down by it in the case of Whirlpool Corporation (supra).

In the case of Ashok Kumar (supra), this Court had entertained the writ petition only on the ground that the issues raised are purely legal and involves jurisdictional issue.

13. In the instant matter admittedly a bulb was connected to indicate whether the supply of electricity was coming or not in the supply line by the petitioner. Prima facie this also amounts to theft. The authority of the respondent K.E.S.Co. to make inspection has not been challenged and the availability of alternative remedy by way of appeal has been provided u/s 127 of the Electricity Act read with Clause 6.8 (d) of U.P. Electricity Supply Code, 2005. The procedure for Investigation and Enforcement and Assessment and appeal have been provided u/s 126 and Section 127 respectively of the Electricity Act, 2003, which are being quoted for better understanding herein below.

14. Section 126 of the Electricity Act, 2003 regarding Investigation and Enforcement is reproduced as under:

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

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

[(3) The person, on whom a notice has been served under sub-section (2), shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who shall, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment within thirty days from the date of service of such order of provisional assessment, of the electricity charges payable by such person.]

(4) Any person served with the order of provisional assessment may, accept such assessment and deposit the assessed amount with the licensee within seven days of service of such provisional assessment order upon him.

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

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

Explanation. - For the purposes of this section-

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

(b) "unauthorised use of electricity" means the usage of electricity--

(i) by any artificial means; or

(ii) by a means not authorised by the concerned person or authority or licensee;
or

(iii) through a tampered meter; or

(iv) for the purpose other than for which the usage of electricity was authorized ;or

(v) for the premises or areas other than those for which the supply of electricity was authorised.

127. Appeal to appellate authority.--(1) Any person aggrieved by the final order made u/s 126 may, within thirty 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 an order of assessment under sub-section (1) shall be entertained unless an amount equal to [half 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 sub-section (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 sub-section (1) passed under sub-section (3) shall be final.

(5) No appeal shall lie to the appellate authority referred to in sub-section (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.

15. Clause 6.8 of Uttar Pradesh Electricity Supply Code, 2005 is reproduced as under:

6.8 (a) Procedure for Inspection, Provisional Assessment, Hearing and Final Assessment in case of unauthorized use of electricity (U.U.E.) u/s 126 of the Act:

(i) An Assessing Officer shall suo motu, or on receipt of reliable information regarding unauthorized use of electricity or on instruction from higher authority, promptly conduct inspection of such premises, exercising due diligence. [Annexure-7.3 (i)]

(ii) The Assessing Officer, if required to do so, may handover his business card to the consumer before entering the premises. Photo ID card shall be carried by each team members.

(iii) The access to consumer premises shall be in accordance to Clauses 4.30 to 4.34. Provided that the occupant of the place of search or any person on his behalf shall remain present during the inspection. A list of all things seized in the course of such search shall be prepared and delivered to such occupant or person who shall sign the list.

(iv) A report shall be prepared at site giving details of connected load condition and details of old seals and resealing done, working of meter, details of new seals. The report shall mention any irregularity noticed which may lead to an inference of unauthorized use of electricity in the format given in Annexure-6.4. The Inspecting Officer shall carry seals for this purpose.

(v) The report shall clearly indicate whether or not conclusive evidence substantiating the fact that U.U.E. was found. The details of such evidence should be recorded in the report. The report shall be signed by each member of

the inspection team and handed over to the consumer or his/her representative at site immediately under proper receipt. In case of refusal by the consumer or his/her representative to either accept or give a receipt, a copy of inspection report shall be pasted at a conspicuous place in/outside the premises and may be photographed. Simultaneously, the report shall be sent to the consumer under Registered Post/Speed Post on the day or the next day of the inspection.

(vi) Within 3 working days of the date of inspection, the Assessing Officer shall analyze the case after carefully considering all the evidence including the consumption pattern, wherever available and the report of inspection. If it is concluded that no unauthorized use of electricity has taken place, no further action will be taken.

(b) Notice to the Consumer and his reply:

[(i) If the Assessing Officer reaches to a conclusion that Unauthorized Use of Electricity has taken place (as defined under Explanation to Section 126 of the Act), he shall serve a provisional assessment bill along with show cause notice to the consumer giving 15 working days for submission of reply under proper receipt fixing a date and time of hearing. The notice shall invite objections in writing from the consumer, against the charges and provisional assessment and require presence of the consumer on the date of hearing.]

[(ii) If the bill is deposited within 7 days of the service of such provisional assessment order on the consumer, the reply to the notice and subsequent hearing shall not be necessary.]

(c) Hearing:

(i) On the date of hearing, the Assessing Officer shall hear the consumer. The Assessing Officer shall give due consideration to the facts submitted by the consumer and pass, (within 15 working days), a speaking order as to whether the case of U.U.E. is established or not. The order shall contain the brief of inspection report, submissions made by the "consumer in his written reply and during hearing.

(ii) A copy of the order shall be served to the consumer under proper receipt, and in case of refusal to accept the order or in absence of the consumer, shall be served on him under Registered Post/Speed Post. The consumer shall be required to make the payment within 15 days of receipt of final order for assessment.

(iii) If the assessing officer reaches to the conclusion that unauthorized use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorized use of electricity has taken place and if, however, the period during which such unauthorized use of electricity has taken place cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection for all categories of services, and he shall provisionally assess the consumption as per the procedure specified in Annexure-6.3.

Note.--The assessing officer can draw "conclusions" that unauthorized use of electricity has taken place, based on findings that reveal existence of conditions of "unauthorized use of electricity" given in "Explanation" of Clause 6.8, and evidence found suggests that unauthorized use of electricity was not made with "dishonest" intentions, but due to ignorance of procedure or rules or compulsions that only warrant a suitable assessment commensurate with the Act.]

[(iv) The assessment under (iii) above shall be made at a rate equal to two times the tariff rates applicable for the relevant category of services. The amount billed at this rate (two times the tariff rates] shall not be taken into consideration for the purpose of computing consumer's liability to pay monthly/annual charges, wherever applicable.]

(d) Appeal:

(i) Any person aggrieved by a final order made (under sub-clause (c) (i)) above, may, within 30 days of the order, prefer an appeal to the appellate authority in the manner specified in Annexure-6.2.

(ii) No appeal shall be entertained by the appellate authority unless the person deposits (one half of the amount) assessed by the Assessing Officer, along with prescribed fee with the concerned division of the licensee and encloses documentary proof of such deposit.

(iii) No appeal shall lie to the appellate authority against the final order made with the consent in writing of the assessed person.

(iv) The licensee shall not take any action for recovery of assessed amount for the period of 30 days, mentioned in (i) above, where the assessed person intimates the Assessing Officer, within this period, of his intention of filing an appeal to the appellate authority.

(v) Within 3 days of receipt of appeal, the appellate authority shall issue a notice, to the appellant and the Assessing Officer fixing date of hearing within 15 days of the date of notice. The appellate authority shall dispose off the appeal within 30 days by a speaking order and shall send the copy of the order to Assessing Officer and the appellant.

(vi) The order shall contain the brief of inspection report, submissions made by person in his written reply and during personal hearing and reasons for acceptance or rejections of the same.

(vii) The appellate authority may, for reasons to be recorded, consider a reduced period of unauthorized use of electricity and assess the amount accordingly.

(e) Default in payment of assessed amount or installments thereof-

(a) In case of default in payment of the assessed amount or any installment granted or agreed by the licensee, the licensee shall, after, giving a 15 days notice in writing, disconnect the supply of electricity, by any suitable means such

as disconnection from pole/transformer, removing meter, electric line, electric plant and other apparatus. The reconnection shall be carried out as per the provisions of reconnection laid down in Clause 4.39.

(b) When a person defaults in making payment of assessed amount, he shall be liable to pay an amount of interest at the rate of sixteen percent per annum with effect from the date of expiry of 30 days from the date of order of assessment, in addition to the assessed amount, compounded every six months.

(c) The levy of charges on account of U.U.E. shall continue till the cause of levy is removed and verified by the licensee.

[Explanation. -- For the purpose of this Clause 6.8, the "unauthorized use of electricity" means the usage of electricity--

(i) by any artificial means, or

(ii) by a means not authorized by the concerned person or authority or licensee, or

(iii) through a tampered meter, or

(iv) for the purpose other than for which thus usage of electricity was authorized, or

(v) for the premises or areas other than those for which the supply of electricity was authorized.]

16. The provisional assessment notice in the instant case does not appear to have been made on the basis of any authentic data. Section 126 of the Electricity Act, 2003 prescribes the procedure read with Clause 6.8 of the Electricity Supply Code, 2005 the petitioner has not been as per his version provided adequate opportunity to defend himself. The term "unauthorised use of electricity" is defined in Explanation (b) to Section 126 of the Electricity Act, 2003 and Clause (ii) and (iii) provides-

(ii) by a means not authorised by the concerned person or authority or licensee; or

(iii) through a tempered meter; or

17. Before issuing an assessment notice the authority must record its conclusion that the person concerned or any other person benefited has used electricity unauthorisedly in terms as defined in Explanation (b) to Section 126 of the Electricity Act, 2003. Though the 2003 Act does not provide that Assessing Officer has to provide opportunity of hearing at the stage of recording of the conclusion, however, it does not simultaneously prohibits the same. We are of the view that no person can come to conclusion of unauthorised use of electricity suo motu without giving an opportunity to the concerned person as deprivation will amount to violation of principles of natural justice.

18. A perusal of Clause 6.8 (a) (i), (ii), (iv), (v) on inspection of the premises by the Assessing Officer, if it is found that some irregularities constituting unauthorised use of electricity have been committed, the Assessing Officer shall prepare a report at the site giving details thereof and will handover the copy of such report to the consumer or his representative. The emphasis is that prima facie conclusion recorded by the Assessing Officer should be communicated to the consumer. Clause 6.8 (b) (ii) shows that the notice shall require the consumer to give his objections against the charges and provisional assessment. Clause 6.8 (c) (i) provides that opportunity of personal hearing shall also be given and thereafter the Assessing Officer shall pass a speaking order specifically disclosing whether unauthorised use of energy is established or not and where it is so determined the quantum of amount which the consumer has to pay, i.e., assessment shall be made by him. Thus, Clause 6.8 provides a detailed procedure in which the assessment would have to be made by the Assessing Officer. In this view of the matter since equally efficacious alternative remedy is available to the petitioner, we dispose of the writ petition with a direction to the petitioner to approach concerned authorities of K.E.S.Co. raising all the objections taken in the writ petition. In the form of a representation along with a copy of the writ petition whereupon the concerned authorities shall decide the representation by passing a reasoned order after affording opportunity of hearing to the petitioner as to whether unauthorised use of electricity (U.U.E.) by the petitioner is established or not and if the unauthorised use of electricity is found, the concerned authority shall pass a final assessment order. The final assessment shall be made for entire period during which such unauthorised use of electricity has taken place subject to limitation provided under Clause 6.8 (c) (iii) of the Code, 2005. If aggrieved from the final order, the petitioner may prefer an appeal within 30 days of the order, as provided u/s 127 read with Clause 6.8 (d) of U.P. Electricity Supply Code, 2005.

No order as to costs.