

Electricity Act, 2003 (36 of 2003) Section 135, 126, 127 – A case of theft of electricity whereby the consumer had been acquitted by the Criminal Court – Once proceedings under Section 135 are initiated, the Assessing Officer had no authority to pass any order regarding the liability and penalty – In case it is so done, it was held that the consumer cannot be left remediless and he can invoke the jurisdiction of the Civil Court.

(1) in case the departments/officers/licensee/supplier is of the opinion that a consumer has committed theft as defined under the Act, and they/he initiate proceedings for theft under Section 135 of the Act, then the assessing officer has no authority to pass any order regarding assessment of liability and penalty against a consumer. If any such order of assessment/penalty is passed and purported to be enforced against a consumer by the department/licensee/supplier then the consumer has every right to avail the remedy of civil suit by challenging such order/demand raised by the department/licensee/supplier. In such a situation, the jurisdiction of the civil court shall not be barred by virtue of Section 145 of the Act.

(2) If an unauthorised order of assessment/penalty is passed by the department/licensee/supplier, despite having alleged and initiated proceedings of theft; then the consumer cannot be said to have alternative remedies under Section 127 of the Act. Therefore, he cannot be denied the right of filing the civil suit against such an illegal assessment/demand/penalty notice on the ground that he can avail an alternative remedy of appeal under Section 127 of the Act. (3) Since the Special Court cannot be initiated at the instance of the consumer and the civil liability as determined by the Special Courts has been restricted to be determined only against the consumer and only for the loss/damages caused to the department and even without following the procedure of a civil court, therefore, mere existence of the Special Court does not, by implication, exclude the jurisdiction of the civil court, in a case where the assessing officer/licensee/supplier has passed an illegal or unauthorised order of demand despite having referred the matter to the police or the Special Court for determination of the same.

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