

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**

**L.P.A. No. 65 of 2009**

M/s Laxmi Business & Cement Co. (P) Ltd., a company registered under the provisions of the Companies Act, 1956 having its factory at Village Morangi, Dist. Hazaribagh through one of its Directors Sri Anupam Agarwal son of Sri Gyan Chand Agarwal resident of Nawabganj, P.O. Hazaribagh P.S. Hazaribagh Sadar, Dist.-Hazaribagh.

... .. Appellant/Petitioner

Versus

1. Jharkhand State Electricity Board having its office at Engineers Bhawan, HEC, Dhurwa, Town Ranchi P.O. & P.S. Dhurwa, Dist.-Ranchi through its Chairman.
2. General Manager cum Chief Engineer, Hazaribagh Electric Supply Area, Jharkhand State Electricity Board, P.O. & P.S. Hazaribagh, Hazaribagh.
3. Electrical Superintending Engineer, Hazaribagh Electric Supply Area, Jharkhand State Electricity Board, P.O. & P.S. Hazaribagh, Hazaribagh.
4. Electric Executive Engineer, Hazaribagh Electric Supply Area, Jharkhand State Electricity Board, P.O. & P.S. Hazaribagh, Hazaribagh.

... .. Respondents/Respondents

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**CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD  
HON'BLE MR. JUSTICE SUBHASH CHAND**

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| For the Appellant   | : Mr. Ajit Kumar, Sr. Advocate<br>Mr. Kushal Kumar, Advocate     |
| For the Respondents | : Mr. Mrinal Kanti Roy, Advocate<br>Mr. Chandan Tiwari, Advocate |

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**ORAL JUDGMENT**

**26/Dated: 09<sup>th</sup> February, 2023**

**Per Sujit Narayan Prasad, J.**

1. The instant appeal under clause 10 of the Letters Patent is directed against the order/judgment dated 29.01.2009 passed by the learned Single Judge in W.P.(C) No. 349 of 2009, whereby and whereunder, the writ petition has been dismissed declining to interfere with the direction sought for restoration of the electricity connection of the appellant/writ petitioner which was disconnected on 17.01.2009 as also the learned Single Judge has refused to interfere with the inspection report dated 17.01.2009 by which the allegation of theft of electricity has been alleged against the writ petitioner.
2. The brief facts of the case as per the pleading made in the writ petition, which requires to be enumerated, reads as under:

The writ petitioner is a medium scale industry engaged in the business of manufacture and sale of Portland Cement and for the purpose of running the same, has taken electrical connection from the then State Electricity Board (now JUVNL).

The unit of the writ petitioner was inspected on 17.05.2008, whereby, various officials of the Electricity Board had come for the inspection and on being satisfied with regard to the proper functioning of the metering unit as also the other parameters for billing purposes, it was mentioned that “NO ABNORMALITY OR DISORDER WERE OBSERVED”.

Another surprise inspection was carried out in the writ petitioner’s plant on 24.05.2008 and on being satisfied, the report was prepared with regard to the proper functioning of the metering unit as also the other parameters for the billing purposes.

It is the case of the writ petitioner that on 17.01.2009, a team of the officers of the Electricity Board visited the writ petitioner’s factory and during the course of inspection, the seals were found to be tampered/duplicate seals were affixed and it is stated that the writ petitioner does not have any control over the said CTPT unit and anybody with mala fide intention can cause damage to the said meter.

It is also stated that the Assistant Electrical Engineer, Electric Supply Sub-Division, Hazaribagh (Rural) lodged a First Information Report before the Officer-in-charge, O.P. Hazaribagh that an inspection was made in the premises of the writ petitioner and the seals were found tampered/duplicate and because of which the Board has suffered a loss of Rs.1.74 crores approximately and the line was disconnected on account of this on 17.01.2009 without resorting to any of the provisions of Electricity Act, 2003.

It is the case of the writ petitioner that in the inspection report dated 17.01.2009, none of the senior officers of the Electricity Board who are authorized to inspect the High Tension Consumers were present and even the Electrical Superintending Engineer of the Area

Board who has been defined as the Assessing Officer in term of Section 126 of the Electricity Act, 2003 for High Tension Consumer was present.

It is also the case of the writ petitioner that the meter is installed in the meter room and under any stretch of imagination, it cannot be said that without breaking the opening the meter room, the seals of terminal cover of the meter can be broken.

The case of the writ petitioner is that in the backdrop of the fact, his premises was inspected by the inspecting team, whereby and whereunder, the detection of unauthorized use of electricity has been found, therefore, a notice under sub-section (2) of Section 126 has been issued to the writ petitioner for filing his objection. The writ petitioner, at that juncture, had approached this Court by filing writ petition for a direction to quash the inspection report dated 17.01.2009 and to restore the electricity connection which was disconnected the day when the inspection of the premises of the writ petitioner was done, i.e., on 17.01.2009.

3. The learned Single Judge has considered the ground and submissions put forth on behalf of the parties and taking into consideration the provision of Section 126 of the Electricity Act, 2003, hereinafter referred to as the Act, 2003, as also the relevant clause of the Supply Code which provides process of conducting inspection, has dismissed the writ petition, which order is the subject matter of the instant intra-court appeal.
4. Mr. Ajit Kumar, learned senior counsel for the appellant/writ petitioner has submitted that the learned Single Judge has failed to consider while dismissing the writ petition that the competent authority had not conducted the inspection since under the explanation of the provision as contained under Section 126, “assessing officer” has been defined as notified by the State Government or any officer of the Board. The Government has come out with a notification on 13.07.2006 issued in the name of the Governor of the State conferring power of inspection to the Superintending Engineer so far as the nature of the electricity connection of the given facts of the case.

5. Learned senior counsel, therefore, submits by referring to the notice which has been issued under the signature of Superintending Engineer but the same cannot be said to be inspection report since the inspection report dated 17.01.2009 has not been signed by the Superintending Engineer rather it is signed by the team headed by the Executive Engineer, therefore, it is incorrect on the part of the respondent to take the ground that the power exercised in conducting the inspection is by the Superintending Engineer.

The learned senior counsel on the basis of the aforesaid ground has submitted that since the inspection has not been conducted by the Superintending Engineer, therefore, the entire exercise initiated under Section 126 (1) in passing the provisional assessment is without any jurisdiction and as such, the same is not sustainable in the eyes of law but this aspect of the matter has not been appreciated by the learned Single Judge.

It has, therefore, been contended that the inspection was conducted not by the competent authority, as such, the very inspection cannot be said to have any substance and in view thereof, there cannot be any demand as has been made on behalf of the respondent.

It has also been contended that the process as stipulated under Clause 15.7 of the aforesaid Supply Code which provides the process to conduct inspection under the provision of Section 126 but the same has not been followed, therefore, the inspection said to have been conducted on 17.01.2009 cannot be said to be sustainable.

6. *Per contra*, Mr. Mrinal Kanti Roy, learned counsel for the Jharkhand State Electricity Board (now JUVNL) has submitted that the notice issued under Section 126(3) of the Act, 2003 by the Superintending Engineer cannot be said to suffer from jurisdictional error in view of the provision as contained under Section 126(1) of the Act, 2003 wherein power has been conferred upon the assessing officer to provisionally assess the unauthorized use of electricity on the basis of the inspection conducted by any person.

Learned counsel, therefore, submits that even accepting the argument of the learned senior counsel in this regard, then also it cannot be said that the Superintending Engineer while issuing notice under Section 126(3) was having no jurisdiction.

7. In response, learned senior counsel has submitted by referring to the supplementary affidavit by taking the ground that the fact which has not been brought to the notice of the Court when the writ petition was pending has now been brought to the notice only after this Court has passed an order on 02.02.2023 when the question of jurisdiction has been raised. The affidavit which has been filed reflects that the respondents are themselves denying the inspection of the premises said to have conducted on 16.01.2009 since a statement has been made at paragraph-7 thereof in that the date of inspection has been tampered with and the date has been changed from 16.01.2009 to 17.01.2009 and accordingly, the date of lodging of the FIR has been changed from 16.01.2009 to 17.01.2009. Therefore, it has been contended that when the date of the inspection itself is not being corroborated by the respondents then where is the question of making a demand from the writ petitioner on the allegation of unauthorized use of electricity.
8. This Court has considered the argument advanced on behalf of the parties, perused the material available on record as also the finding recorded in the impugned judgment.
9. This Court before considering the legality and propriety of the impugned order, deems it fit and proper to refer first the very object and intent of the Act, 2003. It would be evident from the very preamble of the Act, 2003 that one of the object and intent of the said Act is to protect the Electricity Board from the financial crunch which is being caused by theft of electricity or its unauthorized use.
10. Prior to coming into effect of Electricity Act 2003, there were three enactments under the Electricity Supply Industry in India i.e. the Indian Electricity Act, 1910, the Electricity Supply Act, 1948, the Electricity Regulatory Commission Act, 1998 (herein after referred to as Act, 1910, Act 1948 and Act 1998).

11. After a period of time the performance of Electricity Boards has deteriorated substantially on account of various factors, one of the factors was the theft of the electricity and in order to meet out the situation the provision of Section 126 has been incorporated in the new Act which provides a provision to deal with a situation of use of electricity unauthorisedly apart from the penalties to be imposed on account of theft of electricity as per the provision made under Section 135. Section 126 reads as under:

*“126.Assessment-(1) If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or uses, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorized use of electricity, he shall provisionally assess to the best of his judgment the electricity charges payable by such person or by any other person benefited by such use.*

*(2) The order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such manner as may be prescribed.*

*(3) The person, on whom an order has been served under sub-section (2), shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who shall, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment within thirty days from the date of service of such order of provisional assessment, of the electricity charges payable by such person.*

*(4) Any person served with the order of provisional assessment may, accept such assessment and deposit the assessed amount with the licensee within seven days of service of such provisional assessment order upon him.*

*(5) If the assessing officer reaches to the conclusion that unauthorized use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorized use of electricity has taken place and if, however, the period during which such unauthorized use of electricity has taken place cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection.*

*(6) The assessment under this section shall be made at a rate equal to [twice] the tariff applicable for the relevant category of services specified in sub-section (5).”*

*Explanation.—For the purposes of this section,—*

*(a) ‘assessing officer’ means an officer of a State Government or Board or licensee, as the case may be, designated as such by the State Government;*

*(b) ‘unauthorised use of electricity’ means the usage of electricity—*

*(i) by any artificial means; or*

*(ii) by a means not authorised by the person or authority or licensee concerned; or*

(iii) through a tampered meter; or

(iv) for the purpose other than for which the usage of electricity was authorised; or

(v) for the premises or areas other than those for which the supply of electricity was authorised.”

The definition of “unauthorized use of electricity” with explanation ‘(b)’ of Section-126 of the Act, 2003 is as follows:- “(b) “unauthorized use of electricity” means the usage of electricity-

(i) by any artificial means; or

(ii) by a means not authorized by the concerned person or authority or licensee; or

(iii) through a tampered meter; or

(iv) for the purpose other than for which the usage of electricity was authorized; or

(v) for the premises or areas other than those for which the supply of electricity was authorized.”

Part XIV of the Act, 2003 provides theft of electricity which is relevant in the present case as follows:-

**“135.Theft of Electricity-(1) whoever, dishonestly,-**

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

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

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

(d) uses electricity through a tampered meter; or

(e) uses electricity for the purpose other than for which the usage of electricity was authorized, so as to abstract or consume or use electricity shall be punishable with imprisonment for a term which may extend to three years or with fine or with both: Provided that in a case where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use:

(i) does not exceed 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction the fine imposed shall not be less than six times the financial gain on account of such theft of electricity;

(ii) exceeds 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or 8 subsequent conviction, the sentence shall be imprisonment for a term not less than six months, but

*which may extend to five years and with fine not less than six times the financial gain on account of such theft of electricity:*

*Provided further that in the event of second and subsequent conviction of a person where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use exceeds 10 kilowatt, such person shall also be debarred from getting any supply of electricity for a period which shall not be less than three months but may extend to two years and shall also be debarred from getting supply of electricity for that period from any other source or generating station:*

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

*(1A) Without prejudice to the provisions of this Act, the licensee or supplier, as the case may be, may, upon detection of such theft of electricity, immediately disconnect the supply of electricity:*

*Provided that only such officer of the licensee or supplier, as authorized for the purpose by the Appropriate Commission or any other officer of the licensee or supplier, as the case may be, of the rank higher than the rank so authorized shall disconnect the supply line of electricity:*

*Provided further that such officer of the licensee or supplier, as the case may be, shall lodge a complaint in writing relating to the commission of such offence in police station having jurisdiction within twenty-four hours from the time of such disconnection:*

*Provided also that the licensee or supplier, as the case may be, on deposit or payment of the assessed amount or electricity charges in accordance with the provisions of this Act, shall, without prejudice to the obligation to lodge the complaint as referred to in the second proviso to this clause, restore the supply line of electricity within forty-eight hours of such deposit or payment.*

*(2) Any officer of the licensee or supplier as the case may be, authorized in this behalf by the State Government may-*

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

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

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

*(3) The occupant of the place of search or any person on his behalf shall remain present during the search and a list of all things seized in the course of such search shall be prepared and delivered to such occupant or person who shall sign the list:*

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

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

Reference needs to be made herein of a judgment rendered by Hon'ble Apex Court in the case of ***Executive Engineer, Southern Electricity Supply Company of Orissa Limited (SOUTHCO) and Another vs. Sri Seetaram Rice Mill reported in (2012) 2 SCC 108***. In the aforesaid case the Hon'ble Apex Court has occasion to consider the distinction between the unauthorized use of electricity as provided in Section 126 of the Act, 2003 and theft of electricity as provided under Section 135 of the Act, 2003. While dealing with the issue it has been laid down at para 24 to 30 which reads as under:

*"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.*

*25. Section 135 of the 2003 Act falls under Part XIV relating to "offences and penalties" and title of the section is "theft of electricity". The section opens with the words "whoever, dishonestly" does any or all of the acts specified under clauses (a) to (e) of sub-section (1) of Section 135 of the 2003 Act so as to abstract or consume or use electricity shall be punishable for imprisonment for a term which may extend to three years or with fine or with both. Besides imposition of punishment as specified under these provisions or the proviso thereto, sub-section (1-A) of Section 135 of the 2003 Act provides that without prejudice to the provisions of the 2003 Act, the licensee or supplier, as the case may be, through officer of rank authorised in this behalf by the appropriate commission, may immediately disconnect the supply of electricity and even take other measures enumerated under sub-sections (2) to (4) of the said section. The fine which may be imposed under Section 135 of the 2003 Act is directly proportional to the number of convictions and is also dependent on the extent of load abstracted.*

*26. In contradistinction to these provisions, Section 126 of the 2003 Act would be applicable to the cases where there is no theft of electricity but the electricity is being consumed in violation of the terms and conditions of supply leading to malpractices which may squarely fall within the expression "unauthorised use of electricity". This assessment/proceedings would commence with the inspection of the premises by an assessing officer and recording of a finding that such consumer is indulging in an "unauthorised use of electricity". Then the assessing officer shall provisionally assess, to the best of his judgment, the electricity charges payable by such consumer, as well as pass a provisional assessment order in terms of Section 126(2) of the 2003 Act.*

27. The officer is also under obligation to serve a notice in terms of Section 126(3) of the 2003 Act upon any such consumer requiring him to file his objections, if any, against the provisional assessment before a final order of assessment is passed within thirty days from the date of service of such order of provisional assessment. Thereafter, any person served with the order of provisional assessment may accept such assessment and deposit the amount with the licensee within seven days of service of such provisional assessment order upon him or prefer an appeal against the resultant final order under Section 127 of the 2003 Act. The order of assessment under Section 126 and the period for which such order would be passed has to be in terms of subsections (5) and (6) of Section 126 of the 2003 Act. The Explanation to Section 126 is of some significance, which we shall deal with shortly hereinafter. Section 126 of the 2003 Act falls under Part XII and relates to investigation and enforcement and empowers the assessing officer to pass an order of assessment.

28. Section 135 of the 2003 Act deals with an offence of theft of electricity and the penalty that can be imposed for such theft. This squarely falls within the dimensions of criminal jurisprudence and mens rea is one of the relevant factors for finding a case of theft. On the contrary, Section 126 of the 2003 Act does not speak of any criminal intent and is primarily an action and remedy available under the civil law. It does not have features or elements which are traceable to the criminal concept of mens rea.

29. Thus, it would be clear that the expression “unauthorised use of electricity” under Section 126 of the 2003 Act deals with cases of unauthorised use, even in the absence of intention. These cases would certainly be different from cases where there is dishonest abstraction of electricity by any of the methods enlisted under Section 135 of the 2003 Act. A clear example would be, where a consumer has used excessive load as against the installed load simpliciter and there is violation of the terms and conditions of supply, then, the case would fall under Section 126 of the 2003 Act. On the other hand, where a consumer, by any of the means and methods as specified under Sections 135(a) to 135(e) of the 2003 Act, has abstracted energy with dishonest intention and without authorisation, like providing for a direct connection bypassing the installed meter, the case would fall under Section 135 of the Act.

30. Therefore, there is a clear distinction between the cases that would fall under Section 126 of the 2003 Act on the one hand and Section 135 of the 2003 Act on the other. There is no commonality between them in law. They operate in different and distinct fields. The assessing officer has been vested with the powers to pass provisional and final order of assessment in cases of unauthorised use of electricity and cases of consumption of electricity beyond contracted load will squarely fall under such power. The legislative intention is to cover the cases of malpractices and unauthorised use of electricity and then theft which is governed by the provisions of Section 135 of the 2003 Act.”

It is further evident from the judgment rendered in the case of **Sri Seetaram Rice Mill** (supra) wherein while considering the acts enumerated under Section 135 of the aforesaid Act, 2003 with reference to the word “dishonesty” occurring at the commencement of Section 135 of the Act 2003 and if the dictionary meaning of the word “dishonest” would be taken, at paragraph 35 the Hon’ble Supreme Court has held as follows:

*“35. All these explanations clearly show that dishonesty is a state of mind where a person does an act with an intent to deceive the other, acts fraudulently and with a deceptive mind, to cause wrongful loss to the other. The act has to be of the type stated under sub-sections (1)(a) to (1)(e) of Section 135 of the 2003 Act. If these acts are committed and that state of mind, mens rea, exists, the person shall be liable to punishment and payment of penalty as contemplated under the provisions of the 2003 Act. In contradistinction to this, the intention is not the foundation for invoking powers of the competent authority and passing of an order of assessment under Section 126 of the 2003 Act.”*

So far as ambit and scope of Section 126 with reference to word “unauthorized use” means at paragraph 37 to 41 the Hon’ble Supreme Court has held as follows:

*“37. Wherever the assessing officer arrives at the conclusion that unauthorised use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorised use of electricity has taken place and if such period cannot be ascertained, it shall be limited to a period of 12 months immediately preceding the date of inspection and the assessment shall be made at the rate equal to twice the tariff applicable for the relevant category of service specified under these provisions. This computation has to be taken in terms of Sections 126(5), 126(6) and 127 of the 2003 Act. The complete procedure is provided under these sections. Right from the initiation of the proceedings till preferring of an appeal against the final order of assessment and termination thereof, as such, it is a complete code in itself.*

*38. We have already indicated that the provisions of Section 126 do not attract the principles of criminal jurisprudence including mens rea. These provisions primarily relate to unauthorised use of electricity and the charges which would be payable in terms thereof. To determine the controversy in the present case, it will be essential to examine the implication of the expression “unauthorised use of electricity” as contained in Explanation (b) of Section 126 of the 2003 Act.*

*39. In order to explain these expressions, it will be necessary for us to refer to certain other provisions and the Regulations as well. These expressions have to be understood and given meaning with reference to their background and are incapable of being fairly understood, if examined in isolation. It is always appropriate to examine the words of a statute in their correct perspective and with reference to relevant statutory provisions. The expression “unauthorised use of electricity” on its plain reading means use of electricity in a manner not authorised by the licensee of the Board. “Authorisation” refers to the permission of the licensee to use of electricity, subject to the terms and conditions for such use and the law governing the subject.*

*40. To put it more aptly, the supply of electricity to a consumer is always subject to the provisions of the 2003 Act, State Acts, Regulations framed thereunder and the terms and conditions of supply in the form of a contract or otherwise. Generally, when electricity is consumed in violation of any or all of these, it would be understood as “unauthorised use of electricity”. But this general view will have to be examined in the light of the fact that the legislature has opted to explain this term for the purposes of Section 126 of the 2003 Act. The said provision, along with the Explanation, reads as under:*

*“126. Assessment.—(1) If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found*

*connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorised use of electricity, he shall provisionally assess to the best of his judgment the electricity charges payable by such person or by any other person benefited by such use.*

*(2) The order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such manner as may be prescribed.*

*(3) The person, on whom an order has been served under sub-section (2), shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who shall, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment within thirty days from the date of service of such order of provisional assessment, of the electricity charges payable by such person.*

*(4) Any person served with the order of provisional assessment may, accept such assessment and deposit the assessed amount with the licensee within seven days of service of such provisional assessment order upon him.*

*(5) If the assessing officer reaches to the conclusion that unauthorised use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorised use of electricity has taken place and if, however, the period during which such unauthorised use of electricity has taken place cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection.*

*(6) The assessment under this section shall be made at a rate equal to twice the tariff applicable for the relevant category of services specified in sub-section (5).*

*Explanation.—For the purposes of this section,—*

*(a) ‘assessing officer’ means an officer of a State Government or Board or licensee, as the case may be, designated as such by the State Government;*

*(b) ‘unauthorised use of electricity’ means the usage of electricity—*

*(i) by any artificial means; or*

*(ii) by a means not authorised by the person or authority or licensee concerned; or*

*(iii) through a tampered meter; or*

*(iv) for the purpose other than for which the usage of electricity was authorised; or*

*(v) for the premises or areas other than those for which the supply of electricity was authorised.”*

**41.** *The “unauthorised use of electricity” means the usage of electricity by the means and for the reasons stated in subclauses (i) to (v) of clause (b) of the Explanation to Section 126 of the 2003 Act. Some of the illustratively stated circumstances of “unauthorised use” in the section cannot be construed as exhaustive. The “unauthorised use of electricity” would mean what is stated under that Explanation, as well as such other unauthorised user, which is squarely in violation of the abovementioned statutory or contractual provisions.”*

It is thus evident that the supply of electricity to a consumer is always subject to the provisions of the 2003 Act, State Acts regulations from thereunder and the terms and conditions of supply in the form of a contract or otherwise, when electricity consumed in violation of any or of these it would be understood as unauthorized use of electricity.

The Hon'ble Apex Court in the aforesaid judgment has dealt with the meaning of unauthorized use of electricity which reads as under:

*“41. The “unauthorised use of electricity” means the usage of electricity by the means and for the reasons stated in subclauses (i) to (v) of clause (b) of the Explanation to Section 126 of the 2003 Act. Some of the illustratively stated circumstances of “unauthorised use” in the section cannot be construed as exhaustive. The “unauthorised use of electricity” would mean what is stated under that Explanation, as well as such other unauthorised user, which is squarely in violation of the abovementioned statutory or contractual provisions.*

*42. Black’s Law Dictionary (8th Edn.) defines “unauthorised” as “done without the authority, made without actual, implied or apparent authority”. “Unauthorised” is a concept well recognised under different statutes, for example, under Section 31-A of the Delhi Development Act, 1957 (the DDA Act) the authority has the power to seal the “unauthorised” development, if the misuser of the premises would come within the ambit of unauthorised development. But if such misuse does not come within the ambit of “unauthorised development”, such power is not available to the authority. Simpliciter misuse, therefore, may not fall within the ambit of unauthorised development under the provisions of the DDA Act.*

*43. In M.C. Mehta v. Union of India this Court held that if the misuse was in violation of the permission, approval or sanction or in contravention of any conditions, subject to which the said permission/approval has been granted in terms of Section 30 of the DDA Act, then it will be “unauthorised use”. We have primarily referred to this case to support the reasoning that “unauthorised development” is one which is contrary to a master plan or zonal development plan as was the case under the DDA Act. Just as the right to develop a property is controlled by the restrictions of law as well as the terms and conditions of the permission granted for that purpose, the use of electricity is similarly controlled by the statutory provisions and the terms and conditions on which such permission is granted to use the electricity.*

*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.*

*45. The expression “means” used in the definition clause of Section 126 of the 2003 Act can have different connotations depending on the context in which such expression is used. In terms of Black’s Law Dictionary (8th Edn.) p. 1001, “mean” is—“of or relating to an intermediate point between two points or extremes” and “meaning” would be “the sense of anything, but esp. of words; that which is conveyed”. The word ordinarily includes a mistaken but reasonable understanding of a*

*communication. “Means” by itself is a restrictive term and when used with the word “includes”, it is construed as exhaustive. In those circumstances, a definition using the term “means” is a statement of literal connotation of a term and the courts have interpreted “means and includes” as an expression defining the section exhaustively. It is to be kept in mind that while determining whether a provision is exhaustive or merely illustrative, this will have to depend upon the language of the section, scheme of the Act, the object of the legislature and its intent.*

*46. “Purposive construction” is certainly a cardinal principle of interpretation. Equally true is that no rule of interpretation should either be overstated or overextended. Without being overextended or overstated, this rule of interpretation can be applied to the present case. It points to the conclusion that an interpretation which would attain the object and purpose of the Act has to be given precedence over any other interpretation which may not further the cause of the statute. The development of law is particularly liberated both from literal and blinkered interpretation, though to a limited extent.*

*47. The precepts of interpretation of contractual documents have also undergone a wide-ranged variation in the recent times. The result has been subject to one important exception to assimilate the way in which such documents are interpreted by Judges on the common sense principle by which any serious utterance would be interpreted by ordinary life. In other words, the common sense view relating to the implication and impact of provisions is the relevant consideration for interpreting a term of document so as to achieve temporal proximity of the end result.*

*48. Another similar rule is the rule of practical interpretation. This test can be effectually applied to the provisions of a statute of the present kind. It must be understood that an interpretation which upon application of the provisions at the ground reality, would frustrate the very law should not be accepted against the common sense view which will further such application.*

*49. Once the court decides that it has to take a purposive construction as opposed to textual construction, then the legislative purpose sought to be achieved by such an interpretation has to be kept in mind. We have already indicated that keeping in view the legislative scheme and the provisions of the 2003 Act, it will be appropriate to adopt the approach of purposive construction on the facts of this case. We have also indicated above that the provisions of Section 126 of the 2003 Act are intended to cover the cases over and above the cases which would be specifically covered under the provisions of Section 135 of the 2003 Act.*

*51. The primary object of the expression “means” is intended to explain the term “unauthorised use of electricity” which, even from the plain reading of the provisions of the 2003 Act or on a common sense view cannot be restricted to the examples given in the Explanation. The legislature has intentionally omitted to use the word “includes” and has only used the word “means” with an intention to explain inter alia what an unauthorised use of electricity would be. It must be noticed that clause (iv) of Explanation (b) and sub-section (5) of Section 126 of the 2003 Act were both amended/substituted by the same amending Act 26 of 2007, with a purpose and object of preventing unauthorised use of electricity not amounting to theft of electricity within the meaning of Section 135 of the 2003 Act. This amendment, therefore, has to be given its due meaning which will fit into the scheme of the 2003 Act and would achieve its object and purpose.*

*52. The expression “means” would not always be open to such a strict construction that the terms mentioned in a definition clause under such*

*expression would have to be inevitably treated as being exhaustive. There can be a large number of cases and examples where even the expression “means” can be construed liberally and treated to be inclusive but not completely exhaustive of the scope of the definition, of course, depending upon the facts of a given case and the provisions governing that law.”*

The meaning of word “means” as has been considered by the Hon’ble Apex Court in the case of ***K. V Muthu vs. Angamuthu Ammal reported in (1997) 2 SCC 53*** wherein at paragraph 10 the Hon’ble Apex Court has explained the word “means” as follows:

*“10. Apparently, it appears that the definition is conclusive as the word “means” has been used to specify the members, namely, spouse, son, daughter, grandchild or dependant parent, who would constitute the family. Section 2 of the Act in which various terms have been defined, opens with the words “in this Act, unless the context otherwise requires” which indicates that the definitions, as for example that of “family”, which are indicated to be conclusive may not be treated to be conclusive if it was otherwise required by the context. This implies that a definition, like any other word in a statute, has to be read in the light of the context and scheme of the Act as also the object for which the Act was made by the legislature.”*

The word dishonestly as defined under Section 135 also needs to be dealt with, the word dishonestly defined under section 24 of the Indian Penal Code states that the word judicial does intent that the intention of causing wrongful gain to one person or wrongful loss to another person is said to do that thing dishonestly.

In the case of ***Dr. S. Dutt vs. State of U.P reported in AIR 1966 SC 523*** the Hon’ble Apex Court has defined the word dishonestly, as a person who does intent with the intention of causing wrongful gain to one person or wrongful loss to another person.

In another judgment in the case of ***Ramratan and Ors. vs. The State of Bihar & Anr. reported in AIR 1965 SC 926*** the Hon’ble Apex Court has observed that a person is said to do a thing dishonestly when he does intent with the intention of causing wrongful gain to one person or wrongful loss to another person.

As per the provision of Sub section 2 to 5 of Section 126 of the Act the order of provisional assessment shall be served upon the persons in occupation or possession or in charge of the place of premises in such manner as may be prescribed while the procedure is also contemplated in the case of theft following under any of the Acts, enumerated under Section 135(1) a 1(e).

Part XIV of the Electricity Act, 2003 relates to offences and penalties and Section 135 provides theft of electricity.

Section 135(1) provides that whoever dishonestly, taps, makes or causes to be made any connection with overhead, underground or under water lines or cables or service wires or service facilities of a licensee, or tampers a meter or installs or use a tampered meter which enforce with accurate and provide registered, calibration or metering of electricity current or otherwise relates in a manner whereby electricity is stolen or wasted, damages or destroys electric meter, so as to abstract or consume or use electricity shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

Section 135(2) provides that any officer, authorized in this behalf by the State Government, may enter, inspect, break upon and storage any place or premises in which he has reason to play with electricity is used unauthorisedly, and search and seized remove of such devices, instruments, wires or article which has been or is being used for unauthorized use of electricity. Under Section 135(4) the provisions of the Code of criminal procedure, relating to search and seizure, shall apply to searches and seizure under the Act. Under Section 147 the penalties imposed under Electricity Act, 2003 shall be in addition to and not in derogation to, any liability in respect of payment of compensation.

Part XV relates to special courts and Section 153 to the constitution of special courts.

Under Section 153(1) the State Government may, for the purpose of providing speedy trial of offence, refer to in section 135 to 140 and Section 150 by notification in the official gazette, constitute as many special courts as may be necessary for such area or areas, as may be specified in the notification.

Section 154 prescribes the procedure and power of special courts and under sub section (1) every offence punishable under Section 135 to 140 and Section 150, shall be triable only by the special courts.

Section 154(5) enables the special court to 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 tariff rate applicable for a period of twelve months providing 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 decreed to the civil court.

In the explanation of Section 154 “civil liability” is defined to mean the loss or damage incurred by the Board or the licensee or the concerned person, as the case may be, due to commission of an offence referred under Section 135 to 140 and Section 150.

Here it also needs to refer the judgment rendered by Constitution Bench of Hon’ble Apex Court in the case of *Tinsukhia Electricity Supply Co. Ltd. vs. State of Assam and Others, reported in (1989) 3 SCC 709* where at para 118 and 120 it has been laid down that the provision of a statute must be so construed as to make it effective and operative, which reads as under:

*“118. The courts strongly lean against any construction which tends to reduce a statute to futility. The provision of a statute must be so construed as to make it effective and operative, on the principle “ut res magis valeat quam pereat”. It is, no doubt, true that if a statute is absolutely vague and its language wholly intractable and absolutely meaningless, the statute could be declared void for vagueness. This is not in judicial review by testing the law for arbitrariness or unreasonableness under Article 14; but what a court of construction, dealing with the language of a statute, does in order to ascertain from, and accord to, the statute the meaning and purpose which the legislature intended for it.”*

*“Unless the words were so absolutely senseless that I could do nothing at all with them, I should be bound to find some meaning and not to declare them void for uncertainty.”*

*“120. It is, therefore, the court’s duty to make what it can of the statute, knowing that the statutes are meant to be operative and not inept and the nothing short of impossibility should allow a court to declare a statute unworkable.”*

12. The view of the Hon'ble Apex Court as rendered in *Executive Engineer, Southern Electricity Supply Company of Orissa Limited (SOUTHCO) and Another vs. Sri Seetaram Rice Mill* (supra) has again been reiterated in *West Bengal State Electricity Distribution Company Limited and Ors. vs. Orion Metal Private Limited and Anr., (2020) 18 SCC 588* holding therein the applicability of Section 126 and 135

parallelly. The reference of the Supply code which contains a provision under clause 15.7 thereof is also required to be made keeping the fact into consideration that the core issue involved herein is as per the argument advanced on behalf of the appellant that the process for conducting inspection which is to be conducted in exercise of power conferred under Section 126 is to be made, which reads as under:

***“15.7 Method for assessment of electricity charges in case of Unauthorized Use of Electricity (UUE)***

*(i) If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the Assessing officer comes to the conclusion that such person is indulging in unauthorised use of electricity, he shall provisionally assess the electricity charges payable by such person or by any other person benefited by such use as per the procedure in the following sections:*

*(ii) Unauthorised use of electricity shall be as defined in ‘Explanation (b) ‘under section 126 of the Electricity Act 2003, reproduced as under:*

*(b) “unauthorised use of electricity “ means the usage of electricity-*

*(i) by any artificial means; or*

*(ii) by a means not authorised by the concerned person or authority or licensee; or*

*(iii) through a tampered meter; or*

*(iv) for the purpose other than for which the usage of electricity was authorised; or*

*(v) for the premises or areas other than those for which the supply of electricity was authorized.”*

*(iii) **Exemption:** Following activities shall not be considered as unauthorized use of electricity:*

*(a) Where a consumer is billed on demand basis but the connected load exceeds the sanctioned load. In such cases one month notice is to be served by the Licensee indicating additional load to be regularised by the consumer.*

*(b) Use of supply for a religious, social function or any other non-commercial activity by the consumer himself, not exceeding three days, in his own or adjoining premises, provided total operating load does not exceed the sanctioned load of the consumer.*

***Procedure for booking a case of Unauthorized Use of Electricity***

*(iv) The Licensee shall publish the list of Assessing officers, prominently in all the Offices and the Photo Identity Card issued to such officers shall indicate so.*

*(v) An Assessing officer, suo motu or on receipt of reliable information regarding unauthorized use of electricity shall promptly conduct inspection of such premises and shall be present at the time of conducting inspection of such premises.*

(vi) *The inspection team of the Licensee, headed by such Assessing officer shall carry along with them their Visiting Cards and Photo Identity Cards. Photo Identity Card should be shown and Visiting Card handed over to the consumer before entering the premises.*

(vii) *The Assessing officer shall prepare a report giving details such as connected load, condition of seals, working of meter and mention any irregularity noticed (such as, artificial means adopted for unauthorized use of electricity).*

(viii) *The report shall clearly indicate whether sufficient evidence substantiating the fact that unauthorized use of electricity was found or not. The details of such evidence should be recorded in the report and the material utilised for the purpose shall be kept as a proof.*

(ix) *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.*

(x) *Within three working days of the date of inspection, the Assessing officer shall, analyze the case after carefully considering all the evidence including the consumption pattern, wherever available and the report of inspection. If it is concluded that no unauthorized use of electricity has taken place, no further action will be taken.*

#### **Notice to consumer**

(xi) *If the Assessing officer as per clause 15.7 (x) suspects that the unauthorized use of electricity has taken place, he shall serve a provisional assessment order assessed as per clause 15.7 (xx) and (xxi) of these Regulations alongwith show cause notice to the consumer, giving reasons as to why a case of unauthorized use of electricity should not be booked against such consumer. The show cause 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.*

(xii) *The person, on whom an order has been served under clause 15.7 (xi) of these Regulations shall be entitled to file objections, if any, against the provisional assessment before the Assessing officer, who shall, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment.*

(xiii) *If the provisional assessment amount is deposited within seven days of the service of such provisional assessment order on the consumer, the reply to the notice shall not be necessary.*

#### **Consumer's reply submission**

(xiv) *The consumer shall submit his/ her reply within fifteen days of receipt of show cause notice to the concerned officer mentioned in clause 15.7 (xi) of these Regulations.*

(xv) *In such cases where the consumer files objections against the provisional assessment order, the process of hearing shall be as per clause 15.7 (xvi) and (xvii) of these Regulations.*

### **Hearing**

(xvi) *Within five days from the date of submission of consumers' reply, the Licensee shall arrange a hearing with the consumer.*

(xvii) *During the hearing, the Assessing officer shall give due consideration to the facts submitted by the consumer and pass, within five working days, a speaking order as to whether the case of unauthorized use of electricity is established or not. The order shall contain the brief of inspection report, submissions made by consumer in his written reply and oral submissions during hearing and reasons for acceptance or rejections of the same.*

### **Assessment**

(xviii) *In cases where unauthorized use of electricity is not established based on consumer's reply submission / hearing, further proceedings shall be discontinued and case of unauthorized use of electricity shall be dropped immediately.*

(xix) *Where it is established that there is a case of unauthorized use of electricity based on consumer's reply submission/ hearing, the Assessing officer shall assess the energy consumption taking into consideration the following:*

(xx) *The Assessing officer shall assess the energy consumption considering the following:*

(a) **Period of assessment:** *If the Assessing officer reaches to the conclusion that unauthorised use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorized use of electricity has taken place and if, however, the period during which such unauthorised use of electricity has taken place cannot be ascertained, such period shall be limited to a period of twelve (12) months immediately preceding the date of inspection.*

(b) **Assessment charge:** *The assessment for the units assessed as per clause 15.7 (xxi) of these Regulations shall be made at a rate equal to twice (2 times) the tariff rates applicable for the consumer as per the latest Tariff order, excluding the consumption recorded by the meter or already billed during the assessment period at applicable tariffs.*

(c) *If a consumer is found indulging in more than one act of unauthorized use of electricity, the charges payable by the consumer in respect of each such unauthorized use shall be separately assessed and billed accordingly.*

(xxi) *The methodology for assessment of consumption for unauthorized use of electricity shall be as follows:*

*Assessment shall be based on the data obtained from the meter (in case of electronic meter through MRI) and shall be given as:*

**= (Average Monthly consumption for the Period of assessment (units))  
x (Period of assessment (in months or fraction thereof), assessed as per  
clause 15.7 (xx) (a) of these Regulations)**

*Provided the meter has been in working condition for at least nine months of the assessment period;*

*Provided further that the connection of the consumer has been energized for at least nine months prior to the date of inspection for unauthorised use of electricity;*

*If the above conditions are not satisfied then the assessment shall be as per the assessment formula given in clause 1.1 of ANNEXURE-I to these Regulations.*

*(xxii) The final assessment order shall be served on the consumer under proper receipt. The consumer shall be required to make the payment within seven days of its proper receipt. A copy of the speaking order shall also be handed over to the consumer under proper receipt.*

*(xxiii) The order of final assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such manner as prescribed by the State Government under section 126(2) of the Act.*

*(xxiv) Any person served with the order of final assessment, may, accept such assessment and deposit the assessed amount with the Licensee within seven days of service of assessment order upon him.*

*(xxv) In case of non-payment of bill amount within seven days of serving the final assessment order, the connection will be disconnected by serving a fifteen days notice, which will not be reconnected until the assessed amount is deposited. In case of non-payment, the amount will be shown as arrear in the regular bill.*

*(xxvi) When a person defaults in making payment of assessed amount, he, in addition to the assessed amount shall be liable to pay, on the expiry of thirty days from the date of order of assessment, an amount of interest at the rate of sixteen per cent, per annum compounded every six months.*

*(xxvii) **Appeal to Appellate Authority:** Any person aggrieved by the final order served by the Assessing officer may, within 30 days of the said order, prefer an appeal in such form, verified in such manner and be accompanied by such fee as specified by the Commission in the Jharkhand State Electricity Regulatory Commission (miscellaneous provision) Order, 2003 and subsequent amendments, to an Appellate Authority.*

*(xxviii) No appeal against an order of assessment under section (xxvii) above shall be entertained unless an amount equal to half of the assessed amount is deposited in cash or by way of bank draft with the licensee and documentary evidence of such deposit has been enclosed along with the appeal.*

*(xxix) The Appellate Authority will dispose of the appeal after hearing the parties and pass appropriate order and send copy of the order to the Assessing officer and the appellant. The order of the Appellate Authority shall be final and shall not be appeal-able*

*(xxx) The consumer will be served with a revised bill as per final order of the Appellate Authority to be paid in seven days.*

*(xxxi) If a consumer defaults in making the payment within seven days of serving the final order of the Appellate Authority, the connection will be disconnected after serving a fifteen days notice which will not be reconnected until the bill amount is cleared. In case of non-payment, the amount will be indicated as arrear in regular bill and action will be taken for recovery.*

*(xxxii) An interest of 16% per annum will be charged on the amount as per final order of the Appellate Authority after thirty days from the date of final order, compounded every six months as per section 127(6) of the Act. ”*

13. The reason for referring the aforesaid judgment in the context is in order to show the object of the Act, 2003 for protecting the Board from financial loss either due to theft in electricity or its unauthorized use. The Hon'ble Apex Court considering the provision of Section 126 and 135 of the Act, 2003 has been pleased to hold that both the proceeding will run parallel since theft of the electricity will be said to be causing loss to the Board if the theft is with intention by the consumer and also in order to protect the Electricity Board from its unauthorized use, provision has been carved out under Section 126 so as to deal with the unauthorized use of electricity by the consume even if there is no intention to steal the electricity. Meaning thereby, the object behind the Act, 2003 is to protect the Board from financial loss either due to its unauthorized use or in the case of theft.
14. This Court, is now proceeding to examine the factual aspect on the basis of the very object of the Act, 2003 in order to consider that if the inspection of the premises is not in dispute by the appellant whether merely on some discrepancy in making reference of the date of inspection in the notice issued under Section 126 (3) of the Act, 2003, can the entire proceeding be vitiated on technicality.

The facts of the case as has been placed on behalf of the appellant is that the appellant is about competency of the authority who has conducted the inspection. The basis of such argument is the reliance as has been put by the learned senior counsel for the appellant upon the government notification being Notification No.1584 dated 13.07.2006 issued under the signature of Secretary, Energy Department, State of Jharkhand wherein the authority to discharge duty in pursuance of the provision of Section 126 of the Act, 2003 has been given, one of the conferment of power is upon the Superintending Engineer of the Supply Circle pertaining to HT 11 KV power supply. The fact of the case herein is of HT power supply and as such, it has been argued that the Superintending Engineer in view of Clause 3 of the said notification is only the competent authority to inspect the premises in exercise of power conferred under Section 126 of the Act, 2003.

15. This Court, in order to appreciate the aforesaid argument, requires to consider the provision of Section 126 of the Act, 2003, although the same has been referred above but for its analysis for the purpose of jurisdiction of the Superintending Engineer as to what will be its implication if the Superintending Engineer of the concerned Supply Circle is not a member of the inspecting team and in that view of the matter as to whether the Superintending Engineer can have power to issue notice in order to provide an opportunity to the consumer as required under sub-section (3) of Section 126.
16. It is evident from sub-section (1) of Section 126 which contains three eventualities of conducting inspection that if on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorised use of electricity, he shall provisionally assess to the best of his judgment the electricity charges payable by such person or by any other person benefited by such use.

It, thus, implies that the inspection of any place and premises can be done by the assessing officer or the assessing officer has also been authorized to assess it provisionally on the basis of the inspection report so furnished by the inspecting team.

The “assessing officer” has been defined under the explanation as under explanation (a) which means an officer of a State Government or Board or licensee, as the case may be, designated as such by the State Government.

17. The core argument which has been advanced on behalf of the appellant that the Superintending Engineer who had issued notice under sub-section (2) of Section 126 is having no jurisdiction to issue such notice in view of the notification dated 13.07.2006.

The second argument is that the provision of the Supply Code as under Clause 15.7 stipulating the process of conducting inspection has not been followed.

18. So far as the first argument is concerned, there is no dispute that the meaning of “assessing officer” under explanation (a) has been defined under the statute itself which will be said to be a assessing officer if authorized by the State Government by issuance of a notification in this regard. The State Government came out with a notification on 13.07.2006 conferring power to the Superintending Engineer for the purpose of conducting inspection of the nature of electricity supply as the fact of the given case herein is, i.e., HT 11 KV power supply.

Section 126(1) does not contain any provision precluding the Superintending Engineer or any authority not to act upon the inspection report of the inspecting team rather the assessing officer, as notified by the State Government, has also been conferred with the power to assess provisionally in a case where unauthorized use of electricity has been detected by the inspecting team as would appear from the provision of Section 126(1) wherein it has been stipulated that after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorised use of electricity, he shall provisionally assess to the best of his judgment the electricity charges payable by such person or by any other person benefited by such use.

Here, in the instant case, the inspection said to have been conducted on 17.01.2009 is not in dispute by the appellant/writ petitioner for the reason that in the case of the appellant, the day when the premises was inspected, i.e., 17.01.2009, his representative was also present which is evident from the inspection report dated 17.01.2009 which contains the signature of the representative in the left side thereof alongwith signature of the inspecting team which consisted of six members. Therefore, once the inspection of the premises is not in dispute and the Superintending Engineer basis upon the said inspection report if provided an opportunity to the writ petitioner to file objection against the provisional assessment as per the requirement stipulated under sub-section (3) of Section 126 of the Act, 2003, it cannot be said according to the considered view of this Court that the Superintending Engineer has no jurisdiction to exercise such power in order to provide opportunity to

the consumer to file objection against the provisional assessment. Since the power to be exercised by the Superintending Engineer will be said to be in consonance with the provision as contained under Section 126(1) and being covered on the basis of the stipulation so made that after inspection the report has been produced before the assessing officer, the assessing officer will have authority to provisionally assess the unauthorized use of electricity.

Herein, the assessing officer since has been defined to be notified by the Government and the Superintending Engineer has been notified to act as assessing officer in view of the notification dated 13.07.2006, therefore, the issue of jurisdiction of the Superintending Engineer cannot be said to be in question.

19. Mr. Ajit Kumar, learned senior counsel appearing for the appellant/writ petitioner has relied upon the judgment rendered by the Hon'ble Apex Court in *Narayan Chandra Kundu vs. State of West Bengal and Ors.*, 2007 SCC OnLine Cal 538 and another judgment rendered in *M/s Orion Metal Pvt. Ltd. and Anr. vs. West Bengal State Electricity Distribution Company Limited and Ors.*, 2016 SCC OnLine Cal 7461 wherein the consideration of the provision of Section 126(1) has been made by interpreting the meaning of “or” as mentioned in sub-section (1) of Section 126 and by holding the provision not to be conjunctive rather it has been considered to be disjunctive as would appear from paragraph-16 which reads as under:

*“16. It only supports the interpretation of the Section which I have made above that if the basis of determination of unauthorised use of electricity is inspection, then the assessing officer had to be part of the inspection team. In this case the third method of making assessment referred to above was neither in issue nor discussed in the judgement. Only the first two methods can be said to have been dealt with in this judgement. A later division bench of this court headed by Mr. Justice Girish Chandra Gupta in C.E.S.C. Ltd. v. Abdos Trading Co. Pvt. Ltd. reported in 2013 (2) CHN (CAL) 242 followed this judgement. This judgement, also did not consider the third mode of making the assessment provided in Section 126 of the said Act. However, it was discussed broadly by Mr. Justice Jyotirmay Bhattacharya in CESC Limited v. Deputy Chief Engineer-Customer Relation Management reported in 2011 (1) CLJ (Cal) 622 in the following manner:*

*“The use of expression ‘or’ in between the aforesaid three situations, in my view, was used in a disjunctive way. The expression ‘or’ used in between the aforesaid three situations cannot be read as conjunctive. If ‘or’ used in between the three alternatives situations is read as conjunctive, then even the provisional assessment cannot be made by the Assessing Officer unless all the aforesaid three courses are*

*followed. In my view, that was never the intention of the legislature. The last situation which is mentioned in item no. (iii) as above, clearly indicates that provisional assessment can be made by the Assessing Officer, if the Assessing Officer after inspecting the records maintained by any 14 person can come to the conclusion that such person is indulging in unauthorized use of electricity and such conclusion can be arrived at, even without following the other two courses as mentioned above. Thus this Court is of the view, that if the assessing officer is satisfied about the unauthorized use of electricity by following any of the courses as mentioned above, he is competent to pass provisional assessment order. The expression 'any person' used in the last alternative course is significant as instead of using the expression consumer, the expression 'any person' is used therein. In my view, this 'any person' is used in the said provision to include all persons including the consumer, the beneficiary of such illegal connection or any person who is related to such unauthorized extension and/or use of such electricity and the officer authorised to inspect any premises under Section 135(2) of the said Act. The records maintained by any person means and includes the records of inspection prepared by the officer having authority under Section 135(2) of the said Act.'"*

20. Therefore, the judgment upon which reliance has been placed on behalf of the appellant also clarifies that the assessing officer will have jurisdiction to provisionally assess the unauthorized use of electricity on the basis of the inspection of the premises conducted by any person, as such, considering the aforesaid provision as contained under sub-section (2) of Section 126 of the Act, 2003 it cannot be said that the assessing officer, the Superintending Engineer herein, was having no jurisdiction to exercise the power of issuance of notice under Section 126(3) of the Act, 2003.
21. Another question has been raised that the provision as contained under clause 15.7 of the Supply code has not been followed which contains the process to be followed while inspecting the premises in order to detect the unauthorized use of electricity.

There is no doubt that if any statutory provision has been made conferring power upon the statutory authority to exercise it, a process is required to be there, however, no process is there in the Act, as such, by resorting to the provision of Section 50 of the Electricity Act, 2003, the Supply Code has been brought in force which also contains a provision laying down the process to conduct inspection as would appear from clause 15.7 of the Supply Code.

22. This Court as perused the aforesaid provision and has found therefrom that one of the processes is that there will be signature of all the

members of the inspecting team and inspection is to be conducted in presence of the consumer or his representative.

This Court after considering the inspection report dated 17.01.2009 has found therefrom that the inspecting team which consisted of six members, have put their signature as also the signature of the representative of the consumer is found available therein, as such, the aforesaid report of the inspecting team having signed by all the members in presence of the consumer or its representative is already available.

23. Learned senior counsel has however raised the question against the act of the respondent that the inspection was conducted on 17.01.2009 but the notice which was issued providing opportunity to file objection makes reference of the inspection said to have been conducted on 16.01.2009. Further the learned senior counsel has referred the statement made by the respondent in the affidavit filed in pursuance to the order dated 02.02.2023 as contained under para-7 thereof wherein stand has been taken that it is due to inadvertence and the fault committed by the official/staff of the respondent, reference of inspection said to have been conducted on 16.01.2009 has been made instead of actual date of inspection which was conducted on 17.01.2009.

Learned senior counsel, therefore, submits that when the process to conduct an inspection has been given under the Supply Code, the statutory duty which has been casted upon the authority concerned cannot be so casual in committing such type of inadvertence or mistake by goes to the root of the issue.

24. Mr. Mrinal Kanti Roy, learned counsel for the respondents has submitted by referring to para-8 of the affidavit that the aforesaid fact has been detected subsequent to the order passed by this Court on 02.02.2023 and immediately after its detection, authorities have taken decision to initiate a proceeding against the erring official(s) after conducting proper enquiry but in any case if there is any inadvertence bona fide or mala fide committed on behalf of the employee(s)/officer(s) of the respondents, no advantage can be given to the appellant/writ petitioner.

25. The question of giving advantage to the appellant/writ petitioner on the basis of wrong committed by the respondent cannot be said to be proper approach. The ultimate consideration will be that how to achieve the object and intent of the Act. The object and intent of the Act, 2003 is to secure the Electricity Board, JUVNL herein, to get rid from the financial loss due to unauthorized use of electricity or theft and one of the purpose of the Act, 2003 is to get rid of the theft of electricity or its unauthorized use. If on the technicality or any fault committed on behalf of the respondent, benefit will be given to the appellant, the very object and intent of the Act, 2003 will be frustrated. But simultaneously, this Court is to look into that why such type of mistake has been committed by the statutory functionary when the process is there.
26. This Court, therefore, is of the view keeping the fact into consideration, the very object and intent of the Act, 2003 that merely because the notice issued by the concerned authority in exercise of power conferred under sub-section (2) of Section 126 find mention the reference of the notice dated 16.01.2009 instead of 17.01.2009, no benefit can be granted to the writ petitioner on such ground.

However, further question of consideration will be that the notice which was issued by the concerned authority requires to be appended with the inspection report so as to provide adequate and sufficient opportunity to the party concerned who is to defend himself before taking any adverse decision.

27. Admittedly herein, as would appear from the notice dated 17.01.2009 that the inspection report duly been signed by the inspecting team consisting of six members along with the signature of his representative of the consumer has not been appended, as such, the same has not been provided to the consumer before making any objection against the provisional assessment so made by the concerned authority.
28. This Court, in view of the aforesaid background, is of the view that since on technicality no advantage can be given but simultaneously adequate and sufficient opportunity is to be given to the consumer, therefore, the

propriety demands that the matter be remanded to the concerned authority in order to provide an opportunity to file objection.

29. Accordingly, the matter is being remitted before the Superintending Engineer, Hazaribagh, the competent authority, to issue notice, appending the inspection report dated 17.01.2009, to the appellant/writ petitioner.

Such notice be issued within a period of four weeks from the date of receipt/production of copy of this order.

30. The appellant/writ petitioner is required to file objection within a further period of four weeks from the date of receipt of such notice.
31. It is needless to say that the respondent will follow the mandate of the statute for the purpose of taking further course or action.
32. The issue of demand will depend upon the outcome of the decision to be taken by the authority concerned as directed above.
33. Before parting with the order, this Court is also required to refer herein the conduct of the respondent whether it is issuance of notice without appending inspection report dated 17.01.2009 or making reference of wrong date in the notice dated 19.01.2009.

The same *prima facie* cannot be said to be a bona fide mistake for the reason that when each and every process is stipulated under the mandate of the statute whether it is Section 126 of the Act, 2003 or the Supply Code, even then mistake has been committed.

34. Since the respondent has taken decision as would appear from paragraph-8 of the affidavit dated 08.02.2023, therefore, this Court is of the view that the Chairman of the respondent is directed to look into the matter so as to proceed against the erring official(s) after conducting an enquiry. The purpose for this is that the wrong which has been committed may not be repeated in future.
35. Accordingly and in view of the aforesaid observation and direction, the instant appeal is disposed of.

36. Pending Interlocutory application(s), if any, also stands disposed of.
37. Let the original record be handed over to Mr. Mrinal Kanti Roy, learned counsel for the respondent for its onward transmission.

**(Sujit Narayan Prasad, J.)**

**(Subhash Chand, J.)**

*Saurabh/-* **N.A.F.R.**