

UNIT 15

INVESTIGATION, ENFORCEMENT AND SPECIAL COURTS

15.1 Background

One thing is great about the Electricity Act 2003, there are multiple organizations and authorities for proper checks and balances in the power sector. However so many institutions and authority many a time also create confusion. To clarify the jurisdiction and scope of the functioning of various authorities I have clubbed them together in this chapter. These institutions in many ways are semi-judicial in nature therefore there discussion before taking up special courts would be apt.

15.2 Adjudicating officer (Section 143)

15.2.1 Appointment of Adjudicating officer

The appropriate commission shall appoint adjudicating officer. One of the members of the appropriate commission can only be appointed as an adjudication officer.

All question which come before any meeting of the appropriate commission are decided by a majority of the members present and voting , and in the event of equality of votes , the chairperson or in his absence , the person presiding shall have a second or casting vote. Thereby is can be deducted that in case of appointment of an adjudicating officer also one of the member will be appointed by the above mentioned procedure .

15.2.2 Functions of Adjudicating officer

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The primary function of the adjudicating officer of the appropriate commission shall be holding of inquiry .The Central Government is empowered to make rules under section 176(2)(v) for the manner of functioning of the adjudicating officer .It is also mandated that any person concerned with the case will be given reasonable opportunity to be heard before any penalty under section 143 is imposed .

15.2.3 Powers of the Adjudicating Officer

The adjudicating officer shall have the power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case . He person can also be asked to give evidence or produce any document which in the opinion of the adjudicating officer may be useful for or relevant for the subject matter of the inquiry .If on such inquiry the adjudicating officer is satisfied that that the person has failed to comply with the provisions of the below mentioned sections , he may impose penalty as he thinks fit in accordance with the provisions of any of the below mentioned sections .

Section 29(5) provides that If any dispute arises with reference to the quality of electricity or safe, secure and integrated operation of the regional grid or in relation to any direction given under by Regional load dispatch center , it shall be referred to the Central Commission for decision. It is also Provided that pending the decision of the Central Commission, the directions of the Regional Load Despatch Centre shall be complied with by the State Load Despatch Centre or the licensee or the generating company, as the case may be.

If any licensee, generating company or any other person fails to comply with the directions issued by the Adjudicating officer he shall be liable to a penalty not exceeding rupees fifteen lacs.

Secondly Section 33(4) provides that If any dispute arises with reference to the quality of electricity or safe, secure and integrated operation of the State grid or in relation to any direction given the state load dispatch center it shall be referred to the adjudicating officer for decision . It is also provided If any licensee, generating

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company or any other person fails to comply with the directions issued by state load dispatch centre, he shall be liable to a penalty not exceeding rupees five lacs.

Finally Section 43 states that Every distribution licensee, shall on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply. It is also Provided that where such supply require connection of distribution mains, or commissioning of new sub-station, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the adjudicating officer of the Appropriate Commission:

Furthermore that in case of a village or hamlet or area wherein no provision for supply of electricity exists, the adjudicating officer of the Appropriate Commission may extend the said period as it may consider necessary for electrification of such village or hamlet or area. It is also Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of electricity for any premises having a separate supply unless he has agreed with the licensee to pay to him such price as determined by the adjudicating officer of the Appropriate Commission.

15.2.4 Jurisdiction of the civil Court

No civil court¹ has jurisdiction to entertain any suit or proceeding in respect of any matter which an adjudicating officer is empowered to determine .Further more no injunctions shall be granted by any court or any other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under the Electricity Act .

15.3 Assessing officer (Section 126)

¹ Section 145

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15.3.1 Appointment of assessing officer

Assessing officer is an officer of the State Government or State Electricity Board or licensee .He is designated as an assessing officer by the state Government.

15.3.2 Assessment

If on inspection of any premises or documents the assessing officer duly authorized by the State Government comes to the conclusion that unauthorized use of Electricity is taking place . He shall provisionally assess to the best of his judgment the electricity charges which the person using the electricity must pay .Subsection 5 of Section 126 also provides that it shall be presumed that unauthorized use of electricity was taking place for three months immediately preceding the date of assessment in case of domestic and agriculture consumers and six months immediately preceding in case of all other consumers. This presumption shall stand unless it is rebutted by the person ,occupier or possessor of such premises .It is also provided that the assessment shall be made at the rate of one and a half times the tariff applicable.

15.3.3 Unauthorized use of Electricity

Explanation (b) of Section 126 defines "unauthorized use of electricity" to mean the usage of electricity-

- by any artificial means; or
- by a means not authorised by the concerned person or authority or licensee; or
- through a tampered meter; or

- for the purpose other than for which the usage of electricity was unauthorized.

15.3.4 Notice of Assessment

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The order of the provisional assessment shall be served the appropriate person in accordance with the rules made by the state Government under section 180(2)(k).The assessed person can file objections against the provisional assessment before the assessing officer .The assessing officer may or may not give reasonable opportunity to such assessed person before passing the final order .

The assessed person can accept the provisional assessment and deposit the assessed amount within seven days of service of the provisional assessment order. If the assessed person deposits the assessed amount then he shall not be subject to any further liability or any action regarding unauthorized use of electricity

15.3.4 Final Assessment

The person served with the notice of provisional assessment shall be entitled to file objection. The Assessing officer after giving reasonable opportunity of hearing to such person ,pass a final order of assessment of the electricity charges payable by such a person.

Furthermore under section 127(6) it is provided that 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, per annum compounded every six months.

15.3.5 Jurisdiction of the civil Court

No civil court² has jurisdiction to entertain any suit or proceeding in respect of any matter which an assessing officer³ designated by the state government is empowered to determine .Further more no injunctions shall be granted by any court or any other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under the Electricity Act .

² Section 145

³ Section 126

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15.4 Appellate Authority (Section 127)

15.4.1 Appointment of Appellate Authority

The Electricity Act is silent on the issue of the appointment of the appellate Authority .It is not clear from the Act weather the appellate authority shall be a functionary of the Government or the licensee .

15.4.2 Functions of Appellate Authority

The Appellate Authority shall dispose of the appeal from the aggrieved party in the matter of final order of the Assessing officer under section 126.The Appellate Authority shall pass appropriate orders and send a copy of the order to the assessing officer and the appellant.

The order of the Appellate authority shall be final .It is also provided that no appeal shall lie to this appellate authority against the final order of the Assessing officer where the final order was made with the consent of the party.

15.4.3 Limitation on appeal

The appeal shall lie to the appellate authority not after 30 days of the final order of the assessing officer. Secondly no appeal shall be entertained by the appellate authority unless an amount equal to one-third of the assessed amount is deposited in cash or by way of bank draft with the licensee . it is also mandatory that the documentary evidence of the same must be enclosed with the appeal .

15.4.4 Rules for the Appellate Authority

Central Government may frame rules for the general functioning of the appellate authority under the rule-making powers vested in the central Government under section 176(1)(u) of the electricity Act .

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15.4.5 Jurisdiction of the civil Court

No civil court⁴ has jurisdiction to entertain any suit or proceeding in respect of any matter which an Appellate authority empowered to determine .Further more no injunctions shall be granted by any court or any other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under the Electricity Act.

15.4.6 Epilogue

The central government it is hoped will soon come out with the relevant regulation to make the institution truly functional. However as a proactive step one of the distribution licensee of Delhi has created a establishment by the name of Consumer grievance redressal Committee which as similar powers as of the appellate authority. It is a three member body with following composition-

- One retired High Court Judge
- One Senior technical Person
- One person from Non Governmental Organization

This kind of institution will help in speedy and quick disposal of cases with minimum of procedural formalities.

15.5 Assessment Hierarchy for unauthorized use of Electricity

Appellate Authority
(Section 127)

Assessing Officer
(Section 126)

⁴ Section 145

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15.6 Investigating Authority (Section 128)

15.6.1 Appointment of Investigating Authority

The Electricity Commission has the power to appoint an Investigating Authority. If the Appropriate Commission is satisfied that a license has

- A generating company or a license has failed to comply with any of the provisions of this Act or
- A generating company or a license has failed to comply with any of the the rules or regulations made there under,

Appoint an "Investigating Authority" in the order to investigate the affairs of any generating company or license and to report to that Commission on any investigation made by such Investigating Authority. The investigating authority is at liberty to employ auditor for the purpose of investigation.

15.6.2 Powers of the Investigating Authority

Wide powers can be conferred on the investigating authority by the electricity Commission. The powers of the investigation authority may include-

- Inspection of Books
- Examination on oath of appropriate person
- Officers of the investigated licensee or generating companies are duty bound to provide information

The electricity Commission on receipt of the report take following action after giving appropriate hearing to the party concerned -

- require the licensee or the generating company to take such action in respect of any matter arising out of the report as the Appropriate Commission may think fit; or
- cancel the license; or
- direct the generating company to cease to carry on the business of generation of electricity.

This is a extreme power in the hands of the Electricity Commission for application in an extreme situation. The investigating authority can investigate -

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- all the subsidiaries of the investigated entity formed for the purpose of carrying on the business of generation or transmission or distribution or trading of electricity exclusively outside India; and
- all its branches whether situated in India or outside India.

15.7 Special Courts

15.7.1 Constitution of Special Courts

The State Government may, for the purposes of providing speedy trial of offences by notification in the Official Gazette provide for the same. The special court shall try following offences –

- Theft of electricity (Section 135)
- Theft of electric lines and materials(Section 136)
- Punishment for receiving stolen property(Section 137)
- Interference with meters or works of licensee(Section 138)
- Negligently wasting electricity or injuring works(Section 139)

15.7.2 Appointment of judge

A Special Court shall consist of a single Judge who shall be appointed by the State Government with the concurrence of the High Court. However A person shall not be qualified for appointment as a Judge of a Special Court unless he was, immediately before such appointment, an Additional District and Sessions Judge. Moreover it is also provided that in case of exigency or any urgent business, the business shall be disposed of :-

- by a Judge, if any, exercising Jurisdiction in the Special Court;
- where there is no such other Judge available, in accordance with the direction of District and Sessions Judge having jurisdiction over the ordinary place of sitting of Special Court.

15.7.3 Procedure and power of Special Court

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All abovementioned offences shall be triable only by the Special Court within whose jurisdiction such offence has been committed. Where it appears to any court in the course of any inquiry or trial that the case pertains to the abovementioned offence and the case is one which is triable by a Special Court constituted under this Act for the area in which such case has arisen, it shall transfer such case to such Special Court, and thereupon such case shall be tried and disposed of by such Special Court.

It has specially been provided that it shall be lawful for such Special Courts to act on the evidence, if any, recorded by any court in the case of presence of the accused before the transfer of the case to any Special Court. However if the Special Court is of opinion that further examination, cross-examination and re-examination of any of the witnesses whose evidence has already been recorded, is required in the interest of justice, it may re-summon any such witness and after such further examination, cross-examination or re-examination, if any, as it may permit, the witness shall be discharged.

The Special Court may, notwithstanding anything contained in sub-section (1) of section 260 or section 262 of the *Code of Criminal procedure, 1973*, try the offence referred to in sections 135 to 139 in a summary way in accordance with the procedure prescribed in the said Code and the provisions of sections 263 to 265 of the said Code shall, so far as may be, apply to such trial: that where in the course of a summary trial under this sub-section, it appears to the Special Court that the nature of the case is such that it is undesirable to try such case in summary way, the Special Court shall recall any witness who may have been examined and proceed to re-hear the case in the manner provided by the provisions of the said Code for the trial of such offence: further that in the case of any conviction in a summary trial under this section, it shall be lawful for a Special Court to pass a sentence of imprisonment for a term not exceeding five years.

A Special Court may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to, any offence tender pardon to such person on condition of his making a full and true disclosure of the circumstances within his knowledge relating to the offence and to every other person concerned whether as principal or abettor in the commission thereof, and any

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pardon so tendered shall, for the purposes of section 308 of the *Code of Criminal Procedure, 1973*, be deemed to have been tendered under section 307 thereof.

The Special Court may determine the civil liability against a consumer or a person in terms of money for theft of energy which shall not be less than an amount equivalent to two times of the tariff rate applicable for a period of twelve months preceding the date of detection of theft of energy or the exact period of theft if determined whichever is less and the amount of civil liability so determined shall be recovered as if it were a decree of civil court.

In case the civil liability so determined finally by the Special Court is less than the amount deposited by the consumer or the person, the excess amount so deposited by the consumer or the person, to the Board or licensee or the concerned person, as the case may be, shall be refunded by the Board or licensee or the concerned person as the case may be within a fortnight from the date of communication of the order of the Special Court together with interest at the prevailing Reserve Bank of India prime lending rate for the period from the date of such deposit till the date of payment

For the purposes of this section, "civil liability" means loss or damage incurred by the Board or licensee or the concerned person, as the case may be, due to the commission of an offence referred to in sections 135 to 139.

15.7.4 Special Court to have power of Court of Session

Save as otherwise provided in this Act, *the Code of Criminal Procedure, 1973*, insofar as they are not inconsistent with the provisions of this Act, shall apply to the proceedings before the Special Court and for the purpose of the provisions of the said enactments, the Special Court shall be deemed to be a Court of Session and shall have all powers of a Court of Session and the person conducting a prosecution before the Special Court shall be deemed to be a Public Prosecutor.

15.7.5 Appeal and revision

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The High Court may exercise, so far as may be applicable, all the powers conferred by Chapter XXIX and XXX of the *Code of Criminal Procedure, 1973*, as if the Special Court within the local limits of the jurisdiction of the High Court is a District Court, or as the case may, be , the Court of Session, trying cases within the local limits of jurisdiction of the High Court.

15.7.6 Review

The Special Court may, on a petition or otherwise and in order to prevent miscarriage of justice, review its judgment or order passed, by it. However review petition shall be entertained only on the ground that it was such order passed under a-

- mistake of fact,
- ignorance of any material fact or
- any error apparent on the face of the record.

The review petition in the Special Court shall not be allowed if the review petition has been previously set aside in its previous order or review the judgment without hearing the parties affected.

15.8 Hierarchy for Trial of Criminal offence under section 135 to 139