

Discussions On Certain Provisions Of
ELECTRICITY ACT, 2003
(The Electricity Rules, 2005)

S.S. Upadhyay
*Former District & Sessions Judge/
Former Addl. Director (Training)
Institute of Judicial Training & Research, UP, Lucknow.
Member, Governing Body,
Chandigarh Judicial Academy, Chandigarh.
Former Legal Advisor to Governor
Raj Bhawan, Uttar Pradesh, Lucknow
Mobile : 9453048988
E-mail : ssupadhyay28@gmail.com
Website: lawhelpline.in*

(A) Offences and Penalties

Sec. 135. Theft of electricity- (1) Whoever, dishonestly-

(a) taps, makes or causes to be made any connection with overhead, underground or under lines or cables, or service wires, or service facilities of a licensee; or

(b) tampers a meter, installs or uses a tampered meter, current reversing transformer, loop connection or any other device or method which interferes with accurate or proper registration, calibration or metering of electric current or otherwise results in a manner whereby electricity is stolen or wasted; or

(c) damages or destroys an electric meter, apparatus, equipment or wire or causes or allows any of them to be so damaged or destroyed as to interfere with the proper or accurate metering of electricity,

so as to abstract or consumer or use electricity shall be punishable with imprisonment for a term which **may extend to three years or with fine or with both:**

Provided that in a case where the load abstracted, consumer, or used or **attempted abstraction or attempted consumption or attempted use—**

(i) does not exceed 10 kilowatt, the fine imposed or first conviction **shall not be less than three times the financial gain** on account of such theft of

electricity and in the event of **second or subsequent** conviction the fine imposed **shall not be less than six times the financial gain** on account of such theft of electricity;

(ii) **exceeds 10 kilowatt**, the fine imposed on first conviction shall not be less than **three times** the financial gain on account of such theft of electricity and in the event of second or subsequent conviction, the sentence shall be imprisonment for a term not less than **six months** but which may extend to five years and with fine not less than **six times** the financial gain on account of such theft of electricity:

Provided further that if it is proved that any artificial means or means not authorized by the Board of licensee exist for the abstraction, consumption or use of electricity by the consumer, it shall be presumed, until the contrary is proved, that any abstraction, consumption or use of electricity has been dishonestly caused by such consumer.

(2) Any officer authorized in this behalf by the State Government may—

(a) enter, inspect, break open and search any place or premises in which he has reason to believe that electricity has been or is being used unauthorisedly;

(b) search, seize and remove all such devices, instruments, wires and any other facilitator or article which has been or is being used for unauthorized use of electricity;

(c) examine or seize any books of account or documents which in his opinion shall be useful for or relevant to, any proceedings in respect of the offence under sub-section (1) and allow the person from whose custody such books of account or documents are seized to make copies thereof or take extracts therefrom in his presence.

(3) The occupant of the place of search or any person on his behalf shall remain present during the search and 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:

Provided that no inspection, search or seizure of any domestic places or domestic premises shall be carried out between sunset and sunrise except in the presence of an adult male member occupying such premises.

(4) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to search and seizure shall apply, as far as may be, to searches and seizure under this Act.

This clause deals with theft of electricity. It provides that whoever dishonestly indulges in theft of power by adopting the means as specified in that clause, shall be punishable with imprisonment for a term which may extend to three years or with fine or with both. This clause also provides that for theft of electricity involving load abstraction not exceeding 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft and in the event of second or subsequent conviction, the fine imposed shall not be less than six times the financial gain on account of such theft. Similarly for theft of electricity involving load abstraction or consumption exceeding 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft and in the event of second or subsequent conviction, the sentence shall be imprisonment for a term not less than six months and with fine not to be less than six times the financial gain on account of such theft. This clause further provides *inter alia* that without prejudice to the provisions of the Code of Criminal Procedure, 1973 relating to search and seizure any person authorized by Appropriate Government may enter, any premises inspect and search vehicle or other place and may use such minimum force as may be necessary, seize any means used for theft of electricity, require the owner, occupier to produce any books of account, etc.

Important case laws---

1. **Mustaq vs. State of U.P., 2006 (6) ALJ 157 (All—D.B.)**

“Interpreting the provisions of Sec. 135, 151, 175 of the Electricity Act, 2003 and rule 12 of the Electricity Rules, 2005, it has been held by the Division Bench of the Allahabad High Court that offences u/s. 135 of the Act are non cognizable but it should be made cognizable. Direction to State Government has been issued that Sec. 151 & rule 12 shall be kept in abeyance and can be made applicable only when amendment in 2003 Act will actually take place. After obtaining permission from the court, there shall be no bar for a police officer to investigate an offence under the Act and/or arrest an offender.

FIR by private person... FIR for offences u/s 151,151-A,151-B of the electricity act can be lodged by individual person. Cognizance of offence need not be taken only on basis of complaint made by authorized person. See... **2011 CrLJ 213 (All)**

2. Fine---In the case of **Jagmodhan vs. State of Maharashtra, (2006) 8 SCC 629**, it has been held by the Supreme Court on conviction of an accused for the theft of Electricity, court should impose heavy fine.

3. In the case of **Jagmodhan vs. State of Maharashtra, (2006) 8 SCC 629**, it has been held by the Supreme Court that non production of relevant record (HT meter box) by the accused for inspection by court is a material suppression which gives rise to considerable substance in the allegations of prosecution.

4. In the case of **Jagmodhan vs. State of Maharashtra, (2006) 8 SCC 629**, the Supreme Court has suggested the legislature to suitably amend Sec. 135 of the Electricity Act, 2003 for disconnection of the electricity supply temporarily or permanently.

Sec. 136. Theft of electric lines and materials—(1) Whoever, dishonestly—

(a) cuts or removes or takes away or transfers any electric line, material or meter from a tower, pole, any other installation or place of installation or any other place, or site where it may be rightfully or lawfully stored, deposited, kept, stocked, situated or located, including during transportation, without the consent

of the licensee or the owner, as the case may be, whether or not the act is done for profit or gain; or

(b) stores, possesses or otherwise keeps in his premises, custody or control, any electric line, material or meter without the consent of the owner, whether or not the act is committed for profit or gain; or

(c) loads, carries, or moves from one place to another any electric line, material or meter without the consent of its owner, whether or not the act is done for profit or gain,'

is said to have committed an offence of theft of electric lines and materials, and shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

(2) If a person, having been convicted of an offence punishable under sub-section (1) is again guilty of an offence punishable under that sub-section, he shall be punishable for the second or subsequent offence for a term of imprisonment which shall not be less than six months but which may extend to five years and shall also be liable to fine which shall not be less than ten thousand rupees.

This clause deals with theft of electric lines and material. It provides that whoever dishonestly indulges in theft of electric lines and materials by adopting means as mentioned in that clause shall be punishable with imprisonment for a term which may extend to three years or with fine or both. It also provides that a person, shall be punishable for the second or subsequent offence for a term of imprisonment which shall not be less than six months but which may extend to five years and shall be liable to fine which shall not be less than ten thousand rupees.

Sec. 137. Punishment for receiving stolen property—Whoever, dishonestly receives any stolen electric line or material knowing or having reasons to believe

the same to be stolen property, shall be punishable with imprisonment of either description for a term which may extend to three years or with fine or with both.

This clause provides that whoever dishonestly receives any stolen electric lines or material knowing or having reasons to believe the same to be stolen property shall be punishable with imprisonment which may extend to three years or with fine or with both.

Sec. 138. Interference with meters or works of licensee—Whoever,--

(a) unauthorizedly connects any meter, indicator or apparatus with any electric line through which electricity is supplied by a licensee or disconnects the same from any such electric line; or

(b) unauthorizedly connects any meter, indicator or apparatus with any electric line or other works has or have been cut or disconnected; or

(c) lays or causes to be laid, or connects up any works for the purpose of communicating with any other works belonging to a licensee; or

(d) maliciously injures any meter, indicator, or apparatus belonging to a licensee or willfully or fraudulently alters the index of any such meter, indicator or apparatus or prevents any such meter, indicator or apparatus from duly registering, shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to ten thousand rupees, or with both, and, in the case of a continuing offence, with a daily fine which may extend to five hundred rupees; and if it is proved that any means exist for making such connection as is referred to in clause (a) or such reconnection as is referred to in clause (b), or such communication as is referred to in clause (c), for causing such alteration or prevention as is referred to in clause (d), and that the meter, indicator or apparatus is under the custody or control of the consumer, whether it is his property or not, it shall be presumed, until the contrary is proved, that such connection, reconnection, communication, alteration, prevention or improper use, as the case may be, has been knowingly and willfully caused by such consumer.

This clause deals with punishment for interference with meters or works of licensee. It provides that whoever unauthorisedly connects or reconnects or injures any meter, indicator or apparatus with any electrical lines or improperly uses electricity shall be punishable with imprisonment for a term which may extend, to three years or with fine which may extend to ten thousand rupees or with both and in the case of a continuing offence, with a daily fine which may extend to five thousand rupees.

Sec. 139. Penalty for intentionally injuring works—Whoever, with intent to cut off the supply of electricity, cuts or injures, or attempts to cut or injure, any electric supply line or works, shall be punishable with fine which may extend to ten thousand rupees.

Sec. 140. Penalty for intentionally injuring works—Whoever, with intent to cut off the supply of electricity, cuts or injures, or attempts to cut or injure, any electric supply line or works, shall be punishable with fine which may extend to ten thousand rupees.

Sec. 141. Extinguishing public lamps—Whoever, maliciously extinguishes any public lamp shall be punishable with fine which may extend to two thousand rupees.

This clause provides that whoever maliciously extinguishes any public lamp shall be punishable with fine which may extend to two thousand rupees.

This clause provides that whoever maliciously extinguishes any public lamp shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to two thousand rupees or with both.

Sec. 145. Jurisdiction of Civil Courts-- Civil Courts have no jurisdiction to entertain any suit or proceeding in relation to any matter under the Act, 2003. A civil court cannot issue injunction against any action taken by the authorities under this Act.

In the case of **Jagmodhan vs. State of Maharashtra, (2006) 8 SCC 629**, it has been held by the Supreme Court that the civil court's decree against accused for a different amount of electrical dues is of no consequence.

The Uttar Pradesh Government Electrical Undertaking (Dues Recovery) Act, 1958--- **Sec. 4**--- (1) Sec. 4 of the Act provides that where a notice of demand has been served on the consumer, or is authorized agent, under Section 3, he may, if he denies the liability to pay the dues or any part thereof and upon deposit thereof with the prescribed authority under protest in writing, institute a suit for the refund of the dues or part thereof so deposited.

(2) The suit referred to in sub-section (1) may be instituted at any time within six months from the date of deposit with the prescribed authority in the court having jurisdiction, but subject to the result of the suit. The notice of demand shall be conclusive proof of the dues mentioned therein.

Sec. 5--- If the dues for which notice of demand has been served are not deposited with the prescribed authority within thirty days from the date of service, or such extended period as the prescribed authority may allow, the same together with cost of recovery as may be prescribed shall be recoverable as arrears of land revenue, anything contained in any other law or instrument or agreement to the contrary notwithstanding.

Disconnection of Electricity & Injunction--- Where interim prohibitory injunction was sought for by the plaintiff in a suit for injunction only for restraining the electricity board from effecting disconnection without seeking declaration of non-liability of dues, it has been held by the Allahabad High Court

that the suit was not maintainable and injunction against disconnection of supply of electricity could not be granted. See---

1. **M/s. Geeta Pump (P) Ltd. vs. District Judge, Saharanpur, AIR 2000 All 58**
2. **M/s. Pilibhit Ispat (P) Ltd. vs. U.P. State Electricity Board, AIR 1996 All 329 (D.B.)**
3. **Shadi Lal Enterprises Ltd. vs. State of U.P., 1995 ALJ 1517 (All—D.B.)**
4. **Debi Dayal vs. U.P. State Electricity Board, 1988 Civil Law Journal 266 (All)**

Note: Injunction against disconnection of supply of electricity cannot be granted in view of the provisions u/s. 4 & 5 of the U.P. Government Electrical Under Taking (Dues Recovery) Act, 1958.

No injunction can be granted to restrain recovery of public dues like **electric bill**, **telephone bill**, **taxes**, **land revenue**, **bank loans** or any other loans taken from financial institutions. See---

1. **Balram vs. State of U.P., 2002 (47) ALR 30 (All—D.B.)**
2. **M/s Chandranand Packaging vs. U.P. Financial Corporation, ALR 1996 (27) 173 (All) (UPFC Loan)**
3. **Union of India vs. Shree Ganesh Steel Rolling Mills Ltd., 1996 (2) CCC 225 (SC) (Revenue Dues)**
4. **Pawan Kumar Jain vs. I and I Corporation of U.P. Ltd., AIR 1998 All. 57 (Dues of financial corporation)**
5. **Mahesh Chandra vs. Zila Panchayat, Mainpuri, AIR 1997 All. 248 (Arrears recoverable as land revenue)**
6. **U.P. State Industrial Development Corporation Ltd. vs. C.R. Newar, (1995) JCLR 27 All. (Industrial Loan)**
7. **Guru Nanak Beverages and Comp. vs. D.M., Allahabad, AWC 1996 All. 653 (Bank Loan)**

8. Radha Krishna Bhatt vs. State of U.P., 1992 RD 1 (All.) (*Recovery of forest dues*)

Sec. 151. Cognizance of offences—No Court shall take cognizance of an offence punishable under this Act except upon a complaint in writing made by Appropriate Government or Appropriate Commission or any of their officer authorized by them or a Chief Electrical Inspector or an Electrical Inspector or licensee or the generating company, as the case may, for this purpose.

In the case of **Jagmodhan vs. State of Maharashtra, (2006) 8 SCC 629**, it has been held by the Supreme Court that any member of a raiding party is competent to file complaint against the accused. 48 hours prior notice for inspection of the premises is not required.

The Electricity Rules, 2005--- Rule 12. Cognizance of the offence—(1) The police shall take cognizance of the offence punishable under the Act on a complaint in writing made to the police by the Appropriate Government or the Appropriate Commission or any of their officer authorized by them in this regard or a Chief Electrical Inspector or an Electrical Inspector or an authorized officer of Licensee or a Generating Company, as the case may be.

(2) The police shall investigate the complaint in accordance with the general law applicable to the investigation of any complaint. For the purposes of investigation of the complaint the police shall have all the powers as available under the Code of Criminal Procedure, 1973 (2 of 1974).

(3) The police shall, after investigation, forward the report alongwith the complaint filed under sub-clause (1) to the Court for trial under the Act.

(4) Notwithstanding anything contained in sub-clauses (1), (2) and (3) above, the complaint for taking cognizance of an offence punishable under the Act may also be filed by the Appropriate Government or the Appropriate Commission or any of their officer authorized officer by them or a Chief Electrical Inspector or

an Electrical Inspector or an authorized officer of Licensee or a Generating Company, as the case may be, directly in the appropriate Court.

(5) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every special Court may take cognizance of an offence referred to in sections 135 to 139 of the Act without the accused being committed to it for trial.

(6) The cognizance of the offence under the Act shall not in any way prejudice the actions under the provisions of the Indian Penal Code (45 of 1860).

Sec. 153, only special court constituted under this Section is empowered to deal with the cases under the Act 2003.

Sec. 154, powers and procedures of the special court constituted u/s. 153 of the Act, 2003 have been provided under this Section.

The Electricity Rules, 2005--- **Rule 11. Jurisdiction of the Courts**—The jurisdiction of Courts other than the special Courts shall not be barred under sub-section (1) of section 154 till such time the special Court is constituted under sub-section (1) of section 153 of the Act.

Important reported case laws on the Electricity Act, 2003

1. Tata Power Co. Ltd. vs. Reliance Energy Ltd., (2008) 10 SCC 321
2. Kusumam Hotels (P) Ltd. vs. Kerala SEB, AIR 2008 SC 2796
3. Dakshin Haryana Bijli Vitran Nigam Ltd. vs. Excel Buildcon (P) Ltd., (2008) 10 SCC 720
4. Kerala SEB vs. Chinamma Antony, (2008) 11 SCC 476
5. Suresh Jindal vs. Bses Rajdhani Power Ltd., AIR 2008 SC 280
6. U.P. Power Corpn. Ltd. vs. Bonds & Beyonds (India) (P) Ltd., (2007) 7 SCC 779

7. (2006) 13 SCC 101
8. Oswal Woollen Mills Ltd. vs. Punjab SEB, (2006) 13 SCC 719
9. Southern Petrochemical Industries Co. Ltd. vs. Electricity Inspector & ETIO,
AIR 2007 SC 1984
10. (2006) 8 SCC 381
11. Jagmodhan Mehatabsing Gujarat vs. State of Maharashtra, (2006) 8 SCC 629
12. Transmission Corpn. of A.P. Ltd. vs. Sri Rama Krishna Rice Mill, (2006) 3 SCC 74
13. Haryana State Electricity Board vs. Mam Chand, (2006) 4 SCC 649
14. U.P. Power Corpn. Ltd. vs. Lohia Brass (P) Ltd., (2006) 7 SCC 220
15. Amar Amit Jalna Alloys (P) Ltd. vs. Maharashtra SEB, (2005) 13 SCC 126

X X X X X