2026:JHHC:13225

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(C) No. 3578 of 2022

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Jharkhand Ispat Private Limited, a company incorporated under the provisions of the Companies Act, 1956, having its unit at Hesla, Ramgarh Cantonment through one of its Director Ram Chandra Rungta, Son of Late Ram Kumar Rungta aged about 61 Years, Resident of Main Road, Ramgarh Cantonment, P.O. & P.S. Ramgarh, Dist.-Ramgarh (Jharkhand).

..... Petitioner

Versus

1. Damodar Valley Corporation, a Statutory Body, incorporated under Damodar Valley Corporation Act, 1948, carrying on business inter alia "DVC Towers", VIP Road, P.O. & P.S. VIP Road, Kolkata-700054 through its chairman.
2. Chief Engineer (Commercial) Damodar Valley Corporation, Commercial Department, DVC Towers, VIP Road, P.O. & P.S. VIP Road, Kolkata-700054.
3. The Superintending Engineer (E), GOMD-V, DVC Ramgarh, P.O. and P.S. Ramgarh, Jharkhand-829122.
4. The Executive Engineer (E), GOMD-V, DVC, Ramgarh Sub Station, District-Ramgarh, P.O. & P.S. Ramgarh, Jharkhand 829122.

..... Respondent(s)

.....

CORAM: HON'BLE MR. JUSTICE DEEPAK ROSHAN

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For the Petitioner(s) : M/s. Nitin Kr. Pasari, Samiksha Kumari, Shubham Gurung, Neyaba Ahab,Ms. Simoni Tulsyan and Gaurav Kaushlesh Advocates

For the Respondents :M/s. Srijit Choudhary, Tanya Rai, Aayush Ojha, Chiranjeev Mahto, Advocates

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C.A.V. ON 26/03/2026 **PRONOUNCED ON:04/05/2026**

1. Heard learned counsel for the parties.

2. The present writ petition has been filed challenging the order dated 16.07.2022 passed by the Superintendent Engineer (E), Damodar Valley Corporation (Annexure-8 to the Writ Petition), exercising powers under section 126 of the Electricity Act, 2003, in compliance to the order passed by this Court dated 07.04.2022, in W.P.(C) No.95 of 2008.

3. The instant writ petition involves a unique dispute and as such, very briefly the facts are narrated, as submitted before this Court.

4. The Petitioner-Company is a manufacturing unit of Iron and Steel having a contract demand of 8000 KVA and the electrical connection had been taken from the respondent herein.

On 10/16.10.2007, pursuant to a request made by the petitioner for replacement of defective meter, the energy meter was replaced, acceding to such request of the petitioner.

All of a sudden, on 01.01.2008, the electrical connection of the unit was discontinued in the evening hours, the reason thereof came to the knowledge of the petitioner only on 02.01.2008, that an F.I.R. had been registered and allegation of theft of electricity has been levelled against the petitioner.

5. The petitioner approached this Court by filing a writ petition vide W.P.(C) No. 95 of 2008 and also filed an Interlocutory Application for restoration of its electrical connection vide I.A. No.138/2008.

6. A Counter Affidavit was filed by the respondents in the writ petition inter-alia on the ground that an inspection was carried out in the factory premises and certain seals were found to be missing and small copper wire (six in numbers) was used for shorting the electrical connection and based upon which, the

connection was discontinued.

It was also averred in the Counter Affidavit filed by the Respondents that there had been detection of huge power loss in terms of Check Meter installed at Ramgarh Sub-Station from where electricity is being supplied to the petitioner, as also, other consumers and on the basis of alleged tampering of meter, the difference of actual supply and consumption is found to be 20% lesser and as such, the electrical connection was discontinued.

On 24.01.2008, the petitioner was served with a provisional estimated of penal amount to the tune of ₹17.80 Crores approximately. The said provisional estimate was in two parts:

a) Unit Charges
b) Demand Charges

7. The provisional assessment was based upon the units recorded in the meter of Ramgarh Sub-station and difference in units recorded in the meter of petitioner installed in the factory premises.

8. The writ petition was heard by this Court and vide order dated 28.01.2008, the respondents were directed to restore the electrical connection within 48 hours, subject to petitioner depositing Rs.1.50 crores against the provisional bill, which were subject to future adjustment, if any. Since then, the writ petition was pending.

9. Finally, the writ petition came to be heard on 07.04.2022

by a co-ordinate bench of this Court and by a detailed order, the writ petition was disposed of inter-alia making following observations:

> *"So far relief sought by the petitioner, pursuant to their amendment application is concerned, this Court cannot compute the loss caused to the DVC. The computation was also bad in law, which is apparent from the method of calculation explained by the respondent- DVC as Annexure-B to the counter affidavit dated 25.01.2008. This loss caused at the Ramgarh cannot be thrusted upon the petitioner, as there are several consumers. The impugned provisional assessment cannot be accepted unless and until respondent -DVC can point out, that no other consumers was at faulty on that day then only such argument can be accepted by this Court. In absence of such facts, the same is not acceptable to this Court.*
>
> *So far the computation of compensation is to be made as per Section 126 (6) of the Electricity Act with regard to assessment under this section shall be made at a rate equal to twice the tariff applicable for the relevant category of service specified in sub section 5. Admittedly the meter was installed / replaced on 16.10.2007.*
>
> *So far the fuel surcharge and demand charge, which has been imposed thrice, this issue has already been decided by the Apex Court in the case of West Bengal State Electricity Distribution Co. Ltd. (Supra) at para-19. The assessment has to be carried out under Section 126 of the Act, even it is a case under Section 135 of the Electricity Act, as such, the respondent- authorities have to calculate the loss on the basis of Section 126 (6) of the Electricity Act, 2003 with electricity charge without multiplying the same as it has been done by the respondent authorities."*

10. Pursuant to order of this Court, a provisional assessment order dated 20.05.2022, was issued upon the petitioner inter-alia raising a demand of ₹9.18 crores, which initially was ₹17.80 crores. However, this time the demand was raised under three heads:

A) Energy Charges	–	₹5,00,40,107/-
B) Demand Charges	–	₹1,60,28,920/-
C) Fuel Surcharge	–	₹2,57,97,004/-

11. The petitioner filed its objection on 30.05.2022 inter-alia on following grounds:

A) *Non-availability of inspection report is fatal to the licensee, as also, assessment under section 126 of Electricity Act 2003.*

B) *The assessment can be only of Energy Charges and formula to be adopted is prescribed in the Supply Code Regulations.*

C) *Levy of Demand Charges and Fuel Surcharge is illegal.*

D) *Alternatively, the period of assessment, if any, has to be confined for the period 16.10.2007 to 31.12.2007, i.e., the date of meter replacement till the date of alleged inspection (as observed in order dated 07.04.2022).*

However, when the final assessment order dated 16.07.2022, impugned in the writ petition, was passed under section 126 of the Electricity Act 2003, the provisional assessment of ₹9.18 Crores was enhanced to ₹12.54 Crores in the following manner:-

A) Energy Charges – ₹7,79,88,050/-

B) Demand charges – ₹71,48,890/-

C) Fuel Surcharge – ₹4,02,79,750/-

Being aggrieved, the petitioner has preferred the present writ petition.

12. During the pendency of the writ petition, on 10.02.2026, a supplementary affidavit has been filed by the petitioner inter-alia contending that the State Electricity Regulatory Commission has decided/determined the tariff of the Respondent for the period 2006-07 to 2011-12 and the case of the petitioner falls within the period aforesaid and during such period, the tariff applicable and determined by the Jharkhand State Electricity Regulatory Commission vide order dated 23.07.2024 binding on the Licensee, which is as under:

> ***"Applicable from 01.04.2007***
>
> *Ceiling Tariff*
>
> *The Tariffs approved below are Ceiling Tariffs and the Licensee is at liberty to Supply at lower and more*

competitive rates based on the requirement of the Consumers. However, this reduced recovery shall be attributable to the Licensee and shall not be recoverable in the ARR.

High Tension (HT) Industries at 33 kV

Applicability: Applicable for consumers connected at 33 kV.

Service Character: 50 Cycles, 3 Phase at 33 kV

Tariff:

Category	*Fixed Charges*		*Energy Charges*
	Unit	*Rate*	*(Rs./kWh)*
HTS (33kV)	*Rs./kVA/month*	*365.00*	*1.87*

High Tension (HT) Industries at 132 kV

Applicability: Applicable for consumers connected at 132 kV.

Service Character: 50 Cycles, 3 Phase at 132 kV

Tariff:

Category	***Fixed Charges***		***Energy Charges***
	Unit	***Rate***	***(Rs./kWh)***
HTS(132kV)	***Rs./kVA/month***	***365.00***	***1.87***

13. The only reason, as it appears for filing of the supplementary affidavit is to bring on record that the component of *'Fuel Surcharge'* has now been deleted in totality from the Tariff Schedule w.e.f. 01.04.2007 and as such, in order to buttress the submission, the orders of Regulatory Commission has been brought on record. Now what remains in the tariff of the Respondent DVC is:

A) Demand Charges
B) Energy Charges

Arguments of the Petitioner:

14. The petitioner represented through Mr. Nitin Kumar Pasari, Advocate, assisted by Ms. Neyaba Ahab has raised multiple issues, which are basically points of law in terms of statutory provisions.

15. It has been submitted that the impugned order is beyond the Electricity Act 2003, beyond the Tariff Order, beyond the Electric Supply Code Regulation formulated under section 50 of the Electricity Act 2003, by the Jharkhand State Electricity Regulatory Commission in exercise of powers conferred upon it under section 181(2)(x) of the Electricity Act; hence, the impugned order is without jurisdiction which goes to the root of the matter and vitiates the entire proceedings. He further relied upon the judgment rendered in the case of ***The Executive Engineer Vs. M/s. Sri Seetaram Rice Mill*** reported in **(2012) 2 SCC 108.**

16. It has been further submitted that non availability of inspection report is fatal and it goes to the root of the matter and renders the impugned assessment order dated 16-07-2022 passed under Section 126 of the Electricity Act, 2003 without jurisdiction and a nullity in the eye of law.

17. The further case of the Petitioner is that there is absolutely no evidence of seizure of the removable shorting wire as alleged which as per the impugned assessment order was seized from the Ramgarh police station on 01-01-2008 and not seized from

the Petitioner, hence, there is no evidence of theft of electricity hence invocation of Section 126 and Section 135 (1A) of the Electricity Act, 2003 is without jurisdiction.

18. The Petitioner submits that in the instant case there is no inspection report at all, as is required and mandated under Section 126 of the Electricity Act read with Clause 15.8 (now amended as Clause 11) of the *Supply Code Regulation 2015* which is a subordinate legislation under the Act and binding on the Respondent.

19. The Petitioner has also submitted that inspection report is mandatorily required and is the basic foundational material that is to be prepared by the Authorised Officer for booking a case of theft and/or unauthorized use of electricity and for that matter passing of assessment order under Section 126 which is admittedly missing in the instant case.

20. Ld. Counsel contended that the use of the auxiliary verb "shall" under said Clause 11 of the *Supply Code Regulation 2015* indicates that procedure prescribed therein is mandatory and not directory.

21. The Clause 15.8 (now amended as Clause 11) of the Supply Code Regulation 2015 provides that the Authorised officer *suo motu* or on receipt of reliable information regarding theft of Electricity shall promptly conduct inspection of such premises and shall prepare an inspection report giving details inter alia of

the condition of meter seals, working of meter, mention any irregularity noticed such as tempered/artificial means adopted for theft of energy. Further, the report shall clearly indicate whether sufficient evidence substantiating the fact that theft of energy was found or not. The details of such evidence should be recorded in the report. Thereupon, a complaint shall be lodged in writing relating to commission of such offence in the police station. For brevity, relevant clause is extracted hereinbelow:

> ***11: Theft and Unauthorised Use of Electricity***
> ***Theft of Electricity***
> ***Procedure for booking a case of theft of electricity***
>
> *11.3 An Authorised Officer, suo motu or on receipt of reliable information regarding theft of electricity shall promptly conduct inspection of such premises.*
>
> *11.4 The inspection team of the Distribution Licensee or supplier, headed by such Authorised Officer shall carry along with them their Photo Identity Cards. Photo Identity Card should be shown to the consumer/consumer representative before entering the premises. Photo Identity Card of the Authorised Officer shall clearly indicate that he has been nominated as Authorised Officer as per provisions of Section 135 of the Act.*
>
> *11.5* ***The Authorised Officer shall prepare a report giving details such as connected load, condition of meter seals, working of meter and mention any irregularity noticed (such as tampered meter, artificial means adopted for theft of energy).***
>
> *11.6* ***The report shall clearly indicate whether sufficient evidence substantiating the fact that theft of energy was found or not. The details of such evidence should be recorded in the report.***
>
> *11.7 No case for theft shall be booked only on account of seals on the meter missing or tampered or breakage of glass window, unless corroborated by consumption pattern of consumer and such other evidence as may be available.*
>
> *11.8 In case* ***sufficient evidence*** *is found to establish direct theft of electricity, licensee or Supplier as per Section 135 sub-clause (1A) of the Act shall disconnect the supply and seize all material evidence including wires/cables, meter,*

service line etc., from the premises ***and shall lodge a complaint in writing relating to the commission of such offence in police station having jurisdiction*** *within 24 hours from the time of such disconnection. The Authorised Officer of the Distribution Licensee or Supplier shall within 2 days from date of inspection, file a case against the consumer in designated Special Court as per the provisions of* ***Section 135*** *of the Act.*

11.9 The Authorised Officer shall assess the energy consumption as per the assessment formula given in Annexure 19 to these Regulations, for the entire period during which such theft of electricity has taken place. If, however, the period during which such theft of electricity has taken place cannot be ascertained, such period shall be limited to 12 months immediately preceding the date of inspection. The period of assessment may be arrived at after taking into consideration the following guidelines or any combination thereof or any other evidence which may be provided by the consumer:

- *(a) Actual period from the date of commencement of supply to the date of detection of theft;*
- *(b) Actual period from the date of replacement of component of metering system in which the evidence is detected to the date of detection of theft;*
- *(c) Actual period from the date of previous checking of installation to date of detection of theft;*
- *(d) Meter Reading Instrument (MRI) data or Remote Meter Reading data should be considered wherever available.*

11.14 After detailed examination of the evidence and the consumption pattern of the consumer, if the Distribution Licensee or supplier is convinced that a prima-facie case is made out for the abstraction, consumption or use of electricity dishonestly against the consumer, the Distribution Licensee or supplier shall, within 7 days of inspection, serve a provisional assessment order assessed as per clause 11.24 of these Regulations along with show cause notice to the consumer, giving reasons, as to why a case of theft should not be booked against such consumer giving full details for arriving at such decision and points on which reply has to be submitted. The notice should clearly state the time, date and place at which the reply has to be submitted and the designation of the person to whom it should be addressed.

11.25 Where it is ***established*** *that there is a case of theft of energy based on the consumer's reply/hearing, the Authorised Officer* ***shall assess*** *the energy consumption as per the assessment formula given in Annexure 19 to these Regulations, for the entire period during which such theft of electricity has taken place and if, however, the period during which such theft of electricity has taken place can not be*

> *ascertained, such period shall be limited to 12 months immediately preceding the* ***date of inspection*** *and* ***prepare an assessment order*** *on applicable tariff as per the Electricity (Amendment) Act, 2007 and any subsequent amendments, and serve on the person under proper receipt.*

22. It has been further contended by Ld. Counsel that the Supply Code Regulation, 2015 has the force of law, inasmuch as, the Electricity Act 2003, provides for functions of State Electricity Regulatory Commission and in exercise of power conferred upon the State Electricity Regulatory Commission by virtue of section 181(2)(x) of the Electricity Act, the Electric Supply Code Regulation, 2015 has been promulgated in terms of section 50 of the Act. Hence, the Supply Code Regulation, 2015 enacted by the State Electricity Regulatory Commission is binding on the Respondent.

23. Accordingly, he has submitted that the Respondent cannot be allowed to device its own methodology to finalize assessment under section 126 of the Act, which is directly in conflict with Supply Code Regulation, 2015 which is binding and is mandatorily to be followed, for all the licensees operating within the territorial jurisdiction of State of Jharkhand. Accordingly, he had submitted that the assessment can be only of Energy Charges and formula to be adopted is prescribed in the Supply Code Regulations

24. His next limb of argument is that the *"Fuel Surcharge"* is not a part of the tariff fixed by the State Electricity Regulatory

Commission, hence, any imposition of 'Fuel Surcharge' is beyond jurisdiction, inasmuch as, the component of 'Fuel Surcharge' has been deleted by the State Electricity Regulatory Commission from the Tariff Schedule therefore, it is beyond the jurisdiction of the Respondent.

25. The Petitioner in support of its contention had submitted that in the first round of litigation the coordinate bench of this Court vide order dated 07-04-2022 in *W.P. (C) No. 95 of 2008* had held in the following line. The said finding of this Court has been accepted by the Respondent and has attained finality and cannot be re-agitated. For brevity, the same is extracted hereinbelow:

> *"So far the fuel surcharge and demand charge, which has been imposed thrice, this issue has already been decided by the Apex Court in the case of West Bengal State Electricity Distribution Co. Ltd. (Supra) at para-19. The assessment has to be carried out under Section 126 of the Act, even it is a case under Section 135 of the Electricity Act, as such, the respondent- authorities have to calculate the loss on the basis of Section 126 (6) of the Electricity Act, 2003 with electricity charge without multiplying the same as it has been done by the respondent authorities."*

26. Ld. Counsel reiterated that the said Supply Code Regulation, 2015 refers to assessment of Energy Charges only and does not talk about assessment of KVA Charges/Maximum Demand Charges/Fixed Charges. The reason behind not providing for maximum demand Charges is that the "Maximum Demand Charge" is basically a capital expense of the Licensee, which is recovered from a consumer for a particular load/contract demand to be readily made available to the

consumer in terms of agreement or promise entered into between the parties. In any eventuality there cannot be theft of Maximum Demand Charges, which is a recovery of capital expenses for making electricity at a particular load 24x7 ready for consumption.

27. The Petitioner has further contended that intention of the legislative can be gathered from sub-section (5) of Section 154, under which the consumer if held guilty of offences under section 135 of the Electricity Act, is held liable to pay only energy charges. For brevity, Sub-section (5) of Section 154 of the Electricity Act, reads as under:

> *(5) The [38][Special Court shall] 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.*

28. The Petitioner recapped that admittedly; 'Fuel Surcharge' is not a part of the tariff fixed by the State Electricity Regulatory Commission in favour of the Licensee Respondent, hence, any imposition under the head 'Fuel Surcharge' is beyond jurisdiction of the Respondent and would amount to unjust enrichment on the part of the Licensee and as such, is liable to be deleted. It is emphasized by him that once, the component of 'Fuel Surcharge' has been deleted by the State Electricity Regulatory Commission from the Tariff Schedule, any demand under this head is beyond the jurisdiction of the Respondent.

29. Ld. Counsel has lastly submitted that, in any case, the period of assessment, if at all, has to be confined for the period 16.10.2007 to 31.12.2007, i.e., the date of meter replacement till the date of alleged inspection (as observed in order dated 07.04.2022). Based upon the aforesaid argument, he prays that the impugned order be quashed.

30. The Counter Affidavit has been filed *inter-alia* on following lines:

(i) *The petitioner has an alternative statutory remedy under Section 127 of the Electricity Act, 2003 by way of appeal before the Appellate Authority and also under Section 42(5) & (6) before the Consumer Grievance Redressal Forum established by JSERC vide Notification dated 09.11.2011. The existence of such efficacious alternative remedies renders this writ petition not maintainable, as held by the Hon'ble Supreme Court in* ***West Bengal State Regulatory Commissioner Vs. CESC Limited, (2002) 8 SCC 715****, and by this Hon'ble Court in* ***W.P.(C) No. 27/2015 dated 12.02.2020****.*

(ii) *The petitioner has no subsisting cause of action, since the provisional assessment order dated 20.05.2022 and final assessment order dated 16.07.2022 have been passed strictly in compliance with the order dated 07.04.2022 of this Hon'ble Court in W.P.(C) No. 95/2008. The petitioner, having failed to avail of the statutory remedy of appeal under Section 127 of the Electricity Act, 2003, cannot circumvent the same by filing a fresh writ petition.*

(iii) *The proceedings under Section 126 read with Section 135 of the Electricity Act, 2003, have been conducted in full compliance with the statutory mandate, the JSERC Electricity Supply Code Regulations, 2005, and the directions of this Hon'ble Court.*

(iv) *The Meter installation/replacement on 16.10.2007 was a routine exercise carried out in the case of defective meters and has no connection whatsoever with the inception of unauthorized use of electricity. The energy measuring arrangement at the consumer's premises has two parts – (a) an indoor part (consisting of Current Transformer and Potential Transformer) and (b) an outdoor part (the CT Junction Box). The unauthorized use of electricity was committed by the consumer*

through the use of a shorting wire to bypass the secondary side of the current transformer (the outdoor part), thereby causing the meter to register less energy. Therefore, the replacement of the energy meter (indoor part) on 16.10.2007 is not basis of un-authorised use of electricity.

(v) *The inspection report is mandated only when joint meter testing takes place, and its report is given to the consumer bearing the signature of the consumer or its representative. However, no inspection report is mandated, when theft of electricity is detected in the course of recording readings. The DVC team detected the shorting wire at the CT junction box in real time, the disconnection was carried out, and an FIR was lodged - all in strict compliance with Section 135 of the Electricity Act, 2003. The reliance placed by the petitioner on the judgment of M/s Himadri Steel Pvt. Ltd. vs. JUVNL (W.P.(C) No. 6054/2017) is distinguishable on facts, as in the present case, the detection of theft was made during the course of recording monthly consumption and the modus operandi (removable shorting wire on the outdoor CT secondary terminals) was visible and self-evident.*

(vi) *The petitioner's claim that consumption was uniform during June-November 2007 is misleading and, in fact, supports the Respondent's case. The comparative statements of units released from the substation/feeder and units consumed as recorded at the consumer end clearly demonstrate a persistent and significant discrepancy, establishing that the meter was registering less energy than actually consumed. The period of assessment has been considered from January 2007 to December 2007 - i.e., 12 months prior to the date of the incident - as per Section 126(6) of the Electricity Act, 2003, since the exact period of unauthorised use cannot be ascertained.*

(vii) *The petitioner's contention that the formula L x F x H x D should be applied from 16.10.2007 (date of meter replacement) to 01.01.2008 only is wholly misconceived. As stated above, the meter replacement on 16.10.2007 pertained to the indoor part only and is unrelated to the tampering of the outdoor CT secondary terminals. The formula adopted by DVC for the provisional assessment was prepared strictly as per Chapter 15.7 (xxi). Annexure-1. Clause No. 1.1 of the JSERC Electricity Supply Code Regulations, 2005.*

(viii) *The tariff rate includes three components: (a) Energy Charge, (b) Demand Charge, and (c) Fuel Price Surcharge. All these components are calculated as per Section 126(6) of the Electricity Act, 2003, which provides: "The assessment under this section shall be made at a rate equal to one-and-a-half times the tariff rates applicable for the relevant category of services specified in sub-section (5)".*

(ix) *it is stated that on 01.01.2008, the electrical supply of the petitioner was disconnected. The disconnection was lawful and carried out after a team comprising two Assistant Engineers – namely Vikas Das and Harishankar Choubey – along with one Electrical Operator (Umesh Kumar) visited the premises to record monthly consumption and detected unauthorised use of electricity by means of a removable shorting wire to bypass the CT secondary terminals. An FIR was duly lodged under section 135 of the Electricity Act 2003, read with section 379 IPC, within 24 hours of detection, in full compliance with the second proviso to section 135 (1A) of the Act.*

(x) *The tariff rate includes three components: (a) Energy Charge (b)Demand Charge and (c) Fuel Price Surcharge. All these components are calculated as per Section 126(6) of the Electricity Act, 2003, which provides: "The Assessment under this section shall be made at a rate equal to one-and-a-half times the tariff rates applicable for the relevant category of services specified in sub- section (5)".*

(xi) *The petitioner 's attempt to restrict the calculation only to the period between 16.10.2007 (meter replacement) and 01.01.2008 (date of detection) is legally untenable because the meter replacement related to the indoor metering equipment, while the unauthorized use was through shorting of the outdoor CT secondary terminals which is an entirely separate component.*

Arguments of the Respondent - DVC

31. Learned Counsel for DVC Mr. Srijit Choudhary has raised the issue of maintainability of the writ petition, by referring to the judgment of the Hon'ble Supreme Court in the matter of ***Executive Engineer SOUTHCO Vs. Sri Seetaram Rice Mill*** (supra). Reliance has also been placed by him on the orders of this Court in *W.P.(C) No. 27 of 2015* and analogous cases dated 12.02.2020, wherein, this Court directed the petitioners to avail alternative remedy by approaching the appropriate forum under section 42(5) of the Electricity Act.

32. Further reliance has been placed on the judgment of this Court in *W.P.(C) No. 3307 of 2023* dated 08.08.2023, on the issue of maintainability of the writ petition, which was upheld by the Division Bench in *L.P.A. No. 449 of 2023* dated 04.09.2023. On this ground, he submits that the writ petition should not be entertained and the petitioner should be relegated to appellate authority under section 127 of the Electricity Act.

33. Ld. Counsel further argued that there is no requirement of inspection report in a case of theft of electricity or un-authorized use of electricity and whatever has been mentioned in the FIR is sufficient. The Act does not provide for carrying out any inspection report and supplying the copy of the same to the consumer.

34. It has further been submitted by him that in the earlier round of litigation, since, this Court remanded the matter back to the Assessing Officer, for carrying out assessment under Section 126 of the Electricity Act and since the same has not been challenged by either of the parties, the same has attained finality and hence the issue of inspection report being not available has no legs to stand upon and the respondents have complied with the order of this Court.

35. The Ld. Counsel for the Respondent further argued that the tariff carries three components: (i) Energy Charges, (ii)

Demand Charges, (iii) Fuel Surcharge, hence, the assessment carried out is on a correct interpretation of the provisions of the Electricity Act,2003 and the assessment order needs no interference.

36. On a specific query asked to Mr. Choudhary concerning preparation of inspection report, he would submit that since inspection report is not mandatory, hence there was no inspection report prepared, but the FIR contains the allegation of theft of electricity.

37. At this stage itself, it is necessary to be indicated that the FIR which was lodged was against one of the Directors of the Company namely Ram Chandra Rungta and after his demise, the criminal case was dropped. Further, the Respondent never initiated any criminal case against the petitioner-company.

Reply of the Petitioner:

38. In reply to the arguments advanced by Ld. Counsel for the Respondents, Ld. Counsel for the Petitioner contended that the Electricity Forum constituted under the Electricity Act, 2003, under section 42 cannot entertain a dispute pertaining to Section 135 to 141 of the Act of 2003. Since there is a restriction under the Guidelines issued by the JSERC, which is named as *"Jharkhand State Electricity Regulatory Commission (Guidelines for Establishment of Forum for Redressal of Grievances of the*

Consumers and Electricity Ombudsman) Regulations, 2011", and the definition whereof, mentions, what cases can be entertained by the Forum. The details are as follows:-

> *e) "**Complaint**" means any grievance made by a complainant for: -*
>
> *i) Defect or deficiency in electricity supply or service provided by the licensee;*
>
> *ii) Unfair or restrictive trade practices of licensee in providing electricity services;*
>
> *iii) Charging of a price in excess of the price fixed by the Commission for supply of electricity and allied services;*
>
> *iv) Any error in billing;*
>
> *v) Erroneous disconnection of supply;*
>
> *vi) Electricity services which are unsafe or hazardous to public life provided in contravention of the provisions of any law or rule in force; or*
>
> *vii) Any other grievance related to supply of electricity by the licensee to the consumers **except grievances arising under Sections 126, 135 to 139, 143, 152 and 161 of the Act**.*
>
> *viii) Non-performance in Standards of Performance, as stipulated under Jharkhand State Electricity Regulatory Commission (Distribution Licensee's Standard Performance) Regulations 2015.*

> ***Clause 8. Complaint that can be taken up by the Forum**:*
>
> *The Forum(s) shall take up any kind of grievances/complaints as defined in Clause 2(e) of these Regulations and the grievances directly file before the Commission as forwarded to the Forum.*
>
> *Provided that if the complaint has already been registered as per these Regulations and the same has not been redressed within 15 days or the consumer is not satisfied with the redressal, **except the complaint pertaining to**:*
>
> *(i) Offences and penalties as specified u/s **135** to 141 of the Act;*
>
> *(ii) Accidents and inquiries as specified under section 161 of the Act unless prescribed by the State Govt. by General/ special order.*

It has been reiterated by the Ld. Counsel for the Petitioner that the State Electricity Regulatory Commission, in exercise of powers contained in section 181(2)(x) of the Electricity Act, 2003, read with section 50, formulated the Supply Code Regulation, 2015 and as such, the Supply Code Regulation,

2015 has legal/statutory force and as such, non-adherence to the same would amount to the proceedings being beyond jurisdiction. Further, Clause 11.25 of the supply Code Regulation, which provides for assessment of energy consumption, as per the assessment formula given in Annexure-19, and the Respondent have exercised the powers beyond jurisdiction by imposing demand charges and fuel surcharge particularly when fuel surcharge specifically stands deleted in view of the determination of tariff model passed by the Jharkhand State Electricity Regulatory Commission.

It has been lastly submitted by the Petitioner that in the provisional assessment order, the purported loss of units has been ascertained; however, in the final assessment order, the units purportedly lost has virtually been doubled and thereby the respondents have travelled beyond the provisional assessment order. The provisional assessment order is nothing but in the nature of show cause notice and the assessing authority cannot travel outside the scope of provisional assessment order.

If such traversing outside provisional assessment is allowed; then the very purpose of passing provisional assessment, inviting objection of the party to such provisional assessment and then passing final assessment order, after considering such objection to provisional assessment would be

futile exercise. Such an interpretation of the provision cannot be countenanced.

39. The Petitioner further relied upon the judgment of this Court in the case *of* ***Stan Commodities Pvt. Ltd. Vs. JSEB (W.P.(C) No.2413 of 2011 dated 12-03-2015*** in which it is held that check meter installed outside the boundary wall of factory accessible to general public and not in the exclusive control of the Petitioner and further when the Board examining the check meter the Petitioner was not present, hence, for any defect/damage in check meter cannot be presumed that the Petitioner has caused such damage. For brevity, relevant portion is extracted herein below -:

> *"From the plain reading of the definition of theft of electricity, it is clear that if it is found that a person dishonestly damaged the meter, apparatus, equipment, or wire with a view to interfere with the proper or accurate metering of electricity then it can be said that he had committed theft of electricity. In the instant case, there is no direct evidence to show that the petitioner damaged the Check Meter. It is worth mentioning that the Check Meter was installed outside the boundary wall of the petitioner factory premises and it is accessible to general people. Petitioner in its writ application has specifically stated that the Check Meter was not under the exclusive control of the petitioner. Thus, anybody can do any mischief with the said metering unit. It appears from the inspection report (Annexure-3) that on 24.4.2011, the Board Officials found some problem in the Check Meter and they out-circuited it from 11 KV Feeder line for resumption of electric supply. This shows that on 24.4.2011 i.e. one day before the date of inspection of the check Meter, the Board Officials interfered with the Check Meter. It is relevant to mention that on 24.4.2011, petitioner's representative was not present while the Board Officials were examining the Check Meter, which was installed outside the factory premises of the petitioner. Under the said circumstances, if some defect found in the Check Meter on 25.4.2011 then it cannot be presumed that only the petitioner and none else had caused such damage. In that circumstance, in absence of proper investigation it cannot be presumed that petitioner has committed the offence of theft of electricity.*
>
> *The contention of the learned counsel for the respondents that as per the 3rd proviso of Section 135(1) of the Electricity Act, there is a presumption against the petitioner that it has damaged the Check Meter, cannot be accepted, because the 3rd proviso of Section 135(1) of the Electricity Act will become operative if the respondent, prima-facie, proves that any artificial means exists for abstraction of illegal electricity. In the instant case, as noticed above, the Check Meter installed outside the factory premises of the petitioner, which is accessible to general people. It has also come in the inspection report that a day before the inspection, the Board Officials interfered with the Check Meter, thus, there are materials on record to show that somebody else might committed mischief in the Check Meter.*

Since there is no evidence to show that petitioner had committed theft of electricity, therefore, in my view, the assessing officer has no power to make assessment under Section 135(1A) of the Electricity Act, which provides that the assessing officer can assess the amount or electricity charges, if theft of the electricity detected. In my view, there is no material on record to show that the petitioner committed the offence of theft of electricity, therefore, the assessment order is without jurisdiction".

Analysis:

40. Having heard Ld. Counsel for the rival parties and after going through the averments made in the respective affidavits and the documents annexed therein, it is evident that the earlier writ petition *W.P.(C) No.95 of 2008* was disposed of with the observation that the computation of demand is bad in law and the losses caused at Ramgarh sub-station by the Respondent cannot be thrusted upon the Petitioner, as there are several consumers. The Writ Court has categorically held that the impugned provisional assessment cannot be accepted unless and until respondent -DVC can point out, that no other consumers was at fault on that day then only such argument can be accepted by the Court. This Court further held that computation of compensation is to be made as per Section 126 (6) of the Electricity Act, 2003 with regard to assessment which shall be made at a rate equal to twice the tariff applicable for relevant category specified in sub-section (5).

41. It was further observed that admittedly the meter was installed/replaced on 16-10-2007. With respect to fuel surcharge and demand charge which was imposed, it was observed that in the case of ***West Bengal State Electricity Distribution Co.***

Ltd. it is held that the assessment is to be carried out under Section 126 of the Act even in cases falling under Section 135 of the Act and the Respondent are to calculate losses in accordance with Section 126 (6) of the Electricity Act, 2003 with electricity charge without multiplying the same.

42. Pursuant to the order of this Court the Respondent passed provisional assessment order dated 20-05-2022 raising demand of Rs.9.18 Cr., under three heads i.e. (a) Energy Charges-Rs.5,00,40,107/- (b) Demand charges Rs.1,60,28,920/- (c) Fuel Charges Rs.2,57,97,004/- and thereupon final assessment order dated 16-07-2022 was passed under Section 126 of the Act enhancing the demand to Rs.12.54 Cr. under three heads i.e. (a) Energy Charges Rs.7,79,88,050/- (b) Demand Charges Rs.7,48,890/- and (c) Fuel Surcharges Rs.4,02,79,750/-.

43. The Petitioner being aggrieved with the said assessment order dated 16-07-2022 has approached this Court.

44. The crux of the argument of the Respondent DVC is that the writ application is not maintainable as there is an alternative remedy. Accordingly, this Court proceeds to see as to whether this application is maintainable or the Petitioner should be relegated to the Tribunal.

45. On the question of maintainability/alternative remedy the Hon'ble Apex Court in the matter of *Assistant Commissioner of State Tax Vs. Commercial Steel Limited* reported in 2021 SCC

Online SC 884, while dealing with issue concerning alternative remedy under the Act, has held as under:

> ***10.*** *The respondent had a statutory remedy under section 107. Instead of availing of the remedy, the respondent instituted a petition under Article 226. The existence of an alternate remedy is not an absolute bar to the maintainability of a writ petition under Article 226 of the Constitution. But a writ petition can be entertained in exceptional circumstances where there is:*
> *(i) a breach of fundamental rights;*
> *(ii) a violation of the principles of natural justice;*
> *(iii) an excess of jurisdiction; or*
> *(iv) a challenge to the vires of the statute or delegated legislation.*
>
> ***11.*** *In the present case, none of the above exceptions was established. There was, in fact, no violation of the principles of natural justice since a notice was served on the person in charge of the conveyance. In this backdrop, it was not appropriate for the High Court to entertain a writ petition. The assessment of facts would have to be carried out by the appellate authority. As a matter of fact, the High Court has while doing this exercise proceeded on the basis of surmises. However, since we are inclined to relegate the respondent to the pursuit of the alternate statutory remedy under Section 107, this Court makes no observation on the merits of the case of the respondent.*
>
> ***12.*** *For the above reasons, we allow the appeal and set aside the impugned order of the High Court. The writ petition filed by the respondent shall stand dismissed. However, this shall not preclude the respondent from taking recourse to appropriate remedies which are available in terms of Section 107 of the CGST Act to pursue the grievance in regard to the action which has been adopted by the State in the present case.*

46. In order to maintain a writ petition, the writ petitioner has to satisfy either of the four limbs, which are stipulated in Para-10 of the aforesaid judgment. As per the Petitioner, in the case in hand, following three has been violated:

i) a breach of fundamental rights;

ii) a violation of the principles of natural justice;

iii) an excess of jurisdiction.

In yet another case, the Hon'ble Apex Court in the matter of ***Godrej Sara Lee Ltd. Vs. Excise & Taxation Officer*** *reported in* **2023 SCCOnline SC 95**, has held as under:

> ***"2.*** *Two questions emerge for decision on this appeal. First, whether the High Court was justified in declining interference on the ground of availability of an alternative remedy of appeal to the appellant under section 33 of the VAT Act, which it had not pursued. Should the answer to the first question be in the negative, we would next be required to decide whether to remit the writ petition to the High Court for hearing it on merits or to examine the correctness or*

otherwise of the orders impugned before the High Court.

4. *Before answering the questions, we feel the urge to say a few words on the exercise of writ powers conferred by article 226 of the Constitution having come across certain orders passed by the High Courts holding writ petitions as "not maintainable" merely because the alternative remedy provided by the relevant statutes has not been pursued by the parties desirous of invocation of the writ jurisdiction. The power to issue prerogative writs under article 226 is plenary in nature. Any limitation on the exercise of such power must be traceable in the Constitution itself. Profitable reference in this regard may be made to article 329 and ordainments of other similarly worded articles in the Constitution. Article 226 does not, in terms, impose any limitation or restraint on the exercise of power to issue writs. While it is true that exercise of writ powers despite availability of a remedy under the very statute which has been invoked and has given rise to the action impugned in the writ petition ought not to be made in a routine manner, yet, the mere fact that the petitioner before the High Court, in a given case, has not pursued the alternative remedy available to him/it cannot mechanically be construed as a ground for its dismissal. It is axiomatic that the High Courts (bearing in mind the facts of each particular case) have a discretion whether to entertain a writ petition or not. One of the self-imposed restrictions on the exercise of power under article 226 that has evolved through judicial precedents is that the High Courts should normally not entertain a writ petition, where an effective and efficacious alternative remedy is available. At the same time, it must be remembered that mere availability of an alternative remedy of appeal or revision, which the party invoking the jurisdiction of the High Court under article 226 has not pursued, would not oust the jurisdiction of the High Court and render a writ petition "not maintainable". In a long line of decisions, this court has made it clear that availability of an alternative remedy does not operate as an absolute bar to the "maintainability" of a writ petition and that the rule, which requires a party to pursue the alternative remedy provided by a statute, is a rule of policy, convenience and discretion rather than a rule of law. Though elementary, it needs to be restated that "entertainability" and "maintainability" of a writ petition are distinct concepts. The fine but real distinction between the two ought not to be lost sight of. The objection as to "maintainability" goes to the root of the matter and if such objection were found to be of substance, the courts would be rendered incapable of even receiving the lis for adjudication. On the other hand, the question of "entertainability" is entirely within the realm of discretion of the High Courts, writ remedy being discretionary. A writ petition despite being maintainable may not be entertained by a High Court for very many reasons or relief could even be refused to the petitioner, despite setting up a sound legal point, if grant of the claimed relief would not further public interest. Hence, dismissal of a writ petition by a High Court on the ground that the petitioner has not availed the alternative remedy without, however, examining whether an exceptional case has been made out for such entertainment would not be proper.*

6. *At the end of the last century, this court in paragraph 15 of its decision reported in (1998) 8 SCC 1 (Whirlpool Corporation v. Registrar of Trade Marks, Mumbai) carved out the exceptions on the existence whereof a writ court would be justified in entertaining a writ petition despite the party approaching it not having availed the alternative remedy provided by the statute. The same read as under:*

(i) where the writ petition seeks enforcement of any of the fundamental rights;
(ii) where there is violation of principles of natural justice;
(iii) where the order or the proceedings are wholly without jurisdiction; or
(iv) where the vires of an Act is challenged".

47. The later part of this order would demonstrate how the impugned order is without jurisdiction and also there is violation of principles of natural justice.

48. Even otherwise, looking from another angle, before adverting to the merits of the case it is necessary to observe that the issue in this case pertains to the year 2007. The Petitioner first approached this Court in 2008 and has again approached this Court in 2022 and the dispute between parties is continuing since last 18 years. Further, in present writ petition the parties have exchanged pleadings and affidavits and the pleading are complete and the matter is heard at length by this Court therefore, relegating the Petitioner to alternative remedy at this stage would lead to palpable injustice to the Petitioner.

49. In the case of ***State of Uttar Pradesh Vs. Ehsan reported in (2023) 13 SCR 905*** the Hon'ble Supreme Court while dealing with similar situation has held in the following lines-

> *28. We are conscious of the law that existence of an alternative remedy is not an absolute bar on exercise of writ jurisdiction. More so, when a writ petition has been entertained, parties have exchanged their pleadings/affidavits and the matter has remained pending for long. In such a situation there must be a sincere effort to decide the matter on merits and not relegate the writ petitioner to the alternative remedy, unless there are compelling reasons for doing so. One such compelling reason may arise where there is a serious dispute between the parties on a question of fact and materials/ evidence(s) available on record are insufficient/inconclusive to enable the Court to come to a definite conclusion.*

50. Same view has been reaffirmed by the Hon'ble Supreme Court in the case of ***Utkal Highways Engineers Vs. Chief General Manager reported in (2025) SCC Online SC 1400*** in the following lines-

> ***5.*** *The short submission of the learned counsel for the appellant in both the appeals is that the writ petitions were filed in the year 2010, parties had exchanged their affidavits, and the matters were ripe for final disposal. In these circumstances, without even adverting to the facts borne out from the affidavits exchanged by the parties, there was no justification for the High Court to relegate the appellant to avail other remedies.*

6. *In the light of the aforesaid submission, we put a specific question to Mr. K.M. Nataraj, learned senior counsel representing respondent, as to whether parties had exchanged their affidavits in the course of the writ proceedings.*

7. *Mr. K.M. Nataraj fairly stated that the parties had exchanged their affidavits. However, respondents had taken a plea that writ petitions related to a money claim, which had become barred by time, therefore, writ petition was not maintainable.*

8. *Be that as it may, the High Court has not dealt with the merits of the writ petition. Moreover, it is not an inviolable rule that no money claim can be adjudicated upon in exercise of writ jurisdiction. Non-payment of admitted dues, inter alia, may be considered an arbitrary action on the part of respondents and for claiming the same, a writ petition may lie.[1] Further, throwing a writ petition on ground of availability of alternative remedy after 10 years, particularly, when parties have exchanged their affidavits, is not the correct course unless there are disputed questions of fact which by their very nature cannot be adjudicated upon without recording formal evidence[2].*

9. *The High Court, in the impugned orders, has not set out any factual foundation of the kind which may suggest that there were disputed questions of fact that necessitated recording of evidence.*

10. *In these circumstances, we are of the view that the writ petition must be restored for fresh adjudication by the High Court. Consequently, we set aside the order of the High Court and restore the Writ Petition to its original number(s) for fresh adjudication in accordance with law.*

51. Now coming on merits of the case; from record it is evident that, the Respondent has undisputedly not prepared any inspection report, which is mandatory in terms of Clause 11.5 and Clause 11.6 of Supply Code Regulation, 2015 which has a direct bearing on the impugned assessment order passed under Section 126(6).

52. In the impugned assessment order dated 16-07-2022 passed under Section 126 of the Act it is observed as under –

That the reasoned order is hereby passed as per directives of Hon'ble Jharkhand High Court judgment dated 07-04-2022 in r/o W.P. (C) No. 95 of 2008 (Jharkhand Ispat Pvt. Ltd. Vs. Damodar Valley Corporation & Others).

1. The period of assessment has been considered from January, 2007 to December, 2007 i.e. 12 months period to the date of incident i.e. 01/01/2008 as per Section-126(5) of the Electricity Act, 2003 and Chapter-15.7 (xx)("__") of the JSERC (Electricity Supply Cod) Regulation, 2005.

The Inception of unauthorised use of electricity cannot be ascertained from the energy meter installation/replacement on 16-10-2007. The energy measuring arrangement at the consumers (in this case M/s Jharkhand Ispat Pvt. Ltd. (the Petitioner) premises has two parts, one is indoor part(it consist of energy meter and panel inside metering room) and another is outdoor part (it consist of Current Transformer and Potential Transformer).

In this case the unauthorised use of electricity was done by the Petitioner by means of using removable shorting wire to bypass the current transformer (secondary) (outdoor part) and causing the meter to register less energy. So, energy meter (Indoor Part) installation/replacement on 16-10-2007 in no way dedicates inception of unauthorised use of electricity by using removable shorting wire to bypass the current transformer (secondary) (outdoor part).

That the unauthorised use of electricity detected on 01/01/2008 was made by bypassing the current transformer (secondary) (outdoor part) with a removable shorting wire. ***The removable shorting wire was seized by the team from Ramgarh Police Station on 01/01/2008.***

That the removable shorting wire was so devised, that it can be inserted and removed from the current transformer (secondary) (outdoor part) circuit as and when the Petitioner feels safe for unauthorised use of electricity .

2. The calculation has been modified as per Section – 126(6) of the Electricity Act 2003 Quote "the assessment under this section shall be made at a rate equal to (twice) the tariff rates applicable for the relevant category of services specified in sub section (5)."

And as per Chapter-15.7 (xxi) & Annexure-I, Clause No. 1.1 of the JSERC (Electricity Supply Code) Regulation, 2025.

Units assessed = L x D x H x F
Where
L is load (Connected load found in the consumer's premises during the course of inspection) in K.W. (KW consists of two components i.e. KVA (Contract Demand) x Power Factor)

D is the period of assessment in days.
H is the average number of hours per day of power supply made available in the distribution mains feeding the consumer. It will be based on hours of supply recorded in the meter of the consumer/public check meter of the consumer/meter of the distribution transformer, supplying power to the assessee/meter on the feeder installed in the power sub station, supplying power to the assessee/record available in the power sub station or grid sub station.

F is load factor which shall be taken for different categories of use is given below:
HT (installing load above 75 KW for non domestic and above 107 HP or 100 KVA for industries on LT) 100%

xxxxxxx

Tariff rates includes these components-

(1) Energy Charge
(2) Demand Charge
(3) Fuel price Surcharge

Xxxxxxx

The total assessed amount is (Rs.7,79,88,050/- + Rs.71,48,890/- + Rs.4,02,79,750/-) Rs.12,54,16,690/- (Rupees Twelve Crore Fifty Four Lakh Sixteen Thousand Six Hundred Ninety Only).

-Sd-
(Bikash Das)
Superintendent Engineer(E),
Damodar Valley Corporation
Assessing Officer as per order of the
Hon'ble Jharkhand High Court at Ranchi
dated 04.042022 in WP(C) 95 of 2008

Admittedly, in the instant case there is no inspection report prepared by the Respondent. It is the contention of the Ld. Counsel for the Respondent that there is no requirement of preparation of inspection report in case of theft of electricity or unauthorized use of electricity. It was also contended by him that whatever has been mentioned in the FIR is sufficient and law does not provide for preparation of any inspection report and supplying copy thereof to the consumer.

53. The contents of the F.I.R cannot in any eventuality substitute the mandatory requirement of there being an inspection report. The argument advanced by the counsel for the DVC that only in a routine joint meter reading or testing of meter, an inspection report is prepared, which on the face of it appears to be in conflict with Supply Code Regulations and cannot be countenanced.

54. Even otherwise, in the case at hand, the FIR which was lodged was against one of the Directors of the Company namely Ram Chandra Rungta and after his demise, the criminal case was dropped. Further, the Respondent never initiated any criminal case against the petitioner-company.

55. As a matter of fact, in the earlier round of litigation, the writ Court has categorically observed that there are several consumers and held that the impugned provisional assessment

cannot be accepted unless and until respondent -DVC can point out, that no other consumers was at fault on that day then only such argument can be accepted by the Court.

56. Further, a perusal of Section 126 and Section 135 of the Electricity Act and Clause 15.8 (as it then was), which now stands as Clause 11 mandates carrying out of inspection, preparation of an inspection report by the Inspecting Team, seizure of the evidences so collected during the course of inspection and on the basis thereof issuing a provisional assessment order as required under Section 126 of the Act of 2003.

57. The inspection report and the contents therein are germane to the initiation of proceedings under the provisions of Electricity Act, 2003 and in the absence of which there is no other piece of evidence on the basis of which any proceedings can continue.

58. It is the inspection report which would reveal that unauthorised of electricity has been detected in course of inspection. Under Regulation 11.5 the authorized officer is required to prepare a report in which any irregularity, if noticed, such as tampered meter, artificial means adopted for theft of energy, must be recorded. Regulation 11.6 provides that the report shall clearly indicate whether sufficient evidence substantiating the fact that theft of energy was found or not, and the details of such evidences must also be recorded therein.

59. The FIR/Complaint filed under Section 135 cannot be a substitute of an inspection report as Section 126 and Section 135 operates different field and are exclusive of each other.

60. In the case of ***West Bengal State Electricity Distribution Company Limited Vs. Orion Metal Private Limited*** reported in ***(2020) 18 SCC 588,*** the Hon'ble Supreme Court under Para 13 has held that there is apparent distinction between Section 126 and Section 135 of the Act. Section 126 forms part of the Scheme which authorizes electricity supplier to ascertain loss in terms of revenue caused to it by the consumer by his act of unauthorized use of electricity which includes theft of electricity whereas Section 135 deals with offences of theft if he is found to have indulged himself in acts mentioned in clauses (a) to (e) of Section 135(1) of the Electricity Act. Under Para 15, it is held that in cases where allegation is of unauthorized use of energy amounting to theft in such cases, apart from assessment proceeding under Section 126(1) of the Act, a complaint also can be lodged alleging theft of energy.

Section 126 deals with cases of un-authorized use even in absence of intention where there is no theft; only assessment under Section 126 is to be made and no complaint under Section 135 is to be lodged.

61. It is thus clear from the judgment of the Hon'ble Supreme Court in the case ***West Bengal Electricity Distribution***

Company Limited (supra) that Section 126 and Section 135 are independent of each other. The Scheme of the Act is that in some cases only assessment order U/s 126 may be required to be passed for revenue losses without a complaint under Section 135, where there is only unauthorized use of electricity not amounting to theft; while in cases of theft assessment under Section 126 as also complaint under Section 135 is to be made.

62. Precisely, in all cases complaint/FIR need not be filed and such being the Scheme of the Act, the assessment under Section 126 cannot rest on complaint/FIR which may be filed or may not be filed depending on the nature of unauthorized use.

63. Section 126 cannot be read in such a manner and assessment under Section 126 can rest on something which may not be available in cases of un-authorized use not amounting to theft. In a case, if no case of theft is made out and no complaint/FIR is lodged and no proceeding under Section 135 is initiated; in such a case the assessment U/s 126 cannot be made in the vacuum on the *ipse dixit* of the assessing officer without any foundational material i.e., inspection report. That being the case it would be wrong to contend that FIR can be the basis of assessment under Section 126. This is contrary to the Scheme of the Act.

64. In the case of ***Executive Engineers, SESCO Limited Vs. Sri Seetaram Rice Mill*** reported in ***(2012) 2 SCC 108***, the

Hon'ble Supreme Court held that the unauthorised use of electricity for the purposes of assessment under Section 126 must be undisputed from record which clearly brings the consumer under liability. The objection against Provisional Assessment *ipso facto* a challenge to the inspection report (which is missing in the instant case). It is further held that there is no common premise between Section 126 and section 135. There is marked difference between Section 126 and Section 135. Relevant part of the order is extracted hereinbelow:-

> ***24.*** *Upon their plain reading, the marked differences in the contents of Sections 126 and 135 of the 2003 Act are obvious. They are distinct and different provisions which operate in different fields and* ***have no common premise in law.*** *We have already noticed that Sections 126 and 127 of the 2003 Act read together constitute a complete code in themselves covering all relevant considerations for passing of an order of assessment in cases which do not fall under Section 135 of the 2003 Act.*
> ***Xxxxxx***
>
> ***36.*** *Having dealt with the principle of interpretation of these provisions and the distinction between Sections 126 and 135 of the 2003 Act, we shall now discuss the ambit and scope of Section 126. The provisions of Section 126 contemplate the following steps to be taken:*
>
> *(i)* ***An assessing officer is to conduct inspection*** *of a place or premises and the equipments, gadgets, machines, devices found connected or used in such place.*
>
> *(ii) The* ***formation of a conclusion*** *that such person has indulged in unauthorised use of electricity.*
>
> *(iii) The assessing officer to provisionally assess, to the best of his judgment, the electricity charges payable by such person.*
>
> *(iv) The order of provisional assessment to be served upon the person concerned in the manner prescribed, giving him an opportunity to file objections, if any, against the provisional assessment.*
>
> *(v) The assessing officer has to afford a reasonable opportunity of being heard to such person and pass a final order of assessment within 30 days from the date of service of such order of provisional assessment.*

> *(vi) The person, upon whom the provisional order of assessment is served, is at liberty to pay the said amount within seven days of the receipt of such order and where he files such objections, final order of assessment shall be passed, against which such person has a right of appeal under Section 127 of the 2003 Act within the prescribed period of limitation.*
>
> ***Xxxxxxx***
>
> ***44.*** *The unauthorised use of electricity in the manner as is* ***undisputed on record clearly brings the respondent "under liability and in blame" within the ambit and scope of Section 126 of the 2003 Act.*** *The blame is in relation to excess load while the liability is to pay on a different tariff for the period prescribed in law and in terms of an order of assessment passed by the assessing officer by the powers vested in him under the provisions of Section 126 of the 2003 Act.*
>
> ***Xxxxxxx***
>
> ***70.*** *There is another angle from which the present case can be examined and obviously without prejudice to the other contentions raised. It is a case where, upon inspection, the officers of the appellant found that the respondent was consuming 142 kVA of electricity which was in excess of the sanctioned load.* ***To the inspection report,*** *the respondent had not filed any objection before the competent authority as contemplated under Section 126(3) and had approached the High Court. Limited for the purposes of these proceedings, excess consumption is not really in dispute. As stated above, the contentions raised by the respondent were to challenge the very jurisdiction of the authorities concerned.*

65. In yet another case, the Hon'ble Supreme Court in the case of ***Executive Engineer, SESCO Limited Vs. Sri Seetaram Rice Mills*** *supra* held that the assessing officer is to conduct inspection and form a conclusion and invite objection to the inspection report from the consumer and the unauthorised use of must be assessed in such a manner must be undisputed from record of the licensee that the consumer is under liability and in blame within the ambit and scope of Section 126.

66. It is apparent that under the scheme of sub-section (1A) of Section 135 of the Electricity Act, 2003 read with Clause 11.5 and Clause 11.6 of Supply Code Regulation, 2015 the starting point is preparation of inspection report in which the authorised officer must record the finding of facts (fundamental facts) to trigger a case under section 126 and/or Section 135 duly signed by him. The authorised officer has to record the irregularity noticed and/or are any material etc. seized which are used for unauthorised use of electricity. In the instant case the impugned assessment order is passed without such inspection report before the assessing authority.

67. It is settled law that assessment U/s 126 is statutory assessment and it cannot be passed in the vacuum or *ipse dixit* of assessing officer, but must be based on objective criteria. In the impugned assessment order, there is no material on record in support of serious charge of theft. Assessment Order under Section 126 has to passed on objective material/evidence on record and not mere assertions. In law if no inspection report is on record, it would mean no inspection was carried out. It cannot be presumed from mere assertions of parties. In absence of inspection report the assessing authority had no material before him to form an opinion against the Petitioner and make assessment on mere assertion of electricity supplier. The proceeding under Section 126 is quasi-judicial in nature and

statutory in character hence, must be based objectivity; rather than subjectivity. The inspection report is the foundational material on which assessment under Section 126 must rest and in its absence the assessing authority could not have arrived into any conclusion against the Petitioner.

68. The jurisdictional facts and foundational facts must be revealed from the inspection report. The contentions of the Respondent that FIR itself is sufficient cannot be countenanced. On the contrary inspection report can be the basis of FIR which is a subsequent event. The basic document is the inspection report which must speak about the facts. Theft of electricity must be recorded in the inspection report. Theft of electricity is a serious charge and Section 126 imposes penal rate and heavy fiscal burden and may have serious civil and evil consequence hence; it must be strictly construed. The assessment order U/s 126 cannot be passed without substantive material evidencing inspection and seizure of offending materials, nature of unauthorised use or theft which was carried out. These jurisdictional facts must clearly bear out from material on record in the form of inspection report duly signed by the authorised officer by the recording his finding. In the instant case barring assertions, there is no substantive material on record; and that is the reason the writ Court has observed, as stated hereinabove, as there are several consumers; the impugned provisional

assessment cannot be accepted unless and until respondent - DVC can point out, that no other consumers was at fault on that day then only such argument can be accepted by the Court.

69. Law is fairly well settled, when a statute prescribes a particular manner for doing an act, the same must be done in that manner only and in no other manner.

70. In the case of ***A.K. Roy Vs. State of Punjab*** reported in ***(1986) 4 SCC 326,*** it has been held by the Hon'ble Apex Court that when a statute provides for a thing to be done in a certain manner, then it has to be done in that manner and all other modes of its performance are impliedly barred.

71. The inspection report becomes all the more necessary as in the instant it is contended by the Respondent that the removable shorting wire was found at the secondary of the current transformer (the outdoor part). Though in the impugned order it is observed that it was seized by the team from Ramgarh police station on the date of inspection i.e., 01-01-2008.

72. An argument was advanced that in a case of present nature the consumer run away without signing the inspection report, however, in such an eventuality the duty is cast upon the inspecting team to sign the inspection report, the copy of the inspection report has to be pasted at the conspicuous place outside the premises and photographs are to be taken and at the same time needs to be posted on the same day or the next day of

the inspection which is mandated in Clause 11.39 of the Supply code Regulation. For brevity, the same is extracted hereinbelow:-

> *11.39 The report shall be signed by the Assessing Officer, each member of the inspection team and by the consumer, if the consumer fails to sign the report, then the same has to be recorded in the inspection report and the report must be handed over to the consumer or his/her representative at site immediately under proper receipt. In case of refusal by the consumer or his/her representative to either accept or give a receipt, a copy of inspection report shall be pasted at a conspicuous place in/outside the premises and photographed. Simultaneously, the report shall be sent to the consumer under Registered Post/Speed post on the day or the next day of the inspection.*

73. Hence the aforesaid argument of the Respondent Counsel is misplaced and has no legal backing. Further, Annexure-1 to the Supplementary Affidavit dated 10.02.2026, provides for assessment of energy in cases of theft, which is a notified regulation and is binding on all the Licensees operating within the territorial jurisdiction of the State of Jharkhand and as such, the notified regulation cannot be ignored by the Licensee.

74. A bare perusal of the same would transpire that the same only talk about or refer to assessment of Energy Charges, the same does not talk about assessment of KVA Charges /Maximum Demand Charges/Fixed Charges. The reason being irrespective of whether a consumer is consuming electricity or not, irrespective of categorization once there is a fixed charges notified in the Tariff Order, the consumer is duty bound to make payment of the same.

75. Thus, in any case, from the provisional assessment,

Demand Charges and Fuel Price Surcharge needs to be deleted.

76. Further, when the Supply Code Regulation does not provide for imposition of Demand Charge, as also, Fuel Price Surcharge, the same cannot be imposed particularly when Fuel Surcharge has been deleted from the Tariff of DVC by the State Electricity Regulatory Commission while determining the final Tariff of respondent DVC.

77. In the facts of the present case, the violations of statutory provisions, travelling beyond the orders of this Court, ignoring the delegated legislation, all are nothing else, but excess of jurisdiction, which is evident on the face of it. Hence, in my considered opinion in view of the peculiar facts of the present case, the impugned order dated 16.07.2022, calls for interference.

CONCLUSION:

78. As aforesaid, from the perusal of the records and the comparison of final assessment carried out under section 126 of the Electricity Act, by the respondent DVC, it appears that the respondent DVC has acted beyond jurisdiction by not following the Electric Supply Code Regulations 2005, as amended from time to time.

79. The said Electric Supply Code Regulation has the force of law, inasmuch as, the Electricity Act 2003, provides for

functions of State Electricity Regulatory Commission and in exercise of power conferred upon, the State Electricity Regulatory Commission by virtue of section 181(2)(x) of the Electricity Act, the Electric Supply Code Regulation has been promulgated in terms of section 50 of the Act. Hence, the Electric Supply Code Regulation enacted by the State Electricity Regulatory Commission is binding on the Electricity Company operating within the State of Jharkhand.

80. A perusal of Section 126, 135 of the Electricity Act and Clause 15.8 (as it then was), which now stands as Clause 11 mandates carrying out of inspection, preparation of an inspection report by the Inspecting Team, seizure of the evidences so collected during the course of inspection and on the basis thereof issuing a provisional assessment order as required under Section 126 of the Act of 2003.

81. In the case in hand, there have been blatant violation of statutory provisions in the hands of the Respondent DVC, which cannot be lost sight off; such as:-

- Non preparation of inspection report,
- Imposition of demand charge and fuel surcharge,
- Raising the demand on the basis of check meter, installed at the Ramgarh Sub-station,
- When there is definite ascertainment of the unit lost, traveling beyond the same would amount to unjustly enriching itself.

82. Hence, the writ petition is maintainable, since all these factors would fall within the purview of excess of jurisdiction as also lack of jurisdiction.

If such action is allowed to continue in the hands of the State Officers, in the instant case, DVC, which is nothing, but an instrumentality of the State under the Article 12 of the Constitution of India since the same enjoys the character of the deemed Licensee under Section 14 of the Electricity Act, the same would amount to giving premium to the wrong done and would amount to allowing the State Officers to ignore the mandatory statutory provisions.

83. In view of the discussions made and findings recorded hereinabove, the order of assessment dated 16.07.2022, passed by the Learned Superintending Engineer (E), Damodar Valley Corporation, exercising powers under section 126 of the Electricity Act, 2003 is quashed and set aside. The matter is remitted back to the Learned Superintending Engineer (E), Damodar Valley Corporation, with following directions:

i) The Assessing Officer shall serve a notice to the petitioner alongwith fresh calculation of provisional assessment for the relevant period i.e. from the date of installation of meter till the date of inspection/alleged F.I.R., so as to enable the petitioner to file a fresh objection as against the alleged theft of electricity;

ii) There shall be no levy of Maximum Demand Charges,

which is not contemplated in the Supply Code Regulations and neither there shall be levy of Fuel Surcharge, which stood deleted from the Tariff Order with effect from 01.04.2007;

iii) The petitioner shall file its objection within 2 weeks from the date of service of notice as also the provisional assessment thereof;

iv) The objection of the petitioner shall be disposed off, within 2 weeks thereafter, after granting an opportunity of hearing to the petitioner;

v) After finalisation of the assessment, the initial deposit of Rs. 1.50 crores made by the petitioner in terms of interim order dated 28.01.2008 passed in WPC No. 95 of 2008, shall be adjusted accordingly.

84. Consequently, the instant writ application stands disposed of, there is no order as to costs. Pending IAs, if any, also are closed.

(Deepak Roshan, J.)

Dated:04 /05/2026
Amardeep/
N.A.F.R

Uploaded on
05.05.2026