(2008) 02 MAD CK 0094

In the Madras High Court

Case No : Writ Appeal (MD) No''s. 378 of 2005 and 107 of 2007, Writ Appeal No''s. 895 and 1736 of 2005 and WAMP No''s. 531, 532, 1663 and 3223 of 2005 and 1 of 2007

The Executive Engineer (Distribution), Tamil Nadu Electricity Board — APPELLANT

Vs

S.J. Gayas and The Secretary, Energy Department, Government of Tamil Nadu
The Executive Engineer, Tamil Nadu Electricity Board and The Superintendent Engineer, Tamil Nadu Electricity Board Vs Thiru Nachiappan
The Superintendent Engineer, Tamil Nadu Electricity Board, The Executive Engineer, Tamil Nadu Electricity Board and The Assistant Executive Engineer, Tamil Nadu Electricity Board Vs P. Rajaram
The Superintendent Engineer Vs Dindugul Steel Rolling Mills (P) Ltd. and The Secretary, Energy Department, Government of Tamil Nadu — RESPONDENT

Date of Decision : 05-02-2008

Acts Referred:

Constitution of India, 1950 — Article 14
Electricity (Supply) Act, 1948 — Section 49
Electricity Act, 2003 — Section 126, 126(5), 126(6), 135, 136
General Clauses Act, 1897 — Section 6, 6(1)

Citation : AIR 2008 Mad 148 : (2008) 2 MLJ 812 : (2008) WritLR 816

Hon'ble Judges : S.R. Singharavelu, J;Elipe Dharma Rao, J

Bench : Division Bench

Advocate : P.S. Raman, AAG for N. Muthuswami, for the Appellant; Ar. L. Sundaresan, for C.S. Krishnamoorthy, for R.1 in W.As. Nos. 378, 379, 895 abd 1736 of 2005, K. Seshadri, for R.1 in WA. 107/2007 and Geetha Thamaraiselvan, G.A. for R.2 in WAs. 378 and 379/05 and R. 2 in WA. 107/2007, for the Respondent

Final Decision : Allowed

Judgement

Elipe Dharma Rao, J.—Since in all these matters, a common question of law is involved, ail these matters are taken up for common hearing and are being disposed of by this common judgment.

2. The common facts, in a nutshell, in all these matters, are that the sole respondent or the first respondent, as the case may be, in the above cases

(who are hereinafter referred to as the ''consumers'', for the sake of convenience) are accused of committing electricity theft and accordingly, the

Electricity Department had issued show-cause notices to them. In some cases, the consumers, have earlier approached this Court on the ground

that the enquiry was conducted by the concerned Officer without serving the show-cause notices to them and this Court, has directed the

authorities that the consumers should be given time to reply to the show-cause notice and if the authorities are not satisfied, with the reply, an

enquiry has to be conducted on a different date, after giving seven days notice and then to take a decision, whereupon a show-cause notice was

issued and after following the other formalities, ultimately, assessment orders were issued to the consumers, directing them to pay the assessed

loss. In some cases, civil suits are initiated challenging the assessment orders. Since the appeals filed to the higher-ups also failed, the respective

consumers tiled Writ Petitions No. 3969 of 2005 and 6188 of 2005 before this Principal Bench and W.P.(MD) Nos. 4406 of 2005, 4407 of

2005 and 4347 of 2006 before the Madurai Bench of this Court. In all the matters, a learned single Judge of this Court, while sitting both at the

principal seat and also at the Madurai Bench of this Court, has disposed of the writ petitions holding as follows:

Under the new Section 126(5) and (6) of the Electricity Act, 2003, in respect of the supply other than domestic or agricultural, the maximum

period of levy for the assessment can be only for six months and the rate of such assessment cannot also go beyond 1 1/2 times the tariff applicable

for the relevant category. In the impugned proceedings, admittedly, the assessment has been made for 300 days, which will amount to 10 months

period and the rate of assessment is also three times of the tariff applicable to the petitioner.

3. While observing so, the learned single Judge has set aside the impugned assessment orders and directed the respondents therein viz. the

Electricity Department to make the assessment strictly inconsonance with the provisions u/s 126(5) and (6) of the Act before seeking recovery of

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such assessment, further directing the writ petitioners consumers to deposit certain amounts, on which the power supply shall be restored.

4. Aggrieved, the Electricity Department has filed W.A.(MD) Nos. 378 of 2005, 379 of 2005 and 107 of 2007 before the Madurai Bench of this

Court and W.A. Nos. 895 of 2005 and 1736 of 2005 before this Principal Bench.

5. When W.A.(MD). Nos. 378 and 379 of 2005 were taken up for hearing before a Division Bench of the Madurai Bench on 11.9.2006, since it

was represented by the Counsel appearing on either side that connected Writ Appeals are pending before the Principal Seat, the Division Bench

has directed the registry to transfer W.A.(MD). Nos. 378 and 379 of 2005 to the Principal Seat so as to be heard along with W.A. Nos. 895 of

2005 and 1736 of 2005. Likewise, by the order of another Division Bench dated 5.9.2007, W.A.(MD) No. l07 of 2007 has also been

transferred from the Madurai Bench to this Principal Seat. Thus, all these matters are now before us for a common disposal.

6. The learned Additional Advocate General appearing for the appellants Electricity Board would argue that the assessments in question were

made following the thefts committed prior to the coming into being of the new Electricity Act, 2003, which came into force only from 10.6.2004.

but the learned single Judge has proceeded under the wrong impression that the impugned assessment orders were passed under the provisions of

the new Act. It is also argued by the learned Additional Advocate General that for the theft of electricity detected before the coming into force of

the new Act, the provisions of terms and conditions of supply would only be made applicable and therefore, the action initiated by the Electricity

Board in these cases is valid. It is further argued that in all the cases, the alleged theft of electricity has been detected prior to the passing of the

Electricity Act, 2003 and show cause notices have been issued under the Supply Act 1948 to all the consumers.

7. The learned Additional Advocate General would argue that under the Electricity Supply Act, 1948, the Board has entered into supply contracts

with each of the consumers and the terms and conditions of supply of Electricity are also notified u/s 49 of the said Act and under Clause 8.00, the

said terms provide, inter alia, for dealing with cases of theft of energy and as per the then prevailing conditions, the penalty for theft of electricity

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was fixed as twice the tariff rate and the Board could make demands for a period going back to 12 months maximum. It is also argued that the

Electricity Act 2003 contains a repeal and savings Section viz. Section 185, which provides among other things, that the Electricity Supply Act,

1943 stands repealed and would specifically rely on Sub-section (2) of Section 185, which saves certain actions initiated under the old Act. It is

also argued that Sub-section (5) of Section 185 also held that the repeal shall not affect the applicability of Section 6 of the General Clauses Act,

1897 and this is so because the allegations of theft of electricity involves penal sections as well. The further argument advanced on the part of the

appellants is that the provisions of Section 126(5) and (6) of the new Act refer to an assessment only in respect of an ''unauthorised use of

electricity'', whereas the assessments challenged in these writ petitions were in respect of theft of electricity and it cannot be said to be part of the

provisions of Section 126 of the new Act, 2003. It is further argued that the learned Judge failed to appreciate that the proceedings were initiated

before the commencement of existing Act and therefore, it is not necessary to follow the provisions of Section 126 of the Electricity Act, 2003.

The learned Additional Advocate General would further argue that Section 185(2)(a) of the Electricity Act 2003 has saved the actions initiated

under the old Act.

8. On the contrary, the learned senior Counsel appearing for the consumers in all the above cases would argue that Section 185 of the Electricity

Act 2003 repealed the Indian Electricity Act, 1910 and the Electricity (Supply) Act 1948 and there is no provision in the saving Clause under the

new Act with regard to assessment proceedings passed under the old Act. It has also been argued that in some cases in hand, the assessment

orders passed by the Department were quashed by this Court in W.P. Nos. 45233 and 4523 of 2002, dated 4.2.2005 and while allowing the writ

petitions filed by the consumers, this Court has directed the authorities to decide the matter ''in accordance with law'' and therefore, when there is

no assessment and the assessment proceedings have to start afresh, the Department has to follow only the Electricity Act, 2003. It is also argued

that Section 185(2)(a) clearly state that any action or direction given under the repealed laws shall, insofar as it is not inconsistent with the

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provisions of the new Act and Section 172 of the Electricity Act 2003 also does not save conditions of supply and if the Parliament desired to save

conditions of supply, it would have specifically provided for the same in Section 172 or Section 185 of the Act of 2003 and in the absence of

saving clause, repealed Act cannot be followed with fresh assessment proceedings. It is further argued that Section 6 of the General Clauses Act

1897 also does not have any application to the facts of the case; that Section 126 of the new Act deals with assessment procedure in matters of

unauthorized use of Electricity, which include tampered meters and the same has to be followed in the present case. Regarding the contention of

the Department that Section 126 of the Electricity Act will not be applicable since it deals only with unathorized use of electricity and only the

provisions of Section 135 of the Electricity Act, 2003 are applicable since it relates to theft of energy, the learned senior Counsel appearing for the

consumers would argue that Chapter XIV of the Electricity Act 2003 deals with theft of Electricity, Section 154 of the Act deals with powers of

the Special Courts for the speedy trial of offences under Sections 135 to 139 of the Electricity Act, 2003 and as per Section 153(5) of the Act.

die Special Court shall alone determine the civil liability against a consumer and in the cases on hand, criminal cases for theft of energy have been

registered against the petitioners and the same are pending before the concerned Court and hence if the contention of the Department is accepted,

it is for the concerned Court to determine the civil liability, as per the new Act and the Department has no authority has no authority or jurisdiction

to determine the assessment.

9. In the light of the above arguments and to appreciate the facts of the cases on hand, it will be useful to see, the dates of detection of the alleged

theft and the dates of issuance of the show cause notice and the assessment orders in each case:

Case No. Date of Date of issuance of the show-cause

detection of notice and assessment order, with

the alleged brief facts of the case pertaining to

theft the earlier legal proceedings.

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Assessment order was issued in the

year 2002. which was challenged and

quashed by this Court in W.A. Nos.

1670 and 1671 of 2002, dated

17.6.2002, further directing the

authorities to conduct fresh enquiry.

The petitioner further filed

W.A. 78 of 21.3.2002 W.P. No. 45234 of 2002, challenging

2005 the order passed by the Superintending

Engineer, who confirmed the order of

assessment made by the first

Respondent, which was allowed on

4.2.2005, quashing the assessment

order and ordering to conduct fresh

enquiry.

W.A. No. 379 of 21.3.2002 -do-

2005

Show-cause notice, dated 15.2.2001

W.A. No. 895 of and assessment order dated 29.3.2001

14.2.2001 were issued the appeal filed by the

consumer was dismissed on 30.6.2004

Show-cause notice was issued on

29.6.2001. However, the consumer

contended that no opportunity was

afforded to him and filed

W.P. No. 36724 of 2003 and by the

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order of this Court dated 16.12.2003,

fresh show-cause notice was issued

W.A. No. 1736 of 28.6.2001 and enquiry was conducted on,

2005 24.8.2004. Order of assessment was

issued on 22.9.2004, which was

challenged in W.P. No. 29206 of 20041

and this Court, by the order dated

11.10.2004 issued a direction to fie

appeal. Appeal dismissed on;

11.1.2005.

Show cause notice was issued on

18.8.2001. Challenging the same,

O.S. No. 403/2001 on the file of Sub

Court, Dindigul was filed. Stay of the

impugned order was granted by the

Sub Court on 20.9.2001 whereupon;

CRP. No. 439 of 2002 was tiled and

the said CRP was disposed on

27.3.2002 on the ground that there is

remedy of appeal available under

Order 43 Rule 1 CPC and the EB was

W.A. (MD) directed to go before the Appellate

No. 107 of 2007 16.8.2001 Authority. CMA. No. 48 of 2002 was

filed by the Department before the

Prl. Dist. Judge, Dindigul and the said

CMA was allowed on 21.4.2006,

dismissing the stay petition.

Thereafter, contending that civil Court

has no jurisdiction, the consumer has

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filed W.P. 4347/2006 before this Court

for a Writ of Mandamus, to direct the

authorities to follow the provisions of

Section 126 of the Electricity Act, 2003 in

the enquiry.

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10. From the above particulars gathered from the materials placed on record, this Court is able to assess that the Electricity Department has

initiated the proceedings contemplated under the old Act, which was ruling the roost at that time, by issuing show-cause notices and the

assessments orders immediately after detecting the alleged theft. But, under soma pretext or other, the consumers have initiated various legal

proceedings and in some cases, resulting in quashing of the assessment orders with a direction to the Electricity Board ''to decide the matter in

accordance with law''. In the meantime, the new Act of the year 2003 came into force, wherein a less tariff rates are prescribed. Therefore, it has

been argued on the part of the consumers that the term ''to decide the matter in accordance with law'' means the date on which the order has been

passed by the Court, which is strong repelled by the appellant/Electricity Board contending that since all the actions have been initiated well prior

to the coming into force of the new Act, the term ''to decide the matter in accordance with law'' means to decide the matter only in accordance

with the law prevailing as on the date when the alleged their was detected by the Electricity Board. We find force in such an argument advanced on

the part of the Electricity Board since all the necessary actions have been initiated well prior to the coming into force of the new Act.

11. At this juncture, an interesting question was raised on the part of the consumers that such actions of the Electricity Board are not saved under

the new Act and therefore, such actions initiated by the Electricity Board are non-est in the eye of law and when once the old Act is repealed, with

no saving of such actions, it must be deemed that such an Act was never brought into force. It has further been submitted that since the new Act is

lenient and less burdensome when compared to the old Act the intention of the legislature should not be overlooked. In support of his arguments,

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the learned senior Counsel for the consumers would rely on the judgment of the Honourable Supreme Court in Gajraj Singh etc. Vs. The State

Transport Appellate Tribunal and others etc., wherein a Three Judge Bench of the Honourable Apex Court has held as follows:

Whenever an Act is repealed it must be considered, except as to transactions past and closed, as if it had never existed. The effect thereof is to

obliterate the Act completely from the record of the Parliament as if it had never been passed by it if never existed except for the purpose of those

actions which were commenced, prosecuted and concluded while it was existing law. Legal fiction is one which is not actually a reality and which

the law recognises and the Court accepts as a reality.

Therefore, in case of legal fiction the Court believes something to exist which in reality does not exist. It is nothing but a presumption of the

existence of the state of affairs which in actuality is non-existent. The effect of such a legal fiction is that a position which otherwise would not

obtain is deemed to obtain under the circumstances....

When there is a repeal and simultaneous re-enactment, Section 6 of the General Clauses Act would apply to such a case unless contrary intention

can be gathered from the repealing Act. Section 6 would be applicable in such cases unless the new-legislation manifests intention inconsistent with

or contrary to the application of the section. Such incompatibility'' would have to be ascertained from all relevant provisions of the new Act.

Therefore, when the repeal is followed by a fresh legislation on the same subject, the Court would undoubtedly have to look to the provisions of

the new Act only for the purpose of determining whether the new Act indicates different intention. The object of repeal and re-enactment is to

obliterate the repealed Act and to get rid of certain obsolete matters.

12. The learned senior Counsel for the consumers would also rely on a Constitution Bench judgment of the Honourable Apex Court in Kolhapur

Canesugar Works Ltd. and Another Vs. Union of India and Others, , wherein if has been held:

At common law, the normal effect of repealing a statute or deleting a provision is to obliterate it from the statute book as completely as if it had

never been passed, and the statute must be considered as a law that never existed. To this rule, an exception is engrafted by the provisions of

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Section 6(1) (of the General Clauses Act). If a provision of a statute is unconditionally omitted without a saving Clause in favour of pending

proceedings, all actions must stop where the omission finds them, and if final relief has not been granted before the omission goes into effect, it

cannot be granted afterwards. Savings of the nature contained in Section 6 or in special Acts may modify the position. Thus the operation of

repeal-or deletion as to the future and the past largely depends on the savings applicable. In a case where a particular provision in a statute is

omitted and in its place another provision dealing with the same contingency is introduced without a saving Clause in favour of pending proceedings

then it can be reasonably inferred that the intention of the legislature is that the pending proceeding shall not continue but a fresh proceeding for the

same purpose may be initiated under the new provision.

It is not correct to say that in considering the question of maintainability of pending proceedings initiated under a particular provision of the rule

after the said provision was omitted the Court is not to look for a provision in the newly added rule for continuing the pending proceedings. It is

also not correct to say that the test is whether there is any provision in the rules to the effect that pending proceedings will lapse on omission of the

rule under which the notice was issued. In such a case the Court is to look to the provisions in the rule which has been introduced after omission of

the previous rule to determine whether a pending proceeding will continue or lapse. If there is a provision therein that pending proceedings shall

continue and be disposed of under the old rule as if the rule has not been deleted or omitted then such a proceeding will continue. If the case is

covered by Section 6 of the General Clauses Act or there is a pari-material provision in the statute under which the rule has been framed in that

case also the pending proceeding will not be affected by omission of the rule. In the absence of any such provision in the statute or in the rule the

pending proceedings would lapse on the rule under which the notice was issued or proceeding was initiated being deleted/omitted.

Therefore, now we have to see as to whether such actions of the Electricity Board are saved by the new enactment.

13. The Electricity Act, 2003 (Act 36 of 2003) has come into force from 26.5.2003 and u/s 185(1) of this Act, the Indian Electricity Act, 1910,

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the Electricity (Supply) Act, 1948 and the Electricity Regulatory Commissions Act, 1998 are repealed, save as otherwise provided in the Act.

Section 185(2)(a) reads as follows:

Notwithstanding such repeal-

(a) anything done or any action taken or purported to have been done or taken including any rule, notification, inspection, order or notice made or

issued or any appointment confirmation or declaration made or any licence, permission, authorisation or exemption granted or any document or

instrument executed or any direction given under the repealed laws shall, in so far as it is not inconsistent with the provisions of this Act, be deemed

to have been done or taken under the corresponding provisions of this Act;

Further Section 185(5) reads as follows:

Save as otherwise provided in Sub-section (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 (10 of 1897), with regard to the effect of repeals.

14. Now, it will be useful to refer to Section 6 of the General Clauses Act, 1897, which reads as follows:

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 not 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

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may be imposed as if the repealing Act or Regulation had not been passed.

15. Relying on the above, the learned senior Counsel would strenuously argue that under the new Act, the provisions which are not inconsistent

with the old Act alone are saved and since in the case on hand, the provisions relating to the quantum of punishment are inconsistent with the old

Act it cannot be said that they are saved under the new Act. It is also argued that even the conditions of supply are not saved and if the Parliament

desired to save the conditions of supply, it would have specifically provided for the same and in the absence of savings clause, repealed Act cannot

be followed with fresh assessment proceedings. The Electricity Board would repel the above contention on the ground that the inconsistency

contemplated in Sub-section (2) of Section 185 is not variance in the quantum of compensation or punishment but only in the power to law

compensation or punishment and the consumer''s case of inconsistency can only be sustained if the new. Act did not contain any provisions

whatsoever for dealing with theft of energy and therefore, the proceedings can be continued under the old Act itself and the orders of the learned

single Judge directing the Board to resume the adjudication proceedings under the new Act requires to be reconsidered.

16. In this backdrop, now it is to be seen, whether there are is any inconsistency in the new Act. A comparative table showing the differences

between the new Act and the old Act was furnished by the consumers, which was neither questioned nor disputed by the appellants/Electricity

Board. The said table is extracted below:

Repealed Electricity Act 1910,

Electricity Supply Act 1948 and

Sl. No. terms and conditions of supply of Electricity Act, 2003

electricity framed under the old

Act.

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1. Assistant Engineer can issue show- Person who inspected the

cause notice service alone can issue

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provisional assessment

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2. There is no provision for Provision for provisional

provisional assessment and final assessment as well as final

assessment assessment

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3. There is no such provision of best Assessment to be made as per

assessment judgment the best assessment judgment

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4. The assessing officer need not be The assessing officer must be

designated by the State designated by the State

Government Government

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5. The assessment can be made for a The assessment can be made

period of one year for a period of six months only

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6. The assessment can be made under The assessment can be made

appropriate tariff x 2 times under appropriate tariff: 1 1/2

times

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7. There is no difference between For agriculture and domestic

agriculture service, domestic service, assessment can be

service and low tension service made for a period of three

months only; for low tension

service, assessment can be

made for a period of six

months.

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17. But from a reading of Section 185(2)(a) of the Electricity Act 2003, all the actions taken or purported to have been done or taken including

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any rule, notification, inspection, order or notice made are saved. Furnishing the above details, it has been argued on the part of the consumers that

since there are inconsistencies, such orders issued by the Department cannot be considered as saved under the new Act. We are unable to

appreciate the said contentions raised on the part of the learned senior Counsel for the consumers since the variance in the tariff rates cannot be

considered as an inconsistency. If under the old Act such a punishment is contemplated and under the new Act no punishment is contemplated or

electricity theft has not been recognised as an offence at all then it can be said that there are inconsistencies, which is not the case here. Thus

deciding this question, now we shall proceed to consider as to whether the consumers in the cases on hand are entitled to claim to initiate the

proceedings only under the new Act, which prescribed lesser multiplier and tariff rates.

18. The straight case of the appellants is that since all the alleged offences in the cases on hand are committed and detected well before the coining

into force of the new Act and even the proceedings were initiated under the old Act, the consumers are liable to pay the tariff rates only as

prescribed in the old Act and the multiplier and the tariff rates prescribed in the new Act are not applicable to the consumers in the cases on hand.

But on the part of the consumers, it was strenuously contended that since the old Act where under the impugned proceedings are issued itself was

repealed without saying such actions, it should be construed that such an Act was never existed. But as has already been held, this argument of the

consumers has no legs to stand before us since it has been held by us that such actions of the Department being pending proceedings or orders are

very well covered and saved u/s 185(2)(a) of the new Act, 2003.

19. As could be seen from the table, giving particulars regarding the dates of detection of the alleged thefts and the dates of initiation of the

proceedings by the Electricity Department it is clear that all the assessment orders were issued well before the coming into force of the new Act

and even legal proceedings were initiated by the consumers, challenging such assessment orders and in some cases, directions were issued to issue

fresh assessment orders, after quashing the earlier assessment orders. Accordingly, new assessment orders were issued by the Electricity

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Department, probably after rectifying the queries pointed out by the legal for a, by which time the new Act came into force. It is also to be pointed

out that the proceedings initiated by the Electricity Department were dragged on by the consumers under some pretext or other, initiating one

proceeding or other and when the new Act came to force, where under the tariff rates are reduced, they have changed the stance and started

arguing that they must be extended the benefit of new tariffs prescribed under the new Act. These are the matters whereunder theft of electricity

worth Lakhs of rupees is the subject matter and if proved, the consumers are liable for punishment under the criminal proceedings initiated by the

Department. When such is the factual matrix wherein the original proceedings initiated by the Department were successfully dragged by the

consumers till the new Act came into force, at no stretch of imagination, we can find fault with the Department in initiating the proceedings under

the old Act since even when a new assessment order has to be issued, as directed by the Courts, since the date of detection of the offence and the

period of commission of such offence and even the date of issuance of the original assessment orders are well prior. to the coming into force of the

new Act, the tariff rates as are applicable on the date of commission of offence alone are applicable and just for the simple reason that the new Act

has prescribed lesser tariffs, it cannot be made applicable to the cases of the consumers particularly since such assessment orders are saved u/s

185(2)(a) of the 2003 Act. Further more, probably recognising the difficulties being faced by the Department in such matters, a new Amendment

has been brought to fore w.e.f. 13.6.2007 whereunder both the multiplier on the tariff rate as ell as the period of assessment have been amended

so as to bring the new Act of 2003 on par with the pre-existing provisions under the old Act of 1948 viz. twice the rate and 12 months and

therefore, as on today, there is no difference in imposing penalties between the 1948 Act and the 2003 Act. as has been rightly contended on the

part of the appellants/Electricity Board.

20. The learned senior Counsel appearing for the consumers would rely on a judgment of the Honourable Apex Court in Mahadeolal Kanodia Vs.

The Administrator-general of West Bengal, , wherein it has been held:

The principles that have to be applied for interpretation of statutory amendments

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taking away substantive rights are well established. The first of

these is that statutory provisions creating substantive rights or taking away substantive rights are ordinarily prospective; they are retrospective only

if by express words or by necessary implication the Legislature has made them retrospective; and the retrospective operation will be limited only to

the extent to which it has been so made by express words or necessary implication. The second rule is that the intention of the Legislature has

always to be gathered from the words used by it giving to the words their plain, normal, grammatical meaning. The third rule is that if in any

legislation, the general object of which is to benefit a particular class of persons, any provision is ambiguous so that it is capable of two meanings,

one which would preserve, the benefit and another which would take it away, the meaning which preserves it should be adopted. The fourth rule is

that if the strict grammatical interpretation gives rise to an absurdity or inconsistency such interpretation should be discarded and an interpretation

which will give effect to the purpose the Legislature may reasonably be considered to have had will be put on the words, if necessary, even by

modification of the language used.

21. This judgment cannot be applied to the facts of the cases on hand since no such substantial right accrued on the consumers has been taken

away by the new Act, since all the proceedings were initiated well before the commencement of the new Act and they were dragged on by the

consumers till the new Act came into force and changed their stance claiming benefits under the new Act, which was even amended in 2007.

22. The learned senior Counsel appearing for the consumers would also rely on another judgment of the Honourable Apex Court in Commissioner

of Income Tax, U.P.-II, Lucknow Vs. Bazpur Co-operative Sugar Factory Ltd., Bazpur, Distt. Nainital, , wherein it has been held:

In the absence of any power to amend bye-laws retrospectively, being conferred, either expressly or by implication, it could not be said that the

society had any power to amend its bye-laws with retrospective effect and, in this view, the provisions of the unamended bye-law were to be

applied, it was clear that the amounts which were deducted by the society from the price payable to its members on account of supply of

sugarcane were deducted by the society in the course of the trading operations

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of the society and these deductions were a part of its trading

operations. The receipts by way of these deductions must, therefore, be regarded as revenue receipts and were liable to be included in the taxable

income of the society. It made no difference that in the bye-law the amounts had been referred to as deposits and the account in which receipts

were entered was called ""Loss Equilisation and Capital Redemption Reserve Fund.

This judgment also has no application to the facts of the cases on hand since no retrospective effect has been given to the assessment orders, but

they were re-issued as per the law prevailing as on the date of commission of the offence, after rectifying the mistakes pointed out by the legal for a

and it cannot be said such issuance of assessment orders amounts to giving retrospective effect.

23. The learned Additional Advocate General appearing for the appellant would rely on a judgment of the Honourable Apex Court in Nagammai

Cotton Mills v. Regional Director, Employees State Insurance Corporation, Madras and Anr. , wherein a Three Judge Bench of the Honourable

Apex Court, in a case of arrears of special contribution falling due when Chapter V-A of the Employees State Insurance Act 1948 and initiation of

proceedings for recovery of, subsequent to repeal of Chapter V-A was held permissible.

24. In Agricultual and Processed Food Products v. Oswal Agro Furane, 1996 (85) ELT 3 (SC) , relied on by the learned Additional Advocate

General, the Honourable Apex Court has held ''a saving provision merely preserves right or obligation that exists and does not and cannot confer

any new additional right or obligation, since it is different from exemption provision.''

25. As has already been adverted to supra, serious allegations of theft of energy worth lakhs of rupees is made against the consumers in the cases

on hand and only at their instance the proceedings were either stalled or dragged on till the new Act came into force. When, as per the directions

of the legal fora, fresh assessment orders were issued following the procedure prevalent as on the date of detection of the alleged theft, the

consumers have initiated these proceedings to further drag on the matters, with the sole aim of avoiding or delaying the amounts assessed. It is also

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to be pointed out that by the new amendment Act of the year 2007, the tariff rates prevalent in the old Act are restored. Since the commission of

offence, its detection and the commencement of the necessary proceedings all took place before the coming into force of 2003 Act, the consumers

cannot claim any benefits during the interregnum period of 2003 Act and the 2007 Act. Therefore, the other argument advanced on the part of the

consumers that only the special Court is entitled to determine the civil liability against the consumer, as per Section 153(5) of the Electricity Act

2003 and hence, the assessment orders issued by the electricity Department shall be quashed on that ground also, does not arise for consideration

in the cases on hand, in view of our specific finding that for the cases in hand, only the provisions of the old Act are applicable.

26. The consumers relied on the order of a learned single Judge of this Court, dated 25.2.1998 made in W.P. Nos. 9026 and 9027 of 1997,

declaring Chapter 37, Schedule 1 of Terms and Conditions of Supply of Electricity'' framed by the Board as ultravires of the powers of the

Electricity Board and violative of Article 14 of the Constitution of India and hence void, illegal and invalid. This order relied on by the consumers

being the order of a learned single Judge is not binding on us. However, it will have a persuasive value and further more, we are not apprised as to

whether this order of the learned single Judge was challenged anywhere and with what result. Therefore, without going into the discussion on this

point, it is to be pointed out that the consumers in the cases on hand never challenged the terms and conditions of supply and having successfully

dragged on the proceedings, by initiating one proceeding or the other, under one pretext or other, sufficiently for a long time, now this new plea has

been taken by them to further drag on the proceedings. As has already been stated supra, the consumers were changing their stands, to suit their

convenience to avoid payment of the amounts claimed by the Department that too on a serious charges of theft of energy and both the assessing

officer and the appellate authority have given proper and cogent reasons to substantiate the assessment. Therefore, in the peculiar facts and

circumstances of the case, this stand taken on the part of the consumers cannot be appreciated.

27. A careful study of the entire materials placed on record would establish, in more than one way, the sole intention of the consumers in these

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cases to avoid the payment of the amounts claimed under the assessment orders, passed by the Department, on having found them to have

committed electricity theft, which is a very serious offence. The Electricity energy generated and distributed is a ''material source of the

community''. There can be no doubt that such electricity thefts would paralyse the entire system. besides putting the Electricity7 Boards and

consequently the State in a pathetic situation, leading to chaos and shortage in supplies to the genuine consumers also, which should be avoided by

strict adherence of the laws and none should be allowed to resort to collapse the entire system impairing very purpose of such laws and such

menace should be curbed with an iron hand for the betterment of the Society at large.

28. In the light of our above discussion, we find that the orders passed by the learned single Judge are not sustainable under law and accordingly,

the orders passed by the learned single Judge in all these matters are set aside and all these appeals are allowed. No costs. Consequently,

connected miscellaneous petitions are closed.

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