

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment Reserved on: 22/10/2019****Judgment Delivered on : 21/01/2020****Writ Petition (T) No. 140 of 2014**

1. Jindal Steel & Power Limited, A Company incorporated under Companies Act, 1956 having its Corporate Office at Jindal Centre 12, Bhikaji Cama Place, New Delhi, Through its Authorised Representative Deepak Mittal, Jindal Steel & Power Limited, Raigarh.
2. Deepak Mittal S/o Shri Prem Chand Mittal, aged about 43 years, Shareholder of Jindal Steel & Power Limited and resident of CD 32 Hill View Colony, Jindal Steel & Power Limited, Raigarh.

---- Petitioners**Versus**

1. State of Chhattisgarh, through Secretary, Department of Energy, Mantralaya, Dau Kalyan Singh Bhawan, Raipur, Chhattisgarh.
2. Chief Electrical Inspector, Government of Chhattisgarh, Indravati Bhawan, Second Floor, B-Block, Raipur, Naya Raipur.
3. Executive Engineer (Electrical Safety) and Deputy Electrical Inspector, Government of Chhattisgarh, Durga Chak Uttar Chakradhar Nagar, Raigarh.

---- Respondents

For Petitioners	: Shri Naveen Kumar, Shri Ashish Shrivastava, Shri Manish Kharbanda, Ms. Priya Singh and Shri Aman Pandey, Advocates.
For Respondents/State	: Shri Siddharth Dubey, Deputy Government Advocate.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****C.A.V. Judgment****Per P.R. Ramachandra Menon, Chief Justice**

1. The constitutional validity of Section 13(1) of the Chhattisgarh Upkar Adhiniyam, 1981 (*for short 'the 1981 Act'*) is challenged in this writ petition. There is also a challenge against the demand notices dated

19.06.2014 and 11.07.201 whereby a total sum of Rs. 49,47,27,587/- is demanded towards the arrears of Energy Development Cess (*for short, 'the EDC'*) and interest payable for the period from October, 2007 to January, 2014.

2. We heard Shri Naveen Kumar, the learned counsel for the Petitioner-Company supported by Shri Ashish Shrivastava, and Shri Siddharth Dubey, the learned Deputy Government Advocate representing the State/Respondents.

3. The sequence of events is as follows: The Madhya Pradesh Upkar Adhiniyam, 1981 obtained the assent of the President on 16.12.1981 and it was published in the Madhya Pradesh Gazette (Extraordinary) dated 12.01.1982; by virtue of which the said enactment was given life as Act No. 1 of 1982 in the erstwhile undivided State of Madhya Pradesh, from which the State of Chhattisgarh was carved out in the month of November, 2000. After formation of the State as above, the Madhya Pradesh Upkar Adhiniyam, 1981 and the Madhya Pradesh Electricity Duty Act, 1949 (*for short 'the Act, 1949'*) came to be adopted by this State and necessary notification has been issued bringing the above Acts into force, insofar as the State is concerned.

4. The Petitioner-Company is engaged in the business of manufacture of steel at its plant in the Raigarh District. Petitioner-Company obtained '**Distribution licence**' from the Chhattisgarh State Electricity Regulatory Commission as per Annexure P/4 dated 29.11.2005 for

distribution of electricity in the Jindal Industrial Park Limited to 70 industrial consumers with a maximum demand not exceeding 299 MW in the village Tumidih and Punjipathra of Gharghoda Tahsil in Raigarh District. Pursuant to the said licence, it is stated that the Petitioner-Company has been supplying/selling electrical energy to the above industrial units in its capacity as a '**Distribution licensee**' (paragraph 8.1 to 8.4 of the writ petition).

5. The Chhattisgarh Upkar Adhiniyam, 1981 virtually consists of five different parts. Part I deals with the "Energy Development Cess", Part II deals with "Urban Development Cess", Part III deals with "Cess on Transfer of Vacant Land and Land Used for the Purpose of Agriculture", and Part V deals is in respect of the head "Miscellaneous", which contains Section 13, dealing with the power to make rules and Section 14 as to the power to remove difficulties. As per the original scheme of the Act, under Part I, the liability to satisfy the Energy Development Cess was cast upon every '**Distributor**' of electrical energy, subject to the exceptions specified in Section 4, which was to be satisfied at the rate of 10 paise per unit (as per CG Amendment Act 19 of 2010). Initially, it was 1 paise per unit, which came to be enhanced to 5 paise per unit, as per the CG Act No. 28 of 2004 and subsequently, it came to be enhanced to 10 paise per unit, as per the CG Act No. 19 of 2010. As per the CG Act 28 of 2004, simultaneous to enhancement of the cess from 1 paise to 5 paise, mentioned in Section 3(1) of the 1981 Act, a new provision was also inserted as Section 3(1-a), whereby liability was cast upon every '**Producer**' of electrical energy as well, to satisfy the cess at the rate of 10

paise per unit on the electrical energy sold or supplied to a consumer or consumed by himself or his employees by his captive power unit or diesel or other generator set of more than 100 KW capacity during any month, subject to the exceptions carved out as given in the proviso. Similar exception was already there in respect of Section 3(1) of the 1981 Act, whereby the liability was cast upon the '**Distributor**' of the electrical energy as mentioned in the proviso thereunder.

6. Though there was no challenge from the part of the distributors of electrical energy, who are required to satisfy such cess as borne by the charging section 3(1) of the 1981 Act, the insertion of a new provision by way of Section 3(1-a) bringing the 'producers' of electrical energy as well within the 'tax net' made various captive power producers to challenge the constitutional validity of Section 3(1-a) of the 1981 Act before this Court. The writ petition filed by the Petitioner (WP No. 2384 of 2006) came to be finalised by Division Bench of this Court as per the judgment dated 15.12.2006, whereby Section 2(2) of the CG Act No. 28 of 2004 inserting Section 3(1-a) in the 1981 Act, was declared as unconstitutional. The Respondents were restrained from levying and collecting EDC from the Petitioners under Section 3(1-a) of the 1981 Act and the bills raised in this regard were quashed. The verdict passed by a Division Bench of this Court declared the provisions as invalid, as per judgment dated 15.12.2006, whereby Section 2(2) of the CG Act No. 28 of 2004 inserting Section 3(1-a) in the 1981 Act was declared unconstitutional. The Respondents were

restrained from levying and collecting EDC from the Petitioners under Section 3(1-a) of the 1981 Act and the bills raised in this regard were quashed. The verdict passed by the Division Bench of this Court declaring the provisions as invalid was sought to be challenged by the State by filing a Special Leave Petition before the Apex Court. An interim order was passed by the Apex Court on 02.11.2007 granting liberty to the State to raise the bills demanding EDC, however, restraining any coercive steps for recovery of the said amount. It is stated that the matter is still pending before the Apex Court.

7. While so, observing that the statutory requirement in paying the cess by the Petitioner, in the capacity as a '**Distributor**' of electrical energy in terms of Section 3(1) of the 1981 Act, based on the '**Distributor licence**' given by the State Electricity Regulatory Commission in the year 2005 was not being satisfied, Annexure P/2 proceedings were issued by the competent authority on 19.06.2014 raising a demand to satisfy a sum of Rs. 30,14,49,071/- towards the EDC under Section 3(1) of the 1981 Act alongwith interest at the rate of 24% per annum amounting to Rs.19,32,78,516/- for the period from October, 2007 to January, 2014 (to be effected by 30.06.2014). As part of the said proceedings, particulars of the energy used, the cess payable, the delay involved and the interest payable were separately given in the form of a table showing the total amount payable, both towards the principal portion and the interest portion.

8. On receipt of Annexure P/2, the Petitioners submitted a letter dated 30.06.2014 requesting for a period of two weeks for making a proper

assessment of the levy made and for taking further steps. Annexure P/3 notice was issued on 11.07.2014 by the 2nd Respondent referring to the letter dated 30.06.2014 (Annexure P/5). Since the payment was not effected, the demand was reiterated as per Annexure P/3 dated 11.07.2014 referring to Annexure P/1 issued already. In response to this, the Petitioners contend that a request was made on 14.07.2014 (Annexure P/6) to provide for a further period of two weeks to evaluate the facts and figures as to the levy made by the 2nd Respondent and for taking further steps. Shortly thereafter, the Petitioners approached this Court by filing a writ petition on 28.07.2014, challenging the vires of Section 3(1) of the 1981 Act and seeking to quash Annexure P/1 and P/3 orders/demand notices. On 14.08.2014, it was submitted before this Court that, the validity of the Act, 1981 was pending consideration before the Apex Court and hence, the Petitioner had no objection in depositing the cess determined under the Act, under protest, however, pressing the objection towards the interest charged thereupon. In the said circumstance, an interim order was passed by this Court granting stay in respect of the cess amount provided the Petitioners deposited the entire amount before the 2nd Respondent within one month and continue to deposit the future cess as and when they fell due. The Petitioners were also required to furnish Bank Guarantee for interest portion to the 2nd Respondent within the same period. Pursuant to the said direction, it is stated that deposit of the entire cess amount has been satisfied and the Bank Guarantee to the requisite extent towards the interest payable is also stated as furnished, which is stated as kept/renewed as valid throughout.

9. A return has been filed on behalf of the Respondents rebutting the pleadings and opposing the prayers. The contentions raised by the Petitioners that Annexure P/1 order came to be issued all of a sudden demanding the arrears and interest for nearly 7 or 8 years, has been sought to be rebutted by pointing out that the proceedings issued were only in respect of the statutory duty to satisfy the amount prescribed by Act and the Rules and further that the Petitioner-Company was very much aware of the position who had alerted the Petitioner's consumers as well, as to their liability to satisfy the cess. A copy of the specimen agreement executed between the Petitioner-Company and its consumers containing the aforesaid clause/stipulation has been produced as Annexure R/1.

10. The Petitioners have filed a compliance report with supporting affidavit dated 14.12.2014 as to the satisfaction of the deposit of cess and furnishing of the bank guarantee ordered by this Court on 14.08.2014, also producing copies of the relevant documents. Thereafter, the writ petition was sought to be amended (as per IA No. 3 of 2015) by incorporating some other grounds as grounds 'N' to 'P', raising a plea of limitation; and as to the arbitrary and unreasonable exercise of the purported power to raise the demand of levy . On allowing the said IA, additional reply dated 24.07.2015 has been filed by the Respondents.

11. The subsequent developments have been brought on record by the Petitioners by filing IA No. 4 of 2019, also producing copies of the relevant documents. It is pointed out that, pursuant to the interim order passed by this

Court on 14.08.2014 and the deposit made by the Petitioners, Document No. D/1 letter dated 26.08.2014 was issued to the Petitioners' consumers; particulars of whom have been given in Document No. D/2 demanding the 'cess' already deposited by the Petitioners. The consumers sought to challenge the same by approaching the Consumer Grievance Redressal Forum constituted under Section 42 of the Electricity Act, 2003, where the relief was declined vide order dated 27.06.2015 (Document D/3), holding that the consumers were liable to pay the Electricity Duty Cess (EDC). The consumers then moved a representation before the Electricity Ombudsman constituted under Section 42(6) of the Electricity Act, 2003. The learned Ombudsman, vide order dated 07.10.2015 (Document No. D/4) partly allowed the appeal of the consumers and held that the Petitioner-Company was not entitled to recover any amount towards 'EDC' for the period beyond two years prior to its demand letter dated 26.08.2014. This has been sought to be challenged by the Petitioners before the learned Single Bench of this Court by filing Writ Petition (C) No. 2308 of 2015, wherein an interim order has been granted on 22.12.2015 and the matter is still pending.

12. Altogether, 16 grounds have been raised by the Petitioners, 13 at the time of filing of the writ petition and the remaining 3 by way of amendment. Among those grounds, (A) to (G) are in respect of validity of Section 3(1) of the 1981 Act - stated as in conflict with the constitutional mandate and the remaining grounds are in respect of the correctness of the proceedings finalised by the 2nd Respondent in issuing Annexure P/1 order,

the subsequent demands, the quantification of the amount, denial of opportunity of hearing and the excessive/maximum rate of 'interest' (24%) stated as penal in character. The additional grounds (N) to (P) brought in as per the amendment are in respect to the alleged bar of limitation and the unreasonable delay of 8 years in issuing Annexure P/1 and the demands, claiming the cess and interest from October 2007 to January 2014. Reference to the above grounds is made only to mention that no ground has been raised by the Petitioners with reference to 'Section 3(1-a)' of the 1981 Act which is in respect of the 'Cess' payable in the capacity as a 'Producer' of electricity; which presumably may be for the reason that validity of the said provision is pending consideration before the Apex Court, where the Petitioner-Company is also stated as a party. In other words, the entire pleadings and prayers are raised with reference to the liability of the Petitioners to satisfy the EDC and interest only in the capacity as a 'Distributor' envisaged under 'Section 3(1)' of the Act, based on Annexure P/4 Distribution Licence issued by the Chhattisgarh State Electricity Regulatory Commission. The submissions made by the learned counsel by placing reliance on various judgments have to be analysed and understood in the above background.

13. The learned counsel for the Petitioner addressed the Court as to the constitutionality of the impugned provision, mainly contending that it is violative of Article 14 of the Constitution; inasmuch as it is discriminatory qua Distributors, as the 'Cess' is imposed only on the supply/sale of electricity by

the Distributor. This is with reference to the submission that sale by the independent power producer/captive power producer is exempted from the levy of Cess as per the order of the Apex Court, passed on 02.11.2007. The order passed by the Apex Court on 02.11.2007 in the Special Leave Petition (Civil) No. 3853 of 2007 filed by the State, against the common judgment dated 15.12.2006 whereby Section 3(1-a) of the 1981 Act was set aside, declaring it unconstitutional, is only to the following effect:

"In SLP (C) No. 3853 of 2007:

Leave granted.

Hearing expedited.

Liberty to move Hon'ble the Chief Justice of India for a fixed date of hearing.

Pending the hearing and final disposal of the civil appeal, the Department may raise the bills so that the claim does not become time barred. However, no coercive steps shall be taken by the State to recover the dues till further orders. At the same time, the assessee will not press for refund on the basis of the impugned judgment during the pendency of the case.

In SLP (C) Nos. 19370 & 19371 of 2007:

Leave granted.

Hearing expedited.

To be tagged with Civil Appeal arising out of SLP (C) No. 3853/2007.

In the meantime, pending the hearing and final disposal of the appeal, the Department may raise the Bills but they shall not take coercive steps to recover the dues till further orders.

In SLP (C) No. 11870 of 2007:

Leave granted.

Hearing expedited.

To be tagged with Civil Appeal arising out of SLP (C) No. 3853 of 2007"

14. As mentioned already, though the statute originally intended to collect EDC only from the '**Distributors**' of electricity as given under **Section**

3(1) of the 1981 Act, as per the CG Act No. 28 of 2014, 28 of 2004, **Section 3(1-a) was introduced** in similar terms, demanding Cess from the '**Producers**' of electricity as well. The rate is also common, as on date, by virtue of the CG Act No. 10 of 2010. This being the position, there is no unreasonable classification and both the 'Producers' and the 'Distributors' are required to satisfy the EDC to the requisite extent, though the matter is still pending consideration before the Apex Court in respect of the validity of Section 3(1-a) of the 1981 Act. As it stands so, the reliance sought to be placed by the Apex Court in ***Ram Prasad Narain Sahi v. The State of Bihar*** {AIR 1953 SC 215, paragraphs 15 and 18}, ***Kunnathat Thathunni Moopil Nair v. The State of Kerala and Another*** {AIR 1961 SC 552, paragraphs 8 to 10}, ***S.K.Dutta, Income Tax Officer v. Lawrence Singh Ingty***, {AIR 1968 SC 658, paragraphs 8, 10 and 15}, ***State of Kerala v. Haji K. Kutty Naha & Others*** {AIR 1969 SC 378, paragraph 5}, ***Aashirvad Films v. Union of India*** {(2007) 6 SCC 624 , paragraphs 12 to 15, 18, 25 and 27} and ***State of Andhra Pradesh v. Nalla Raja Reddy*** {(1967) 3 SCR 28, paragraphs 21 and 25} asserting the necessity to have a rational classification and the existence of discriminatory provisions, are not attracted to the case in hand.

15. During the course of arguments, the learned counsel for the Petitioners referred to various provisions of the Electricity Act and the Rules thereunder, to demonstrate that as per the Act of 2003 and the Rules 2005, other entities like the Independent Power Producers (IPP) and Captive Power Producers (CPP) are entitled to effect sale and supply of electricity to their

respective consumers under non-discriminatory mechanism. As pointed out already, the entire case is moulded with reference to the nature of business being performed by the Petitioners in the capacity as a 'Distributor' of electricity, coming within the purview of 'Section 3(1)' of the 1981 Act and not with reference to the liability as a 'Producer' of electricity, separately coming within the purview of 'Section 3(1-a)' of the 1981 Act (which issue is pending before the Supreme Court). There is no pleading in the writ petition that the Petitioner-Company is a 'Producer' of electricity in any capacity and the rights of the Petitioners in this regard are adversely affected because of any unreasonable classification with reference to IPP and CPP, as the case may be. Since the above arguments advanced do not have any basis as contained in the pleadings, it is not liable to be acted upon.

16. It was further contended by the learned counsel for the Petitioners that the enactment is unreasonable and arbitrary, inasmuch as there is no mechanism for issuing any prior notice, hearing, assessment, appeal etc. with regard to the fixation of liability. It is also pointed out that there is no quasi-judicial forum before which the person facing the demand of such kind can approach. The absence of any machinery or mechanism as above will make the taxation unconstitutional. Support is sought to be drawn by the verdict passed by the Apex Court in ***Kunnkathat Thathunni Moopil Nair*** (*supra*) {paragraph 9} and ***Nalla Raja Reddy*** (*supra*) {paragraph 22 and 23} wherein the Apex Court held that, if a taxing statute does not provide for

redressal i.e. notice, opportunity of hearing, taxing authority, procedure for assessment, redressal mechanism, then, such statute is unconstitutional.

17. Coming to the Act, 1981, it is a self contained statute. Section 3(1) clearly stipulates the extent of liability for payment of EDC at the of 10 paise per unit and the total units of electrical energy sold or supplied to the consumers or consumed by him or his employees during any month, subject to the exceptions mentioned in the proviso. Section 4 of the above Act clearly stipulates that the provisions of Section 4 to 9 (both inclusive) of the Act, 1949 and the Rules made thereunder shall *mutatis mutandis* apply to cess under the Act, 1981 as they shall apply to levy of duty on sale or consumption of electrical energy under that Act and for that purpose, reference to 'duty' or 'electricity duty' in the said Act or the Rules made thereunder, as the case may be, shall be construed as reference to 'cess'. Rule 3 of the Madhya Pradesh Electricity Duty Rules, 1949 (*for short 'the Rules, 1949'*) reads as follows:

"3. Time and manner of payment.- Every distributor of electrical energy and every producer shall pay the electricity duty in respect of each month before the expiry of the following month into a government treasury to the credit or Government under the head "XII-Other Taxes and Duties-Receipts from Electricity Duties-Other Receipts-Receipts from Electricity Duty, 1949" and send the treasury receipt to the Electric Inspector within fifteen days from the date of such credit."

18. From the above, it is clear that every 'Distributor' of electrical energy shall pay the electricity duty in respect of each month before expiry of the following month into the Government treasury under the head as

mentioned therein and send 'treasury receipt' to the Electrical Inspector within 15 days from the date of such credit. Rule 7(i) of the Rules, 1949 mandates that, every 'Distributor' of electrical energy shall submit to the Electrical Inspector a return for each month in Form 'G' alongwith the treasury receipt sent under Rule 3. If the duty is not paid within the period specified under Rule 3, the liability to satisfy interest is specified under Rule 5(1) and the rate of interest is given under sub-rule (2) of Rule 5. Settlement of disputes is taken care of by Rule 13, which is to the following effect:

"13. Settlement of disputes. - If any question arises between the distributor of electrical energy or the producer and an Electric Inspector as to the quantity of energy which is liable to electricity duty, the Provincial Government may on application of such distributor or producer or of the Electric Inspector refer the question to such authority as the Provincial Government may appoint and the decision of such authority shall be final."

19. If there is a failure on the part of the 'Distributor' in submitting the treasury receipt under Rule 3 and return mentioned in Rule 7(i) of the Rules, 1949, the course of action to be pursued enabling the Electrical Inspector to determine the amount of electricity duty by way of best of his judgment method and the subsequent issuance of a notice of demand requiring to satisfy the amount due pointing out that the amount so assessed shall be deemed to be the duty payable under Section 3 of the Act, 1949, are clearly mentioned in Rule 15(1) of the Rules, 1949. The liability to satisfy interest under such circumstance, in addition to the duty, is clearly given in sub-rule (2) of Rule 15. Rule 16 of the Rules, 1949 speaks about the penalty to be mulcted upon a person who commits breach of any of the Rules. From this, it

is clear that the statute provides a complete mechanism as to the quantum of liability to be satisfied, the burden to submit the return, the period within which the payment has to be effected, liability to satisfy interest on delay, the power of the Electrical Inspector to fix the quantum when there is a failure on the part of the distributor, the rate of interest payable in respect of delay and also for settlement of disputes.

20. There is no case for the Petitioners that they had complied with the requirements by effecting the payment of 'Cess' in terms of Rule 3 of the Rules, 1949; that they have filed any return in terms of Rule 7(i); that there was no fault or delay in satisfying the statutory requirement or further that they had raised any dispute before any of the competent authorities as to the liability or quantum. This being the position, the contention raised by the Petitioners in this regard is absolutely without any merit or bonafides.

21. There is a contention for the Petitioners that the levy of Cess is virtually a tax in disguise and that no tax can be levied without any authority of law, by virtue of mandate under Article 265 of the Constitution of India. There is also a contention that in case of any Cess, there must be co-relation between levy and the services rendered (cess or fee) revealing the '*quid-pro-quo*'. The verdicts passed by the Apex Court in **Commissioner, Hindu Religious Endowments v. Sri Lakshmindra Tirtha, Swamiar of Sri Shirur Mutt**, {AIR 1954 SC 282, paragraph 44 to 51}, **Jaora Sugar Mills (P) Ltd. v. State of Madhya Pradesh**, {AIR 1966 SC 416, para 19}, **Om Prakash Agarwal v. Giri Raj Kishore** {AIR 1986 SC 726, paragraphs 7, 10 to 12} and

Chandrakant Krishnarao Pradhan v. Jasjit Singh, Collector of Customs, Bombay, {AIR 1962 SC 204, paragraph 13} are sought to be pressed into service in this regard.

22. There cannot be any dispute with regard to the legal position made clear by the Apex Court in the above context. The purpose of levy is discernible from sub-section (3) of Section 3 of the 1981 Act which mentions the utilisation, also involving 'Research and Development' in the field of energy. The said provision is extracted below:

"3. Levy of energy development cess. -

- (1)

xxx

xxx

xxx
- (2)

xxx

xxx

xxx
- (3)

The amount in the credit of the fund shall, at the discretion of the State Government be utilized for,-

(a)

research and development in the field of energy including electrical energy as well as other conventional and non-conventional sources of energy;

(b)

improving the efficiency of generation, transmission, distribution and utilization of energy including reduction of losses in transmission and distribution;

(c)

research in design, construction, maintenance, operation and materials of the equipment used in the field of energy with a view to achieve optimum efficiency, continuity and safety;

(d)

survey of energy sources including non-perennial sources to alleviate energy shortage;

(e)

energy conservation programmes;

(f)

extending such facilities and services to the consumers as may be deemed necessary;

(g)

creation of a laboratory and testing facilities for testing of electrical appliances and equipments and other equipments used in the field of energy;

(h)

programmes of training conducive to achieve any of the above objectives;

(i)

transfer of technology in the field of energy;

(ii) any purpose connected with safety of electrical installations and

(j) any other purposes connected with improvement of generation, transmission, distribution or utilization of electrical and other forms of energy, as the State Government may, by notification, specify.

Explanation."In this sub-section, 'energy' includes all conventional and non-conventional forms of energy."

23. **Sub-section (2) of Section 3** of the 1981 Act deals with the fate of the cess collected and under sub-section (1) which is to the following effect:

"(2) The proceeds of the cess under sub-section (1) shall first be credited to the Consolidated Fund of the State and the State Government may, at the commencement of each financial year, after due appropriation has been made by law, withdraw from the Consolidated Fund of the State an amount equivalent to the proceeds of cess realized by the State Government in the preceding financial year and shall place it to the credit of a separate fund to be called the Energy Development Fund and such credit to the said fund shall be an expenditure charged on the Consolidated Fund of the State Government of Madhya Pradesh."

Sub-section (4) of Section 3 says that if any question arises as to whether the purpose for which the fund is being utilised is a purpose falling under sub-section (3) of Section 3 or not, the decision of the State Government therein shall be final and conclusive.

24. A conjoint reading of the above provisions clearly reveals the purpose of collection of EDC and its utilization, which clearly reflects the 'service' that is being rendered by utilising the amounts in connection with the field of generation, transmission, distribution and utilization of energy, research, development, survey and such other programmes, also involving transfer of technology in the field of energy. As it stands so, the idea and

understanding of the Petitioners as to the lack of any service is quite wrong and misconceived.

25. The Petitioners attack Annexure P/1 order referring to the violation of the principles of natural justice as well, in so far as no notice or opportunity of hearing was given; nor any assessment was made as to the determination of the quantum of liability, unlike in the case of assessment of tax under various statutes. The fixation of liability towards the EDC is clear and certain, by virtue of the rate/quantum mentioned under Section 3(1) of the 1981 Act. The liability of the Distributor to satisfy the Cess at the above rate with respect to number of units and the necessity to file return under Rule 7(1) of the Rules, 1949 before the Electrical Inspector are also clear and definite. Since the number of units sold/supplied/ used by the Distributor is clearly within the knowledge of the Distributor and since the 'rate per unit' is also clearly stipulated in the statute itself, the rest is for the Petitioner/Distributor to show the relevant figures in the return to be filed before the Electrical Inspector after satisfaction of the duty in terms of Rule 3 of the Rules, 1949. There is no ambiguity/obscurity in any manner and the statute does not envisage issuance of any notice as to the fixation of liability. This is something like the satisfaction of the tax payable in respect of motor vehicles under the Motor Vehicles Taxation Act and such other similar statutes. When the statute is a 'self-contained' one as to the rate and the manner of satisfaction, fixing the extent of liability upon the Distributor, the alleged violation of the principles of natural justice with reference to non-issuance of

notice or opportunity of hearing is not correct or sustainable and is unfounded. This being the position, the reliance sought to be placed on ***Kothari Filament v. Commissioner of Customs*** {(2009) 2 SCC 198 paragraph 15}, ***Municipal Committee, Hosiarpur v. Punjab State Electricity Board***, {(2010) 13 SCC 216, paragraphs 31 to 36}, ***Kesar Enterprises Limited v. State of Uttar Pradesh***, {(2011) 13 SCC 711, paragraphs 23, 30 to 36} and ***Swadeshi Cotton Mills Ltd. Union of India***, {(1981) 1 SCC 664, paragraphs 21 to 45} in respect of the violation of principles of natural justice is quite out of context and is not applicable.

26. The knowledge of the Petitioner/Distributor as to the liability to satisfy the EDC in terms of Section 3 and the relevant Rules is revealed from the materials on record. Even otherwise, there cannot be any defence with reference to the ignorance of law; as it is not an excuse. The fact that the Petitioner/Distributor was aware of the situation is clearly discernible from a copy of the agreement executed between the Petitioner-Company and one of the consumers, produced as Annexure R-1 alongwith the reply filed by the Respondents. The relevant portion of the said agreement dated 10.02.2006, which is in continuation of the agreement dated 12.03.2005, is extracted below:

"The charges for energy payable shall be on two part basis as under:-

Monthly fixed charges = contract demand in MVA x 1000 x 720 Hours x 0.9 PLF x 30 paise.

Actual energy consumed charges = Unit of Energy consumed in KWH during the month is Rs. 2.15 paise (including cess 10 paise per unit is applicable as on date.)

The other terms and conditions for additional supply of 3000 KVA electrical energy shall be as per the terms and condition, specified in the agreement dated 12th Mach 2005."

27. Paragraph 20 of the agreement, as to the amount to be satisfied by the consumers, is to the following effect:

"20. (a) The consumer shall pay JSPL every month charges for electrical energy supplied to consumer as per this agreement made on the sale of power to the consumer and the charges for energy consumed by consumer during the said month will be on the following basis.

(b) The charges for energy payable shall be on two part basis consisting of Monthly fixed charges based on contract demand and Actual energy charges based on total energy consumed during the month.

Total Energy Charges = Monthly fixed charges + Actual energy charges

Monthly fixed charges = Contract demand in MVA x 1000 x 720 Hours x 0.9 PLF x 30 paise

Actual energy consumed charges = unit of Energy consumed in KWH during the month x Rs. 2.05 paise.

The above energy charges have been calculated based on existing rate of royalty on coal, electricity duty applicable on generation and sale of power and other levies and duties. The rates of actual energy charges shall be revised in the event of any change in the rate of royalty on coal by Government of India and/or by State Government of Chhattisgarh, revision in the levies, duties etc. on generation and sale of energy.

(c) The maximum Contract Demand recorded during the month shall be evaluated based on 30 minutes average of the maximum power drawn during the month. If recorded Demand during the month exceeds the Contract Demand up to 10% once in a while, in that event the amount of total energy charges payable during the month shall be calculated as per clause 20(b) above.

If recorded demand exceeds the contract demand upto 10% continuously for 3 months, the consumer shall increase his contract demand accordingly and also should pay additional monthly fixed charges from the date of initial exceeded M.D., recorded. If recorded demand exceeds the contract demand beyond 10% in the event the amount of total energy charges payable during the month shall be calculated proportionately

for contract demand at normal rates of total energy charges as given in clause 20(b) above and for extra MD recorded at 1.5 times of the normal tariff."

28. Paragraph 25 of the agreement clearly says that the tariff set out in the schedule vide paragraph 20 does not include any tax, duty or other charges which is applicable for consumption of electrical energy that may be payable in accordance with any law in force and that such charges shall be payable by the consumer in addition to the tariff charges. The said clause is also reproduced below:

"25. (a) The tariff set out in the schedule vide para 20 does not include any tax, duty or other charges, which is applicable on consumption of electrical energy that may be payable in accordance with any law in force. Such charges will be payable by the Consumer in addition to JSPL tariff charges."

29. The Petitioner-Company admits in the writ petition that it has been raising bills to its consumers for the electricity supplied to them. If the Petitioners were not raising any demand in respect of EDC in the bills raised to such consumers for the period from October 2007 to January 2014, it can only be the fault of the Petitioners and nobody else can be blamed in this regard. This is more so, since Section 4 of the Madhya Pradesh Electricity Duty Act, 1949 which is adopted and made applicable to the State of Chhattisgarh starts with a '*non-obstante* clause' and it says that a Distributor of electrical energy, subject to the limitations and conditions, if any, can recover from a consumer, by way of surcharge, the whole or part of the duty payable by such distribution of electrical energy under Section 3 in respect of all consumption of electrical energy. The Petitioners contend that it was not

raised or demanded from the consumers because of the interim order passed by the Supreme Court on 02.11.2007, whereby the bills were permitted to be raised, however interdicting the recovery by way of coercive proceedings. The said order does not come to the rescue of the Petitioners in any manner, insofar as it was in respect of demand under Section 3(1-a) of the 1981 Act, fixing the liability of the 'Producer' of electrical energy and in the challenge raised before the Apex Court by the State against the verdict passed by a Division Bench of this Court setting aside the amending provision (CG Act No. 28 of 2004) whereby Section 3(1-a) was introduced. Even before and after, Section 3(1) was and is standing intact; which deals with liability of the 'Distributor' to satisfy the EDC. If the Petitioners had not satisfied the EDC in terms of Rule 3 and had not filed any return in terms of Rule 7(i) or had not demanded the consumers to reimburse it in terms of Section 4 of the Act, 1949, it can only be the fault of the Petitioners and nobody else.

30. There is a contention for the Petitioners that the Annexure P/1 has been issued all of a sudden, demanding arrears for about 7/8 years and as such, there is a faulty exercise of power by the 2nd Respondent and hence the liability cannot be shifted to the shoulders of the Petitioners in respect of 'interest' to be satisfied for the delay. There is also a contention that the interest is excessive, as the 'maximum rate of 24%' has been imposed and it is penal in nature. Such extent of interest is stated as imposed under a wrong impression that the Petitioners had actually collected the Cess from the consumers, but had not deposited; as contended by the 2nd Respondent. We

find it difficult to agree. It is true that the respondents have mentioned in their reply that the Petitioners had collected the amounts (Cess) from the consumers and the same has not been deposited in the Government Treasury under the relevant head in terms of Rule 3; nor have they filed any return before the Electrical Inspector in terms of Rule 7(i) and as such, interest is liable to be paid in terms of the relevant provisions of the Act/Rules. Here, it has to be noted that, nowhere in the writ petition, have the Petitioners stated anything as to the collection of EDC from the consumers. The Petitioner Company obtained 'distributor licence' vide Annexure P/4 from the Respondent No. 1 in the year 2005. The statute was very much in existence then. The challenge against the statutory provision was raised for the first time only by filing the present writ petition in the year 2014. The assertion that the Petitioners have not demanded Cess from the consumers comes up for the first time only as per IA No. 4 of 2014 dated 19.08.2019 (for accepting additional documents by this Court). A specimen copy of the bill dated 31.03.2013 has been filed by the Petitioners as Document D-7 alongwith the said IA, wherein a 'note' has been given in the following terms:

"Note:

1. The case is pending with Hon'ble Supreme Court of India but demand is to raised as per S.C. order dated No. SLP No. 3853 dated 02.11.2007.
2. On receipt of final outcome of Appeals pending with Supreme Court there same will be passed on to you as per note on Reverse Side of this demand note."

We do not find it necessary to go into the relative rights and liberties between the Petitioners and the consumers; which is pending

consideration before the learned Single Bench of this Court by way of Writ Petition (C) No. 2308 of 2015.

31. The only question is with regard to the 'rate of interest' adopted by the 2nd Respondent i.e. 24% which is the maximum as per the relevant Rules. The question is whether the said rate of interest of 24% has been imposed by the 2nd Respondent as a matter of penal measure, for the reason that the Petitioners, after collecting the Cess from the consumers has not remitted and has misappropriated it or not. The answer can only be in the 'negative', as discernible from the Rule and the relevant Notification issued in this regard.

32. Rule 5 of the Rules, 1949 reads as follows:

"5. Recovery of Duty and interest. - (1) Where the duty due is not paid within the period specified under rule 3, the same shall be paid thereafter with interest thereon at the rate prevailing in accordance with sub-rule (2). For the purpose of calculating the interest part of a month shall be treated as equal to a month.

(2) The rate of interest payable under sub-rule (1) shall be such as may be fixed by the Provincial Government by notification from time to time subject to a maximum of 24% per annum."

Sub-rule (1) of Rule 5 of the Rules, 1949 says that interest is payable, if the duty is not paid within the period specified under Rule 3 and it shall be at the rate prevailing in accordance with sub-rule (2). Sub-rule (2) says that the rate of interest payable under sub-rule (1) shall be as notified by the Government from time to time, subject to a maximum of 24% per annum.

The question is whether the Government has issued any notification and if 'yes', what is the interest payable as per the said notification.

33. It is relevant to note that Notification dated 22.07.1975 has been issued by the Government in exercise of the powers conferred by sub-rule (2) of Rule 5 of the Rules, 1949, which is in supersession of all previous orders in this regard. The same reads as follows:

"NOTIFICATION

Notification No. 2698-3752-XIII, dated the 22nd July, 1975. In exercise of the powers conferred by sub-rule (2) of Rule 5 of Madhya Pradesh Electricity Duty Rules, 1949 and in supersession of the previous orders in this respect, the State Government directs that the interest under sub-rule (1) of Rule 5 shall be payable at the following rates. This Notification will be effective from 1st August, 1975.

Rate of Interest

After the prescribed period:-

- | | | |
|-------|--|------------|
| (i) | on payment made within three months. | @ 12% p.a. |
| (ii) | on payment made after three months but within six months | @ 15% p.a. |
| (iii) | on payment made after six months but within 12 months | @ 20% p.a. |
| (iv) | on payment made after 12 months | @ 24% p.a. |

(Published in MP Rajpatra Part I, dated 12-3-76 page 473)."

From the above, it is explicitly clear that, if the payment is made after the prescribed period but within three months, interest payable shall be 12% per annum, whereas it will be at the rate of 15% per annum if it is effected after three months but within six months. Once the payment is effected after six months but within 12 months, interest has to be satisfied at

the rate of 20% per annum and if the payment is made beyond the period of 12 months, interest has to be satisfied at the rate of 24% per annum.

34. Coming back to the case in hand, it is to be noted that the Petitioner-Company has no case that it has satisfied the EDC in respect of the period from October 2007 to January 2014 at any point of time. The delay obviously is of more than 12 months, for the period from October 2007 to April, 2013 and hence, 24% interest has been charged, as reflected from the facts and figures given in the table forming part of Annexure P/2. In respect of the period from May 2013 to October 2013, the delay is more than 6 months, but within six months and hence, interest charged is only at the rate of 20%. In respect of the period from November 2013 to January 2014, the delay is only more than 3 months but within six months and hence, the interest payable only at the rate of 15% alone has been reckoned for the purpose of computing the liability. In other words, the entire amount due is not taken together, applying a uniform rate of interest of 24%; but it has been worked out at the varying rates from 15 to 24%, strictly in conformity with the Notification issued under Rule 5(2) of the Rules, 1949. Admittedly, the Rule is not under challenge. As it stands so, the contention raised by the Petitioners that the rate of interest adopted by the 2nd Respondent is onerous, questionable and penal in nature, is without any pith or substance.

35. In the above facts and circumstances, this Court finds that the Petitioners have failed in establishing a case before this Court with regard to the alleged ultra vires nature of Section 3(1) of the 1981 Act, nor have they

succeeded in substantiating the case to dispute the liability towards the Electricity Duty Cess and interest.

36. The writ petition fails. It is dismissed accordingly.

Sd/-

(P.R. Ramachandra Menon)
CHIEF JUSTICE

Sd/-

(Parth Prateem Sahu)
JUDGE