

**IN THE HIGH COURT OF HIMACHAL PRADESH AT
SHIMLA**

**CWP No. 9082 of 2025.
Decided on : 30.05.2025**

M/s Jai Durga Stone Crusher.

...Petitioner

Versus

**Himachal Pradesh State Electricity Board Limited and
another.**

...Respondents

Coram

Hon'ble Mr. Justice Ajay Mohan Goel, Judge

Whether approved for reporting?¹ Yes

**For the petitioner : Mr. Vishal Mohan, Senior
Advocate, with Mr. Shriyek
Sharda, Advocate.**

**For the respondents : Ms. Sunita Sharma, Senior
Advocate, with Mr. Dhananjay
Sharma, Advocate.**

Ajay Mohan Goel, Judge (*Oral*)

Notice. Mr. Dhananjay Sharma, learned counsel, accepts notice on behalf of the respondents. On his instructions, Ms. Sunita Sharma, learned Senior Counsel, has also put in appearance on behalf of the respondents.

2. Taking into consideration the controversy involved in this writ petition, with the consent of the parties, this petition is

¹Whether reporters of the local papers may be allowed to see the judgment?

being disposed of at this stage itself.

3. By way of this writ petition, the petitioner has assailed Provisional Assessment Notice dated 11.04.2025, Annexure P-1, which reads as under:-

"From:

*Sr. Executive Engineer,
Electrical Division. H.P.S.E.B.L..
Jawali*

To:

*M/s Jai Durga Stone Crusher
Vill & P.O Kotla
The Jawali Distt Kangra*

On 11.04.2025 meter tamper data of your service bearing Account No 100012000230 was analysed and reviewed by the undersigned and it was then noticed that:

(i) Prolonged power failures were observed during the months of January and February 2025.

The above facts indicate that you are guilty of malpractice. An enquiry will be made into the matter by the Executive Engineer Elect. Division HPSEBL Jawali who will fix the amount of loss sustained by the Board. You may make appropriate representation to him in this regard.

I have provisionally estimated the value of energy misused by you at Rs. 13,85,865/Therefore it is

requested to deposit the assessed amount immediately in the office of the Assistant Engineer Electrical Sub division HPSEBL Kotla. Otherwise, your electricity service connection shall be liable to be disconnect."

4. Learned Senior Counsel appearing for the petitioner has invited the attention of the Court to the provisions of Section 126 of the Electricity Act, 2003 (hereinafter referred to as 'the Act'), and submitted that in terms of Section 126 of the Act, the Assessment Officer, wherever he makes provisional assessment, has to serve such provisional assessment upon the party concerned. Thereafter, objections are to be invited on the provisional assessment and after giving the party an opportunity of being heard, final assessment has to be made. He submitted that there is no provision in Section 126 of the Act of demanding the deposition of provisional assessment as has been ordered vide Annexure P-1. He further submitted that the petitioner has not been given any provisional assessment along-with the Provisional Assessment Notice and neither objections were invited nor opportunity of hearing given, therefore, the act of the respondents is bad in law.

5. Learned Senior Counsel appearing for the

respondent-Board has handed over a copy of Final Assessment Notice to the Court, dated 25.04.2025, in terms whereof the respondents were directed to deposit an amount of Rs. 13,67,978/- as finally assessed. Learned Senior Counsel submitted that the petitioner has concealed this fact from the Court that Final Assessment Notice was also served upon the petitioner. She further submitted that in terms of Provisional Assessment Notice dated 11.04.2025, opportunity was granted to the petitioner file representation, which opportunity was not availed by the petitioner.

6. Having heard learned Senior Counsel for the parties and having perused the Provisional Assessment Notice as well as the Final Assessment Notice, which was handed over by learned Senior Counsel for the respondents, this Court is of the considered view that as there is apparently a flaw in the manner in which the respondents-Board has proceeded against the petitioner in this case, it will be in the interest of justice to quash the Provisional Assessment Notice as well as the subsequent acts of the respondents but with liberty to the respondents to proceed against the petitioner afresh in the

matter, in accordance with law, under Section 126 of the Act.

7. As far as contention raised by learned Senior Counsel for the respondents that in terms of Provisional Assessment Notice dated 11.04.2025, an opportunity was given to the petitioner to make a representation is concerned, this Court does not deem that to be an appropriate opportunity in terms of Section 126 of the Act for the reason that a representation could have been filed by the petitioner only against a Provisional Assessment Order and not against a Provisional Assessment Notice, which does not expressly speak of as to how the demand mentioned therein was arrived at by the Electricity Board. According to this Court, along-with the Provisional Assessment Notice, Assessing Officer ought to have had appended the provisional assessment actually done by the Authority and response, from the petitioner ought to have been sought with regard to the said Provisional Assessment Order.

8. Be that as it may, without making any further observation and without making any observation on the merit of the case, as agreed, these proceedings are closed by setting

aside Provisional Assessment Notice dated 11.04.2025 as well as subsequent act of the respondents-Board pursuant to the issuance of this Provisional Assessment Notice dated 11.04.2025 for non compliance of Section 126 of the 2003 Act, but with liberty to the respondents-Board to proceed against the petitioner afresh under Section 126 of the Act, with regard to the cause, which resulted in the issuance of Provisional Assessment Notice dated 11.04.2025, by following the statutory rigours contained in Section 126 of the Act, in letter and spirit. Pending miscellaneous application(s), if any, also stand disposed of accordingly.

(Ajay Mohan Goel)
Judge

May 30, 2025
(Shivank Thakur)