

IN THE HIGH COURT OF JHARKHAND AT RANCHI
L.P.A. No.305 of 2015

.....

M/S. USHA MARTIN LTD. (Earlier known as M/s. Usha Beltron Ltd.), A Company incorporated under the provisions of Companies Act, 1956, having its Registered Office at 2A, Shakespeare Sarani, Kolkata, P.O. Shakespeare Sarani, P.S. Shakespeare Sarani, District Kolkata, West Bengal through its General Manager (Commercial) Sri N.K. Patodia, son of Late R.D. Patodia, Resident of Deputy Para, P.O. GPO, P.S. Kotwali, District Ranchi. Appellant

Versus

1. JHARKHAND URJA VIKAS NIGAM LIMITED (Earlier known as JHARKHAND STATE ELECTRICITY BOARD), having its office at Engineers Bhawan, HEC, Dhurwa, Ranchi through its Chairman-cum-Managing Director, Engineers' Bhawan, H.E.C., P.O. & P.S. Dhurwa, District Ranchi.

2. Bihar State Electricity Board, a body constituted under the Indian Electricity Act, 1910, having its Head Office at Bailey Road, Patna, through its Chairman, P.O & P.S. Fraser (Dak Bunglow).

3. The Chief Engineer (Commercial and T.A.), Bihar State Electricity Board, Bailey Road, Patna, P.O & P.S. Fraser (Dak Bunglow).

4. The Financial Controller (Rev.), Bihar State Electricity Board, Bailey Road, Patna. P.O & P.S. Fraser (Dak Buglow).

5. General Manager-cum-Chief Engineer, Ranchi Area Electricity Supply (Earlier known as South Bihar and Chhotanagpur Area Electricity Board), Kusai Colony, Doranda, P.O & P.S:- Doranda Ranchi.

6. General Manager-cum-Chief Engineer, Jharkhand Urja Sancharan Nigam Limited (Earlier Jharkhand State Electricity Board), Transmission Zone JR, Gamharia, P.O. & P.S. Gamharia, District- Seraikella Kharsawan.

7. The Electrical Superintending Engineer, Ranchi Electrical Circle, Kusai Colony, Doranda, P.O. and P.S. Doranda, District Ranchi.

8. The Electrical Superintending Engineer, Electric Supply Circle, having its office at Vikash Bhawan, Adityapur, P.O. and P.S. Adityapur, District Seraikella Kharsawan.

9.The Electrical Executive Engineer (Commercial & Revenue), Office of the Electrical Superintending Engineer, Ranchi Electrical Circle, Kusai Colony, Doranda, P.O.&.S:- Doranda,Ranchi.

10.The Electrical Executive Engineer (Commercial and Revenue), Office of the Electrical Superintending Engineer, Electric Supply Circle, VikashBhawan, Adityapur, P.O. and P.S. Adityapur, District –SeraikellaKharsawan.

.....Respondents

With

L.P.A. No.410 of 2015

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Ramakant Vishwakarma, son of Late Udaybhan Vishwakarma, Resident of Dimna Chowk P.O. and P.S. Mango, Town-Jamshedpur, District-Singhbhum East.

..... Appellant

Versus

1. Jharkhand State Electricity Board(Now Jharkhand State Vijli Vitran Nigam Ltd.) through its Chairman, Engineering Bhawan, Dhurwa, P.O. Dhurwa P.S. Jagannathpur, District-Ranchi.

2.General Manager Cum Chief Engineer, Singhbhum Division, Jharkhand State Electricity Board(Now Jharkhand State VijliVitran Nigam Ltd.), Co-operative Building, Bistupur, P.O. and P.S. Bistupur, Town-Jamshedpur, District-Singhbhum East.

3. Electrical Executive Engineer, Electric Supply Division, Jamshedpur, P.O. and P.S. Bistupur, District- Singhbhum East.

....Respondents

With

L.P.A. No. 431 of 2015

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M/s. La Opala (R.G.), Ltd., at Madhupur, District- Deoghar, a Company incorporated under the Indian Companies Act, having its factories at Madhupur through its Vice President and Secretary Alok Pandey, Son of Late Bal Krishna Pandey, Resident of 1/C, Heysham Road, P.O. LalaLaljpat Rai Sarani Road, P.S. Bhawanipur Town and District-Kolkata, West Bengal-700020.

..... Appellant

Versus

1.Jharkhand URJA VIKAS NIGAM LIMITED (Earlier known as Jharkhand State Electricity Board), having its office at Engineers Bhawan, HEC, Dhurwa, Ranchi through its Chairman, Project Bhawan, H.E.C, P.O. & P.S. Dhurwa, District-Ranchi.

2.Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, P.O., G.P.O & P.S. Kotwali, Patna through its Chairman.

3.The Chief Engineer (Commercial & T.A.), Manager, Bihar State Electivity Board, Bailey Road, P.O., G.P.O & P.S. Kotwali, Patna.

4.The Financial Controller (Rev.), Bihar State Electricity Board, Bailey Road, P.O., G.P.O, & P.S.-Kotwali.

5.The General Manager-cum-Chief Engineer, Chotanagpur Area, Electricity Board, Doranda, Ranchi, P.O. & P.S. Doranda, Ranchi.

6.Electrical Superintending Engineer, Electric Supply Circle, Deoghar, P.O. and P.S. Deoghar, District-Deoghar.

7.Electrical Executive Engineer (C& R), Electrical Circle, Deoghar, P.O. and P.S. Deoghar, District-Deogahr.

.....Respondents

With

L.P.A. No. 444 of 2015

.....

URANIUM CORPORATION Of INDIA LIMITED,A Government Company, registered under section 617 of the Companies Act, 1956, having its registered and Head Office at Jadugora Mines, PO and PS Jadugoda District-East Singhbhum, through Its G M (Personnel-IR) Shri C H Sharma, son of- Late L P Sharma resident of- E- 2 Ucil Colony PO and PS Jadugora District-Singhbum East.

..... Appellant

Versus

1.JHARKHAND URJA VIKAS NIGAM LIMITED (Earlier Known as JHARKHAND STATE ELECTRICITY BOARD), having its office at Engineers Bhawan, H E C, Dhurwa, Ranchi through its Chairman, Engineers Bhawan, HEC, P.O. and P.S. Dhurwa, District-Ranchi.

2. Bihar State Electricity Board, Vidyut Bhawan Bailey Road , P.O. & P.S. Patna, District-Patna Through Its Chairman.

3. The Electrical Executive Engineer, (Commercial & Revenue), Jharkhand State Electricity Board, Singhbhum Supply Circle Jamshedpur PO and PS Adityapur, Jamshedpur, (Singhum East).

4.The Financial Controller (Rev), Jharkhand State Electricity Board, Engineers Bhawan H E C P.O and P.S Dhurwa District- RanchiRespondents

With

L.P.A. No. 448 of 2015

.....

URANIUM CORPORATION Of INDIA LIMITED, A Government Company, registered under section 617 of the Companies Act, 1956, having its registered and Head Office at Jadugora Mines, PO and PS Jadugoda District-East Singhbhum, through Its G M (Personnel- IR) Shri C H Sharma, son of- Late L P Sharma resident of- E- 2 Ucil Colony P.O and P.S Jadugora District- Singhbhum East Appellant

Versus

1.JHARKHAND URJA VIKAS NIGAM LIMITED (Earlier Known as JHARKHAND STATE ELECTRICITY BOARD), having its office at Engineers Bhawan, H E C, Dhurwa, Ranchi through its Chairman, Engineers Bhawan, HEC, P.O. and P.S. Dhurwa, District-Ranchi.

2. Bihar State Electricity Board, VidyutBhawan Bailey Road , P.O. & P.S. Patna, District-Patna Through Its Chairman.

3.The Chief Engineer, (Commercial and T A) Bihar State Electricity Board, Bailey Road, P.O & P.S. Patna, Bihar.

4. The Electrical Executive Engineer, Commercial & Revenue), Bihar State Electricity Board, Singhbhum Supply Circle, Jamshedpur, P.O. and P.S. Adityapur.

5.The Financial Controller (Rev), Bihar State Electricity Board, Bailey Road, P.O. & P.S. Patna, Bihar.

6.The Secretary, Bihar State Electricity Board, Baily Road, P.O. & P.S. Patna, Bihar.Respondents

With

L.P.A. No. 449 of 2015

.....

URANIUM CORPORATION OF INDIA LIMITED, A Government Company, Registered under Section 617 of the Companies Act, 1956 having its registered and Head Office at Jadugora Mines, P.O. and P.S. Jadugoda, District - East Singhbhum through its G.M. (Personnel IR) Shri C.H. Sharma, son of Late L.P. Sharma, Resident of E-2, UCIL Colony, P.O, and P.S. Jadugora, District Singhbhum East.

..... Appellant

Versus

1. JHARKHAND URJA VIKAS NIGAM LIMITED (Earlier known as JHARKHAND STATE ELECTRICITY BOARD), having its office at Engineers Bhawan, HEC, Dhurwa, Ranchi through its Chairman, Engineers Bhawan, H.E.C., P.O. & P.S. Dhurwa, District – Ranchi.

2. Secretary, Bihar State Electricity Board, Bailey Road, P.O., P.S. and District-Patna.

3. The Chief Engineer (Commercial and T.A.), Bihar State Electricity Board, Bailey Road, P.O., P.S. and District-Patna.

4. The Electrical Executive Engineer (Commercial & Revenue), Bihar State Electricity Board, Bailey Road, P.O., P.S. and District-Patna.

5. The Financial Controller (Rev.), Bihar State Electricity Board, Bailey Road, P.O., P.S. and District-Patna.

.....Respondents

With

L.P.A. No. 454 of 2015

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URANIUM CORPORATION OF INDIA LIMITED, A Government Company, Registered under Section 617 of the Companies Act, 1956 having its registered and Head Office at Jadugora Mines, P.O. and P.S. Jadugoda, District - East Singhbhum through its G.M. (Personnel IR) Shri C.H. Sharma, son of Late L.P. Sharma, Resident of E-2, UCIL Colony, P.O, and P.S. Jadugora, District Singhbhum East.

..... Appellant

Versus

- 1.** JHARKHAND URJA VIKAS NIGAM LIMITED (Earlier known as JHARKHAND STATE ELECTRICITY BOARD), having its office at Engineers Bhawan, HEC, Dhurwa, Ranchi through its Chairman, Engineers Bhawan, H.E.C., P.O. & P.S. Dhurwa, District – Ranchi
- 2.** The Chairman, JHVNL, Engineers Bhawan, H.E.C., P.O. & P.S. Dhurwa, District Ranchi.
- 3.** The Chief Engineer (Commercial and T.A.) J.S.E.B, Engineers Bhawan, HEC, P.O. & P.S.-Dhurwa, District-Ranchi
- 4.** The Electrical Executive Engineer (Commercial & Revenue), J.S.E.B, Singhbhum Supply Circle, Jamshedpur, P.O. and P.S. –Adityapur District-Jamshedpur.
- 5.** The Financial Controller (Rev.), J.S.E.B, Engineers' Bhawan, H.E.C., P.O. and P.S. Dhurwa, District Ranchi.

.....Respondents

With

L.P.A. No. 463 of 2015

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URANIUM CORPORATION OF INDIA LIMITED, A Government Company, Registered under Section 617 of the Companies Act, 1956 having its registered and Head Office at Jadugora Mines, P.O. and P.S. Jadugoda, District East Singhbhum through its G.M. (Personnel-IR) Shri C.H. Sharma, son of Late L.P. Sharma, Resident of E-2, UCIL Colony, P.O. and P.S. Jadugora, District - Singhbhum East.

..... Appellant

Versus

- 1.** JHARKHAND URJA VIKAS NIGAM LIMITED (Earlier known as JHARKHAND STATE ELECTRICITY BOARD), having its office at Engineers Bhawan, HEC, Dhurwa, Ranchi through its Chairman, Engineers Bhawan, H.E.C., P.O. & P.S. Dhurwa, District – Ranchi.
- 2.** Secretary, Jharkhand State Electricity Board, Doranda, P.O. & P.S. Doranda, District-Ranchi.
- 3.** The Chief Engineer (Commercial and T.A.), J.S.E.B, Engineers Bhawan, HEC, Dhurwa, P.O. & P.S. Dhurwa,

District-Ranchi.

4. The Electrical Executive Engineer (Commercial & Revenue), JUVNL, Singhbhum Supply Circle, Jamshedpur, P.O. and P.S. Adityapur.

5. The Financial Controller (Rev.), J.S.E.B., Doranda, P.O. and P.S.-Doranda, Ranchi Respondents

With

L.P.A. No. 465 of 2015

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MAHALAKSHMI FIBERS & INDUSTRIES LIMITED, a company duly registered under the Companies Act, 1956 having its Registered Office at 5, Synagogue Street, P.O., P.S. & District Kolkata and its manufacturing unit and works at Ormanjhi, P.S. Ormanjhi, District Ranchi, through its Commercial Manager and duly constituted Attorney Shri Jawahar Bhan, Son of Late, P.S. Bhan, Resident of P.O. Ormanjhi, P.S. Ormanjhi, District Ranchi. Appellant

Versus

1. JHARKHAND URJA VIKAS NIGAM LIMITED (Earlier known as Jharkhand State Electricity Board), having its office at Engineers Bhawan, HEC, Dhurwa, Ranchi through its Chairman-Cum-Managing Director, Engineers' Bhawan, H.E.C. P.O. & P.S. Dhurwa, District. Ranchi.

2. Bihar State Electricity Board, a body constituted under the Indian Electricity Act, 1910, having its Head Office at Baily Road P.O. & P.S. Baily Road, District- Patna, through its Chairman.

3. The Chief Engineer (Commercial and T.A.), Bihar State Electricity Board, Baily Road, P.O. & P.S. Bailey Road, District-Patna, Bihar

4. The Financial Controller (Rev.), Bihar State Electricity Board, Bailey Road, Patna. P.O. & P.S. Baily Road, District-Patna, Bihar.

5. General Manager-cum-Chief Engineer, Ranchi Area Electricity Supply (Earlier known as South Bihar and Chhotanagpur Area Electricity Board), Kusai Colony, Doranda, Ranchi. P.O. & P.S. Doranda

6. The Electrical Superintending Engineer, Ranchi Electrical Circle, Kusai Colony, Doranda, P.O. and P.S.

Doranda, District-Ranchi.

7. The Electrical Executive Engineer (Commercial and Revenue Electric Supply sub. Division, JCEB), office of the Ranchi Electrical Circle Kusai Colony, Doranda, P.O. & P.S. Doranda, Ranchi.Respondents

With

L.P.A. No. 470 of 2015

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M/s. Auto Profiles Ltd. (Unit-1), A company registered under the provisions of Indian Companies Act having its works at Plot Nos.33 - 34, 4th Phase, Gamharia, P.O. and P.S. Gamharia, District-SeraikellaKharsawan, through its Managing Director Sri Bikash Mukherjee, son of Late P Mukherjee, resident of 457, G-Road, West Layout, P.O. and P.S. Sonari, Town-Jamshedpur, District- Singhbhum East.

..... Appellant

Versus

1. JHARKHAND BIJLI VITRAN NIGAM LIMITED, having its Head Office at Engineering Bhawan, Dhurwa, P.O. & P.S. Dhurwa, District-Ranchi, through its Managing Director.

2. The Secretary, Jharkhand State Electricity Board, Kusai Colony, Doranda P.O. & P.S. Doranda, District-Ranchi.

3. The Finance Controller (Revenue), Jharkhand State Electricity Board, Kusai Colony, P.O. & P.S. Doranda, District-Ranchi.

4. General Manager-Cum-Chief Engineer, Jharkhand BijliVitrان Nigam Limited, Jamshedpur Division, Co-operative Building, Bistupur, P.O. and P.S. Bistupur, Town-Jamshedpur, District-East Singhbhum

5. Electrical Executive Engineer, (Commercial & Revenue), Electric Supply Circle, Adityapur, Vikash Bhawan, Adityapur, P.O. and P.S. Adityapur, District- Seraikella Kharsawan.Respondents

With

L.P.A. No. 481 of 2015

.....

M/S. Maithan Ceramics Ltd., a Company incorporated under the provisions of Companies Act, 1956, having its Factory at Chirkunda, P.O. and P.S. Chirkunda, District

Dhanbad, through one of its Director Binod Kumar Agarwal, son of Late Raghunath Agarwal, Resident of Chirkunda, P.O. and P.S. Chirkunda, District - Dhanbad.

..... Appellant

Versus

1. JHARKHAND URJA VIKAS NIGAM LIMITED (Earlier known as JHARKHAND STATE ELECTRICITY BOARD), having its office at Engineers Bhawan, HEC, Dhurwa, Ranchi through its Chairman cum - Managing Director, Engineers' Bhawan, H.E.C., P.O. & P.S. Dhurwa, District - Ranchi.

2. Bihar State Electricity Board, a body constituted under the Indian Electricity Act, 1910, having its Head Office at Bailey Road, Patna, P.O. G.P.O., P.S. Kotwali, District - Patna, through its Chairman.

3. The Financial Controller (Rev.), Bihar State Electricity Board, having its Head Office at Bailey Road, Patna, P.O. G.P.O., P.S. Kotwali, District - Patna.

4. Chief Engineer (Commercial and T.A.), Bihar State Electricity Board, having its Head Office at Bailey Road, Patna, P.O. G.P.O., P.S. Kotwali, District - Patna.

5. General Manager-cum-Chief Engineer, Dhanbad Area Electricity Board, JUVNL, having its office at Combined Building, P.O. and P.S. - Dhanbad, District - Dhanbad.

6. The Electrical Executive Engineer (Commercial and Revenue), JUVNL, Electrical Supply Circle, P.O. and P.S. - Dhanbad, District - Dhanbad.

7. The Superintending Engineer, Dhanbad.

..... Respondents

With

L.P.A. No. 482 of 2015

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M/S. Maithan Coal Co Pvt Ltd., a Company incorporated under the provisions of Companies Act, 1956, having its Factory at Tetulia,, P.O. and P.S. Nirsha, District Dhanbad, through one of its Directors Shri Shiv Kumar Sharma,, son of R.S. Sharma, Resident of Chirkunda, P.O. and P.S. Chirkunda, District - Dhanbad.

..... Appellant

Versus

1. JHARKHAND URJA VIKAS NIGAM LIMITED (Earlier known as JHARKHAND STATE ELECTRICITY BOARD), having its office at Engineers Bhawan, HEC, Dhurwa, Ranchi through its Chairman cum - Managing Director, Engineers' Bhawan, H.E.C., P.O. & P.S. Dhurwa, District - Ranchi.
2. Bihar State Electricity Board, a body constituted under the Indian Electricity Act, 1910, having its Head Office at Bailey Road, Patna, P.O. G.P.O., P.S. Kotwali, District - Patna, through its Chairman.
3. The Financial Controller (Rev.), Bihar State Electricity Board, having its Head Office at Bailey Road, Patna, P.O. G.P.O., P.S. Kotwali, District - Patna.
4. Chief Engineer (Commercial and T.A.), Bihar State Electricity Board, having its Head Office at Bailey Road, Patna, P.O. G.P.O., P.S. Kotwali, District - Patna.
5. General Manager-cum-Chief Engineer, Dhanbad Area Electricity Board, JUVNL, having its office at Combined Building, P.O. and P.S. - Dhanbad, District - Dhanbad.
6. The Electrical Executive Engineer (Commercial and Revenue), JUVNL, Electrical Supply Circle, P.O. and P.S. - Dhanbad, District - Dhanbad.
7. The Superintending Engineer, Dhanbad.

.....Respondents

With

L.P.A. No. 483 of 2015

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1. M/S. Mugma Coke Oven Pvt ltd a company incorporated under the Companies Act, 1956 having its factory at Mugma, P.O. Mugma, P.S. Nirsha, district- Dhanbad through one of its Directors Sri Shri JalajChowdhary son of Shri Krishna MurariChowdhary, resident of Chirkunda, P.O. & P. S - Chirkunda, District - Dhanbad, Jharkhand.
2. M/s Shree Dwarka Bee Hive Plant PvtLtd., a company incorporated under the Companies Act, 1956 having its factory at Egarpore, P.O. Egarpore, P.S. Chirkunda, district- Dhanbad Jharkhand through one of its present Director, Sri Shiv Kumar Sharma, Son of Shri Radhey Shyam Sharma, resident of Hariyana Colony, Upper Bazar

G.T. Road, P.O. & P.S. Chirkuna, Dhanbad, Jharkhand

..... Appellants

Versus

1. JHARKHAND URJA VIKAS NIGAM LIMITED (Earlier known as JHARKHAND STATE ELECTRICITY BOARD), having its office at Engineers Bhawan, HEC, Dhurwa, Ranchi through its Chairman cum Managing Director, Engineers' Bhawan, H.E.C., P.O. & P.S. Dhurwa, District - Ranchi.

2. Bihar State Electricity Board, through its Chairman a body constituted under the Indian Electricity Act, 1910, having its Head Office at Bailey Road, Patna, P.O. G.P.O., P.S. Kotwali, District - Patna,

3. The Financial Controller (Rev.), Bihar State Electricity Board, having its Head Office at Bailey Road, Patna, P.O. G.P.O., P.S. Kotwali, District - Patna

4. Chief Engineer (Commercial and T.A.), Bihar State Electricity Board, having its Head Office at Bailey Road, Patna, P.O, G.P.O., P.S. Kotwali, District - Patna.

5. General Manager- cum- Chief Engineer, Dhanbad Area Electricity Board, JUVNL, having its office at Combined Building, P.O, and P.S, Dhanbad, District Dhanbad.

6. The Electrical Executive Engineer (Commercial and Revenue), JUVNL, Electrical Supply Circle, P.O, and P.S. - Dhanbad, District Dhanbad.

7. Electrical Executive Engineer, Commercial & Revenue, Electric Supply Circle, P.O, and P.S. Dhanbad, District Dhanbad.

8. The Electrical Executive Engineer, Electric Supply Circle, Dhanbad.
.....Respondents

With

L.P.A. No. 484 of 2015

.....

1. M/S. Arun Refractories, a partnership firm, having its factory at Chirkunda, P.O. & P.S. Chirkunda, District, Dhanbad through one of its partners Sri, SUSHIL Kumar Gadhyan son of Late Rajkumar Gadhyan, resident of Chirkunda, P.O. & P. S Chirkunda, District - Dhanbad, Jharkhand.

2. M/s Sharad Refractories Pvt Ltd. a company incorporated under the Companies Act, 1956 having its factory at Chirkunda, P.O. & P.S. Chirkunda, District, Dhanbad through one of its Directors Sri Arun Agarwal son of Late Bihari Agarwal, resident of Chirkunda P.O. & P. S - Chirkunda, District Dhanbad, Jharkhand.

3. M/s Associated Ceramics Ltd., a company incorporated under the Companies Act, 1956 having its factory at Chirkunda, P.O. & P.S. Chirkunda District, Dhanbad through one of its Directors Sri Arun Agarwal , son of Late Bihari Agarwal, resident of Chirkunda P.O. & P. S - Chirkunda, District Jharkhand. Appellants

Versus

1. JHARKHAND URJA VIKAS NIGAM LIMITED (Earlier known as JHARKHAND STATE ELECTRICITY BOARD), having its office at Engineers Bhawan, HEC, Dhurwa, Ranchi through its Chairman cum Managing Director, Engineers' Bhawan, H.E.C., P.O. & P.S. Dhurwa, District - Ranchi.

2. Bihar State Electricity Board, a body constituted under the Indian Electricity Act, 1910, having its Head Office at Bailey Road, Patna, P.O. G.P.O., P.S. District Patna, through its Chairman.

3. The Financial Controller (Rev.), Bihar State Electricity Board, having its Head Office at Bailey Road, Patna, P.O. G.P.O., P.S. Kotwali, District Patna.

4. Chief Engineer (Commercial and T.A.), Bihar State Electricity Board, having its Head Office at Bailey Road, Patna, P.O. G.P.O., P.S. Kotwali, District - Patna.

5. General Manager cum Chief Engineer, Dhanbad Area Electricity Board, JUVNL, having its office at Combined Building, P.O. and P.S. Dhanbad, District - Dhanbad.

6. The Electrical Executive Engineer (Commercial and Revenue), JUVNL, Electrical Supply Circle, P.O. and P.S. + - Dhanbad, District - Dhanbad.

7. The superintending Engineer, Dhanbad.

.....Respondents

With

L.P.A. No. 485 of 2015

.....
M/S. SRI DURGA CEMENT COMPANY LIMITED, a company incorporated under the provisions of the Companies Act, 1956, having its unit at Hesla, Argada Road, Ramgarh Cantonment through one its Executive Director Sri Naresh Kumar Iyengar son of Late A.K. Iyengar resident of Bharechnagar, Ramgarh Cantonment, P.O. Bharechnagar & P.S. Kujju, Dist. Ramgarh. Appellant

Versus

1. JHARKHAND URJA VITARAN NIGAM LIMITED (Earlier known as JHARKHAND STATE ELECTRICITY BOARD), having its office at Engineers Bhawan, HEC, Dhurwa, Ranchi through its Chairman, Project Bhawan, H.E.C., P.O. & P.S. Dhurwa, District – Ranchi

2. BIHAR STATE ELECTRICITY BOARD, Vidyut Bhawan, Bailey Road, P.O. & P.S.- Bailey Road, District -Patna through its Chairman.

3. The Chief Engineer (Commercial & T.A.), Manager, Bihar State Electricity Board, Bailey Road, P.O. & P.S.- Bailey Road, District - Patna.

4. The Financial Controller (Rev.), Bihar State Electricity Board, Bailey Road, P.O. & P.S.- Bailey Road, District Patna.

5. The General Manager cum Chief Engineer, Jharkhand UrjaVitaran Nigam Limited (earlier Dhanbad) now Hazaribagh Electric Supply Area, P.O. and P.S. Hazaribagh. Hazaribagh, Town & District

6. Electrical Superintending Engineer, Electric Hazaribagh. P.O. and P.S. Hazaribagh, Town & District - Hazaribagh.

7. Electrical Executive Engineer (C & R), Electrical Circle, Hazaribagh, P.O. and P.S. Hazaribagh, Town & District - Hazaribagh
.....Respondents

With

L.P.A. No. 498 of 2015

.....
M/s. R. K. Industries, a company incorporated under the Companies Act, 1956 having its Head Office at 144, Sakchi Market, P.O. & P.S. Sakchi, Town-Jamshedpur, District-Singhbhum East and works at 11 & 12, Phase-IV, Adityapur Industrial Area, P.O, & P.S. Gamharia, District-

SeraikelaKharsawan through its PatnerBalkrishna Choudhary, Son of Late Lal Chand Choudhary, resident of 144, Sakchi Market, P.O. & P. S. Sakchi, Town-Jamshedpur, District-Singhbhum East. Appellant

Versus

1.JharkhandState Electricity Board, now Jharkhand Bijli Vitran Nigam Limited, Engineering Bhawan, P.O. and P.S. Dhurwa, District-Ranchi through its Chairman.

2. General Manager-Cum-Chief Chief Engineer, Singhbhum Area, Cooperative Building, Bistupur, PO. and P.S. Bistupur, Town- Jamshedur, District-Singhbhum East.

3. Bihar State Electricity Board, Vidyut Bhawan, Serpantine Road, Patna through its Chairman, Bihar State Electricity Board, Bailey Road, Patna.Respondents

with

L.P.A. No. 499 of 2015

.....

M/s. JMT Auto Ltd., a company incorporated under the Companies Act, 1956 having its accounts and project office at C-19/20, 7th Phase, Adityapur Industrial Area, P.O. and P.S. Adityapur, District-SeraikellaKharswan, through its Company Secretary, Mona Bahadur, daughter of Ravindra Bhadur, Resident of Bijaya Heritage P.O. and P.S. Sonari, Town Jamshedpur, District-Singhbhum East.

..... Appellant

Versus

1.Jharkhand State Electricity Board, Now Jharkhand Bijli Vitran Nigam Limited, Engineering Bhawan, P.O. and P.S. Dhurwa, District-Ranchi.

2. General Manager-Cum-Chief Engineer, Singhbhum Area, Cooperative Building, Bistupur, PO. and P.S. Bistupur, Town- Jamshedur, District-Singhbhum East.

3. Bihar State Electricity Board, Vidyut Bhawan, Serpantine Road, Patna through its Chairman, Bihar State Electricity Board, Bailey Road, Patna

.....Respondents

With

L.P.A. No. 505 of 2015

.....
M/s. JMT Auto Ltd.(Unit-2), a company incorporated under the Companies Act, 1956 having its accounts and project office at C-19/20, 7th Phase, Adityapur Industrial Area, P.O. and P.S. Adityapur, District-Seraikella Kharswan, through its Company Secretary, Mona Bahadur, daughter of Ravindra Bhadur, Resident of Bijaya Heritage P.O. and P.S. Sonari, Town Jamshedpur, District-Singbhum East.
..... Appellant

Versus

1. Jharkhand State Electricity Board, Now Jharkhand Bijli Vitran Nigam Limited, Engineering Bhawan, P.O. and P.S. Dhurwa, District-Ranchi.

2. General Manager-Cum-Chief Engineer, Singbhum Area, Cooperative Building, Bistupur, PO. and P.S. Bistupur, Town- Jamshedur, District-Singbhum East.

3. Bihar State Electricity Board, Vidyut Bhawan, Serpentine Road, Patna through its Chairman, Bihar State Electricity Board, Bailey Road, Patna.

..... Respondents

With

L.P.A. No. 508 of 2015

.....
M/s. Bihar Caustics & Chemicals Ltd. (now known as M/s. Aditya Birla Chemicals (India) Ltd.), having its Factory and Registered Office at village - Rehla, P.S. Garhwa Road, District Palamau, through its Legal Officer and authorized signatory Shri Shailendra Panday, son of Shri H.N. Pandey, Resident of-293 K, Lake Avenue, P.O. and P.S. Gonda, Kanke, District - Ranchi, Jharkhand, 834008.

..... Appellant

Versus

1. The Jharkhand State Electricity Board, Kusai Colony, Ranchi, through its Chairman, NOW JHARKHAND URJA VIKAS NIGAM LIMITED (Earlier known as JHARKHAND STATE ELECTRICITY BOARD), having its office at Engineers Bhawan, HEC, Dhurwa, Ranchi through its Chairman, Project Bhawan, H.E.C., P.O. & P.S. Dhurwa, District – Ranchi.

2. Bihar State Electricity Board, Vidyut Bhawan, PO.-G.PO.

P.S. Kotwali, District-Patna, Bailey Road, Patna through its Chairman.

3. The Chief Engineer (Commercial & T.A.), Manager, Bihar State Electricity Board PO.-G.P.O. P.S. Kotwali, District-Patna, Bailey Road, Patna.

4. The Financial Controller (Rev.), Bihar State Electricity Board, P.O., P.S.-Kotwali, District-Patna, Bailey Road, Patna.

5. The General Manager-cum-Chief Engineer, ChhotanagpurArea Electricity Board, Doranda, Ranchi, now The General Manager - cum - Chief Engineer, Daltonganj, P.O. and P.S. -Daltonganj, Town Daltonganj, District - Palamau.

6. The Electrical Superintending Engineer, transmission Circle, Kusai Colony, Doranda Ranchi, Now Electrical Superintending Engineer, Supply Circle, Daltonganj, P.O. and P.S.-Daltonganj, District - Palamau.

7. Assistant Executive Engineer, Supply Sub-Station, Garhwa Grid, Garhwa Road, P.O. and P.S. - Garhwa Road, District - Palamau.Respondents

With

L.P.A. No. 542 of 2015

.....

M/S. USHA MARTIN LTD. (Earlier known as M/s. Usha Beltron Ltd.), A Company incorporated under the provisions of Companies Act, 1956, having its Registered Office at 2A, Shakespeare Sarani, Kolkata, P.O. Shakespeare Sarani, P.S. Shakespeare Sarani, District Kolkata, West Bengal through its General Manager (Commercial) Sri N.K. Patodia, son of Late R.D. Patodia, Resident of Deputy Para, P.O. GPO, P.S. Kotwali, District - Ranchi. Appellant

Versus

1.JHARKHAND URJA VIKAS NIGAM LIMITED (Earlier known as JHARKHAND STATE ELECTRICITY BOARD), having its office at Engineers Bhawan, HEC, Dhurwa, Ranchi through its Chairman, Project Bhawan, H.E.C., P.O. & P.S. Dhurwa, District - Ranchi.

2. Bihar State Electricity Board, a body constituted under the Indian Electricity Act, 1910, through its Chairman,

having its Head Office at Bailey Road, P.O G.P.O., P.S. Kotwali, Patna.

3. The Chief Engineer (Commercial and T.A.), Bihar State Electricity Board, Bailey Road, P.O G.P.O., P.S.-Kotwali Patna.

4. The Financial Controller (Rev.), Bihar State Electricity Board, Bailey Road, P.O - G.P.O., P.S.- Kotwali Patna.

5. General Manager cum Chief Engineer, Ranchi Area Electricity Supply (Earlier known as South Bihar and Chhotanagpur Area Electricity Board), Kusai Colony, Doranda, P.O. & P.S.- Doranda, Ranchi, R.Np.5 as per the certified copy: The General Manager Cum Chief Engineer, Singhbhum Area Electricity Board, Bistupur, P.O, P.S. Bistupur, District-Jamshedpur.

6. The Electricity Superintending Engineer, Ranchi Electrical Circle, Kusai Colony, Doranda, P.O. and P.S. - Doranda, District - Ranchi.

7. The Electrical Superintending Engineer, Electric Supply Circle, having its office at Jamshedpur Vikash Bhawan, Adityapur, P.O. and P.S. Adityapur, District-Seraikella Kharsawan, R.No.7 as per C.C: The Electrical Superintending Engineer, Electric Supply Circle, Jamshedpur.

8. The Electrical Executive Engineer (Commercial & Revenue), Office of the Electrical Superintending Engineer, Ranchi Electrical Circle, Kusai Colony, P.O. & P.S.- Doranda Ranchi. R.No8 as per C.C.: The office of the Electrical Executive Engineer (Commercial & Revenue), office of the Electrical Superintending Engineer, Ranchi, Electrical Circle, at Kusai Colony, P.O. & P.S. Doranda, Ranchi.

9. The Electrical Executive Engineer (Commercial & Revenue) Office of the Electrical Superintending Engineer, Electric Supply Circle, Vikas Bhawan, Adityapur, P.O. and P.S. Adityapur, District-Seraikella Kharsawan, West Singhbhum R. No.9, as per CC: The Electrical Executive Engineer (Commercial and Revenue), Office of the Electrical Superintending Engineer, Electric Supply Circle, Jamshedpur.

.....Respondents

With

L.P.A. No. 581 of 2015

.....

M/s UBL INDUSTRIES & INVESTMENT LIMITED, (WIRE MILL DIVISION) (Now known as Usha Martin Ltd. (Bar and Wire Mills Division Unit-I & II), a Company incorporated under the provisions of Companies Act, 1956, having its Registered Office at 8, Chittaranjan Avenue, P.O. & P.S. Chittaranjan Avenue, District Kolkata and its works at Plot No. 34, Phase-IV, Adityapur Industrial Area, Gamharia, P.O. & P.S. Adityapur, Jamshedpur, District East Singhbhum, through its General Manager (Works) Sri I. Mitra, Son of A.K.Mitra, Resident of Adityapur Industrial Area, Gamharia, P.O. & P.S. Adityapur, Jamshedpur, District East Singhbhum. Appellant

Versus

1. JHARKHAND URJA VIKAS NIGAM LIMITED (Earlier known as JHARKHAND STATE ELECTRICITY BOARD), having its office at Engineers Bhawan, HEC, Dhurwa, Ranchi through its Chairman-cum-Managing Director, Engineers Bhawan, H.E.C., P.O. & P.S. Dhurwa, District Ranchi.

2. Bihar State Electricity Board, a body constituted under the Indian Electricity Act, 1910, having its Head Office at Bailey Road, P.O. & P.S. Baily Road, District Patna, through its Chairman.

3. The Chief Engineer (Commercial and T.A.), Bihar State Electricity Board, Bailey Road, P.O. & P.S. Baily Road, District Patna.

4. The Financial Controller (Rev.), Bihar State Electricity Board, Bailey Road, P.O. & P.S. Baily Road, District Patna.

5. General Manager cum Chief Engineer, Singhbhum Area, Electricity Board, Bistupur, Jamshedpur

6. The Electrical Superintending Engineer, Electric Supply Circle Jamshedpur.

7. The Electrical Executive Engineer (Commercial & Revenue), office of the Electrical Superintending Engineer, Electric Supply Circle, Jamshedpur. Respondents

With

L.P.A. No. 585 of 2015

.....

M/s UBL INDUSTRIES & INVESTMENT LIMITED, (WIRE MILL DIVISION) (Now known as Usha Martin Ltd. (Bar and Wire Mills Division Unit-I & II), a Company incorporated under the provisions of Companies Act, 1956, having its Registered Office at 8, Chittaranjan Avenue, P.O. & P.S. Chittaranjan Avenue, District Kolkata and its works at Plot No. 34, Phase-IV, Adityapur Industrial Area, Gamharia, P.O. & P.S. Adityapur, Jamshedpur, District East Singhbhum, through its General Manager (Works) Sri I. Mitra, Son of A.K.Mitra, Resident of Adityapur Industrial Area, Gamharia, P.O. & P.S. Adityapur, Jamshedpur, District East Singhbhum. Appellant

Versus

- 1.** JHARKHAND URJA VIKAS NIGAM LIMITED (Earlier known as JHARKHAND STATE ELECTRICITY BOARD), having its office at Engineers Bhawan, HEC, Dhurwa, Ranchi through its Chairman-cum-Managing Director, Engineers Bhawan, H.E.C., P.O. & P.S. Dhurwa, District Ranchi.
- 2.** Bihar State Electricity Board, a body constituted under the Indian Electricity Act, 1910, having its Head Office at Bailey Road, P.O. & P.S. Baily Road, District Patna, through its Chairman.
- 3.** The Chief Engineer (Commercial and T.A.), Bihar State Electricity Board, Bailey Road, P.O. & P.S. Baily Road, District Patna.
- 4.** The Financial Controller (Rev.), Bihar State Electricity Board, Bailey Road, P.O. & P.S. Baily Road, District Patna.
- 5.** General Manager cum Chief Engineer, Singhbhum Area, Electricity Board, Bistupur, Jamshedpur
- 6.** The Electrical Superintending Engineer, Electric Supply Circle Jamshedpur.
- 7.** The Electrical Executive Engineer (Commercial & Revenue), office of the Electrical Superintending Engineer, Electric Supply Circle, Jamshedpur. Respondents

With

L.P.A. No. 597 of 2015

.....

M/S. BIHAR EXTRUSIONS LTD, A Company incorporated under the provisions of Companies Act, 1956, having its factory at Industrial area, Gamharia, District Singhbhum (East) through its authorized signatory Sri Rahul Tantia, son of Ishwari Prasad Tantia, resident of 96, Narkeldanga Main Road, P.O.- Kankurgachi and P.S. Phoolbagan, District- West Bengal, Kolkata. Appellant

Versus

1. Earlier Known as “ Bihar State Electricity Board having its office at Baily Road, Patna through its Chairman” in the matter; M/s Bihar Extrusions Ltd. having its factory at Industrial Area, Gambharia, District-Singhbhum (East), through its authorized Signatory, Now known as, JHARKHAND URJA VIKAS NIGAM LIMITED" (Earlier known as) " Jharkhand State Electricity Board having its office at Engineers Bhawan, H.E.C Dhurwa, Ranchi, through its Chairman, Project Bhawan, H.E.C., P.O. and P.S. Dhurwa, District-Ranchi.

2. Bihar State Electricity Board, a body constituted under the Indian Electricity Act, 1910, through its Chairman having its Head Office at Bailey Road, P.O. G.P.O, P.S.- Kotwali Patna.

3. The Secretary Bihar State Electricity Board, having its Head Office at Bailey Road, P.O. G.P.O, P.S. Kotwali Patna,

4. The State of Bihar through its Secretary (Energy) Energy Department, Government of Bihar 8 Daroga Rai Path Patna-800001, Bihar, P.O.-GPO and P.S. Kotwali.

5. The Chief Engineer (Commercial and T.A.), Bihar State Electricity Board, Bailey Road, P.O. G.P.O, P.S.- Kotwali Patna.

6. The Financial Controller (Rev.), Bihar State Electricity Board, Bailey Road, P.O. G.P.O, P.S. Kotwali Patna.

7. General Manager cum Chief Engineer, Jamshedpur Area Electricity Board, Bistupur, PO & P.S. Bistupur, Town Jamshedpur

8. The Electrical Executive Engineer (Commercial and Revenue) Office of the Electrical Superintending Engineer, Electric Supply Circle, Vikash Bhawan, Adityapur, P.O. and P.S. Adityapur, District-Seraikella Kharsawan, as per CC,

the Electrical Sup./Executive Engineer (Commercial and Rev), BSEB, Electric Supply Circle Jamshedpur.

.....Respondents

With

L.P.A. No. 599 of 2015

.....

M/S TATA STEEL LIMITED (previously known as M/S. Tata Iron & Steel Co. Ltd.,) a Company incorporated under the Companies Act, 1956, having its Registered Office at 24, Homi Mody Street, Fort, Bombay and works at Jamshedpur in the State of Jharkhand through its Legal Head, Mrs Meena Lall wife Sri Behari Lall and Chief Legal, (Corporate Services), Tata Steel limited, Jamshedpur, resident of R/o B-228, G. K. -1 P.O and P.S-G.K-1, New- Delhi - 49.

..... Appellant

Versus

1. Bihar State Electricity Board, a body constituted under the Indian Electricity Act, 1910, having its Head Office at Bailey Road, Patna, P.O,G.P.O., P.S. Kotwali, District Patna, through its Chairman having his office at Bailey Road, Patna, P.O. Kotwall, District - Patna. G.P.O., P.S.Kotwali, District-Patna.

2. The Chief Engineer (Commercial and T.A.), Bihar State Electricity Board, having its Head Office at Bailey Road, Patna, P.O. G.P.O., P.S. Kotwali, District Patna.

3. The Financial Controller (Rev.), Bihar State Electricity Board, having its Head Office at Bailey Road, Patna, P.O. G.P.O., P.S. - Kotwali, District - Patna.

4. General Manager- cum- Chief Engineer, Singhbhum Area Electricity Board, P.O AND P.S Bistupur, Jamshedpur District Singhbhum (east) PIN 831001 (previously under General Manager cum Chief Engineer, South Bihar and Chhotanagpur Area Electricity Board, Kusai Colony, Doranda, Ranchi).

5. The Electrical Superintending Engineer, Jamshedpur Electric Circle, Jharkhand Urja Vikash Nigam Limited (Earlier Bihar State Electricity Board) having its office at Vikash Bhawan, Adityapur, P.O, and P.S. Adityapur, Jamshedpur District - Singhbhum (East)

6. The Electrical Executive Engineer (Commercial and

Revenue), Electric Supply Sub-Division, Jharkhand Urja Vikash Nigam Limited (Earlier Bihar State Electricity Board) Vikash Bhawan, Adityapur, P.O. and P.S. - Adityapur, District - Singhbhum (East).

7.JHARKHAND URJA VIKAS NIGAM LIMITED (Earlier known as JHARKHAND STATE ELECTRICITY BOARD which is successor of erstwhile Bihar State Electricity Board), having its office at Engineers Bhawan, HEC, Dhurwa, Ranchi through its Chairman, Project Bhawan, H.E.C., P.O. & P.S. Dhurwa, District - Ranchi.

.....Respondents

With

L.P.A. No. 610 of 2015

.....

MECON LIMITED. (formerly known as Metallurgical & Engineering Consultants (India) Ltd.), a Company incorporated under the Companies Act, 1956 and a Government of India Undertaking having its Registered Office at Doranda, Ranchi through its DGM 1/c TA&CD, Sri Vijay Khanna, son of Late G.D.Khanna, resident of Flat no. 204, Ishwar Enclave, P.P Compound, Ranchi -834001, P. O. Hindpiri and P.S. Hindpiri, Ranchi, Jharkhand.

..... Appellant

Versus

1. JHARKHAND URJA VIKAS NIGAM LIMITED (Earlier known as JHARKHAND STATE ELECTRICITY BOARD), having its office at Engineers Bhawan, HEC, Dhurwa, Ranchi through its Chairman cum Managing Director, Engineers' Bhawan, H.E.C., P.O. & P.S. Dhurwa, District - Ranchi.

2. Bihar State Electricity Board, a body constituted under Indian Electricity Act, 1910, through its Chairman, having its Head Office at Bailey Road, Patna, P.O. G.P.O., P.S. District - Patna

3. The Chief Engineer (Commercial & T.A.), Bihar State Electricity Board, Bailey Road, having its Head Office at Bailey Road, Patna, P.O. G.P.O., P.S. Kotwali, District - Patna.

4.The Financial Controller (Rev.), Bihar State Electricity Board, having its Head Office at Bailey Road, Patna, P.O.

G.P.O., P.S. Kotwali, District Patna.

5. General Manager cum Chief Engineer, JHARKHAND URJA VIKAS NIGAM LIMITED, Kusai colony Doranda, Ranchi. P.O and P.S- Doranda, District- Ranchi.

6. The Electrical Superintending Engineer, Ranchi Electrical Circle 'Kusai colony Doranda, Ranchi. P.O and P.S- Doranda, District- Ranchi.

7. The Electrical Executive Engineer (Commercial and Revenue), JUVNL, Electrical Supply Circle, P.O. and P.S. - Dhanbad, District - Dhanbad.Respondents

With

L.P.A. No. 613 of 2015

.....

M/s. Gajanan Minerals Private Limited, a Company incorporated under the provisions of Indian Companies Act, 1956 having its Works and Office at Plot No.B047 and B-29,1st Phase, Industrial Area, Adityapur, P.O. & P.S. Adityapur, District-SeraikellaKharsawan through its Director Kaushal Singhal, Son of Sri Kailash Chandra Singhal resident of B-47, 1st Phase, Industrial Area, Adityapur, P.O. & P. S. Adityapur, District-Seraikella Kharsawan. Appellant

Versus

1. Jharkhand Bijli Vitran Nigam Limited, having its Head Office at Engineering Bhawan, Dhurwa, P.O. and P. S. Dhurwa, District-Ranchi through its Managing Director.

2. Bihar State Electricity Board, having its office at Vidhut Bhawan, Patna, through its Chairman, P.O. G.P.O., P.S. Kotwali, Patna, District-Patna.

3. The Finance Controller (Revenue), Jharkhand State Electricity Board, Kusai Colony, P.O. and P.S. Doranda, District-Ranchi.

4. General Manager cum Chief Engineer, Jharkhand Bijli Vitran Nigam Limited, Jamshedpur Division, Co-operative Building, P.O. and P.S. Bistupur, Town-Jamshedpur, District-Singhbhum East.

5. Electrical Executive Engineer (Commercial & Revenue), Electric Supply Circle, Jharkhand Bijali Vitran Nigam Ltd.

Adityapur, P.O. and P.S. Adityapur, District-Seraikella, Kharsawan.

6. Chief Engineer (Commercial), Bihar State Electricity Board, Fraser Road, P.O., G.P.O, P.s. Kotwali, District-Patna.
.....Respondents

With

L.P.A. No. 616 of 2015

.....

M/S. B.M.C. Metal Cast Ltd., A Company incorporated under the provisions of Companies Act, 1956, having its factory at A-1819, 2nd Phase, Industrial Area, Adityapur, P.O. and P.S. Adityapur, District SeraikellaKharsawan-832109, through its Executive Director Shri Deepak Dokania, Son of Shri Mahaveer Ram, Resident of - 7, Circuit House Area (North West), Sonari, P.O. and P.S. Sonari Town Jamshedpur, District - Singhbhum East.

..... Appellant

Versus

1.JHARKHAND URJA VIKAS NIGAM LIMITED (Earlier known as JHARKHAND STATE ELECTRICITY BOARD). having its office at Engineers Bhawan, HEC, Dhurwa, Ranchi through its Chairman, Project Bhawan, H.E.C., P.O. & P.S. Dhurwa, District - Ranchi.

2. Bihar State Electricity Board, a body constituted under the Indian Electricity Act, 1910, through its Chairman having its Head Office at Bailey Road, P.O.- G.P.O, P.S.- Kotwali Patna,.

3. The Secretary, Bihar State Electricity Board, having its Head Office at Bailey Road, P.O.- G.P.O, P.S.- KotwaliPatna,.

4. General Manager cum Chief Engineer, Jamshedpur Area Electricity Board, Bistupur, P.O & P.S.- Bistupur, Town Jamshedpur

5. The Electrical Executive Engineer (Commercial and Revenue), Office of the Electrical Superintending Engineer, Electric Supply Circle, Vikash Bhawan, Adityapur, P.O. and P.S. Adityapur, District –Seraikella Kharsawan.

.....Respondents

With

L.P.A. No. 43 of 2016

.....

M/S. Tetuliya Coke Plant Pvt. Ltd., A Company incorporated under the provisions of Companies Act, 1956, having its factory at Govindpur, P.O. and P.S. - Govindpur, District - Dhanbad, Jharkhand through one of its Directors Shri Shailesh Agarwala, son of Late Birendra Kumar Agarwala, Resident of - Sukhi Niwas, P.O. and P.S. - Govindpur, District - Dhanbad, Jharkhand.

..... Appellant

Versus

1. JHARKHAND URJA VIKAS NIGAM LIMITED (Earlier known as JHARKHAND STATE ELECTRICITY BOARD), having its office at Engineers Bhawan, HEC, Dhurwa, Ranchi through its Chairman, Project Bhawan, H.E.C., P.O. & P.S. Dhurwa, District - Ranchi.

2. Bihar State Electricity Board, a body constituted under the Indian Electricity Act, 1910, through its Chairman having its Head Office at Bailey Road, P.O.- G.P.O, P.S.- Kotwali Patna.

3. The Secretary, Bihar State Electricity Board, having its Head Office at Bailey Road, P.O.- G.P.O, P.S.- Kotwali Patna.

4. General Manager cum Chief Engineer, Dhanbad Area Electricity Board, Combined Building, P.O & P.S.- Dhanbad, Town Dhanbad.

5. The Electrical Executive Engineer (Commercial and Revenue), Electrical Supply Circle, Dhanbad, Combined Building, P.O & P.S.-Dhanbad, Town - Dhanbad.

..... Respondents

**CORAM: HON'BLE MR. JUSTICE RONGONMUKHOPADHYAY
HON'BLE MR. JUSTICE DEEPAK ROSHAN**

For the Appellants : Mr. Navniti Prasad Singh, Sr. Adv.
Mr. M.S. Mittal, Sr. Adv.
Mr. Indrajit Sinha, Adv.
Mr. Salona Mittal, Adv.

[in L.P.A. Nos. 305/15, 431/15, 444/15, 448/15, 449/15, 454/15, 463/15, 481/15, 482/15, 483/15, 484/15, 508/15, 542/15, 597/15,

610/15, 616/15, & 63/16]

Mr. Biren Poddar, Sr. Adv.

Mr. Piyush Poddar, Adv

(in LPA No. 465/2015, 581/2015 & 585/20150

M/S. Shankar Lal Agarwal, Adv.

(In LPA No. 410/2015, 470/2015, 498/2015, 498/2015, 505/2015 & 613/2015

Mr. Dhananjay Kr. Pathak, Adv.

(In LPA No. 508 of 2015)

Mr. M.B.Lal, Advocate

[in L.P.A Nos. 444/15, 448/15, 449/15, 454/15 & 463/15]

Ms. Monika Kumari

[in L.P.A. No. 508/15]

For the JUVNL/JSEB : Mr. Shri Venkatesh, Advocate

Mr. Rahul Saboo, G.P.II

For the JUVNL : Mr. Manish Kumar, Adv.

For the BSEB : Mr. Manoj Tandon, Adv

CAV on:-21.06.2024

Pronounced on:-31/08/2024

Per Deepak Roshan J.

Heard learned counsel for the parties.

2. The challenge in these batch of appeals is to the common judgment passed by the writ court in batch of writ petitions by Order dated 08.05.2015; wherein the Writ Petition filed by the respective petitioner-consumer was dismissed.

3. The brief fact of the case is that the erstwhile Bihar State Electricity Board (hereinafter to be referred as BSEB) had notified a new power tariff dated 21.06.1993 which was made effective from 01.07.1993.

In the said tariff clause 16.10 deals with operational charges-

- i. "Operational charges" contains two elements i.e. "other operational charge" and "fuel surcharge".
- ii. Other operational charge was struck down by the Hon'ble High Court in the case of *Bihar 440 Vidyut Upbhokta Sangh Vs. B.S.E.B.* (1994) 2 PLJR 103 and affirmed by the Hon'ble Supreme Court as reported in (1997) 11 SCC 380).

- iii. Clause 16.10.1 specifies the categories of the consumers which were required to pay the operational surcharge at the rate to be determined every year in accordance with the formula.
- iv. **Clause 16.10.3** of the tariff specifies of the formula for calculation in increase in the rate of fuel surcharge.
- v. **Clause 17** of the tariff specifies that the entire rate of fuel surcharge amounting to 32 paise per unit had been merged with the tariff rates.

4. From time-to-time various circulars were issued by the Board fixing various rates of fuel surcharge. Finally, for the consumers this final rate of fuel surcharge was raised much after the actual accounting period, resulting in the fact that after completion of books of accounts of the year, huge liability accrued upon the consumers which could not be recovered by them from their customers resulting in huge losses and ultimate closure of various industries.

5. A batch of writ petitions were filed before the Patna High Court, with the lead case being that of M/s Pulak Enterprises being CWJC No. 5542 of 1999. The Patna High Court delivered its judgment dated 26.06.2000 (Ann – 1). In the said judgment the High Court held that –

- (i) *“Purchase of electricity from TVNL cannot be made a component of H-3”; and as such purchase of electricity from TVNL has to be deleted as competent of H-3 (Refer Paras 34 & 35).*
- (ii) *There could not be two rates of supply of electricity by DVC, i.e., Supply by DVC to TISCO and supply by DVC to BSEB, and as such for the component of D-3 there can only be one rate as the source is one. (Refer Para-36).*
- (iii) *The High Court also dealt with the issue of Rs. 100 Crore paid by the Coal Companies to the Board, but no specific direction was issued on that (Refer para - 40).*

6. Pursuant to said Judgment of Patna High Court, both the BSEB as well as consumers approached the Supreme

Court of India. BSEB challenged findings of the Division Bench of Patna High Court so far as TVNL issue and deemed supply by DVC (and consequently the dual rate for D3) are concerned. The consumers filed their Appeals on the issue of Rs. 100 Crores, wherein though the issue was referred in the judgment, but no specific direction was given.

Since, no stay was granted by the Hon'ble Apex Court and in order to collect fuel surcharge, the BSEB, pursuant to direction of the Patna High Court in *Pulak Enterprises* case, issued various Circulars of fuel surcharge which were claimed to be in gross contravention of the Patna High Court Judgment and these circulars were challenged in the batch of writ petitions by the consumers, being CWJC No. 2758 of 2000(R) and analogous cases. It is the order passed in these batch of cases which has been impugned in the present Appeals.

In the meantime, all the appeals were disposed of by the Hon'ble Apex Court vide its judgment dated 15.4.2009.

7. As a matter of fact, the BSEB was getting reimbursement of increased cost of power from the certain categories of consumers on quarterly / yearly basis since long. In the year 1999 when they issued circulars for fuel surcharge, consumers challenged the validity of calculation before the Patna High Court bench, later on Jharkhand High Court and Hon'ble Supreme Court of India as well.

8. Present issue is also related to the method of calculation of fuel surcharge which was calculated against the order of Patna High Court as well as Supreme Court of India, although BSEB/JSEB claiming that they have calculated the rate of fuel surcharge in line with the order of High Court and Supreme Court of India. This is the reason, so many petitioners challenged the calculation by filing various writ petitions and later on Appeal before this Court. With consent of the parties; leading case has been considered for hearing

purpose is LPA No. 305 of 2015 which has been filed by Usha Martin.

9. In this LPA, Usha Martin challenged the validity of the bills amounting to Rs.107.73 crores (For principal amount Rs.23.85 crores and DPS Rs.83.88 crores). Hon'ble Supreme Court of India stayed the DPS of Rs.83.88 crores and directed Usha Martin to pay Principal amount of Rs.23.85 crores which Usha Martin has paid.

10. In all these LPAs, what can be culled out from the argument by the learned senior counsel / counsel of the appellants is that largely on five issues plus on charging of DPS has affected the rate of fuel surcharge drastically for the year 1996-97 to 2000-01 which was valid up to 31.03.2003. The same are discussed hereunder under:

(i) **TVNL issue:** TVNL came into existence in the year 1996-97 whereas base year for calculation of fuel surcharge is 1991-92, as such, Division bench of Patna High Court and Hon'ble Supreme Court of India both has directed Electricity Board not to consider the increase in cost on account of TVNL as TVNL was not existence in the year 1991-92 i.e. base year.

Year	As per calculation of the Board (paise KWH)	As per the Consumers Calculation should have been as per UML (Paise KWH)
1996-97	86.25	79.58
1997-98	137.20	115.76
1998-99	164.83	140.54
1999-2000	204.4	186.36
2000-01 to 31.03.2003	244.01	Data not available for calculation.

II) **Providing credit of Rs.100 crores** while calculating the rate of fuel surcharge on account of credit receivable by BSEB from CCL. A/c. due to the inferior quality of coal supply in the year 1996-97. It has been submitted that after hearing the argument of Board, Patna High Court as well as Hon'ble

Apex Court has directed to consider credit of Rs.100 crores in the year 1998-99 instead of 1997-98.

iii) **Higher amount of increased cost of fuel considered in Calculation of Fuel Surcharge Rate in the matter of DVC.**

(a) Deemed supply to TISCO: TISCO is in outside command area of DVC, as such, to avail DVC Power, they have entered into a tripartite agreement with BSEB/ DVC wherein it was decided that DVC will bill to TISCO at BSEB Rate but will charge to BSEB at DVC Rate. Differential amount will be adjusted by DVC against the power supply to BSEB. It has been submitted that while calculating the fuel surcharge rate, Board considered increase in DVC charge at two rates i.e. one for direct supply to DVC and another one to BSEB. Hon'ble Courts passed order that there cannot be two rates for the source being one; as such, directed BSEB to charge the rate at which DVC supplied the power to BSEB.

(b) In addition, DVC tariff from the year 1991-92 to 1996-97 increased every year but BSEB has considered this increase only from 01.05.1997. While making the calculation of Fuel Surcharge, BSEB considered increased rate of DVC tariff.

iv) **Charging of fuel surcharge on unconsumed units of LTIS, CS 2 and CS 3 categories of consumers who are entitled to pay for minimum guarantee unit.**

It has been submitted that while issuing the fuel surcharge circular, BSEB has considered only actual consumed units by these categories of consumers; whereas BSEB has charged fuel surcharge on unconsumed units also. The issue has been raised before the court that these unconsumed units are also being considered for arriving at the rate of fuel surcharge as Board has already collected the money from these categories of consumers.

(v) **Recalculation of fuel surcharge after the bifurcation of Jharkhand State Electricity Board (JSEB) from Bihar State Electricity Board (BSEB) with effect from 01.04.2001.**

This issue was raised for the first time before the writ court stating therein that JSEB has bifurcated from BSEB and have started functioning independently of their own. Ratio of power consumption is different after the bifurcation. As per lump sum calculation it was observed that earlier almost 30-35% power was being consumed by bifurcated BSEB and 65% to 70% power was being used by the consumer of JSEB. In addition, major industrial consumers i.e. Fuel Surcharge payable consumers are in the area of JSEB, as such, recalculation of fuel surcharge rate from 01.04.2001 to 31.12.2003 is necessary based on the actual figure of JSEB keeping the formula intact.

(vi) **DPS:**

(a) In this regard, it has been submitted that BSEB has issued a circular reducing therein the rate of fuel surcharge by 6.04 paise/kwh considering only Rs.23.22 crores in calculation of fuel surcharge for the year 1998-99; whereas they were required to consider Rs.100 crores; if considered Rs.100 crores, expected reduction in the rate of fuel surcharge will be about 26 paise per/kwh. It has been contended that the Board has not given effect of this circular while issuing the fuel surcharge bill as such, they will have to issue new bills. Once the new bills are issued, DPS has to go.

b) On this issue, it has been further contended by the appellants that there are various orders of various High Courts and Hon'ble Supreme Court of India ordering therein that once the bills are revised; DPS has to be set aside. In the present case Board has already issued revised circular for the year 1998-99 reducing therein the rate of fuel surcharge by 6.04 paise/KWH only considering Rs.23.22 crores in

calculation, with regards to inferior quality of coal. Effect of this circular was not given by the Board in the fuel surcharge bills which are under challenge.

11. At the outset, Mr. Navniti Prasad Singh, senior Counsel and Mr. Indrajit Sinha, Advocate appearing for respective appellants have submitted the following formula in order to appreciate the issue of fuel surcharge involved in this case. He referred the judgment rendered in the case of ***Rohtas Industries Ltd. v. Bihar SEB, 1984 Supp SCC 161***, and contended that the Hon'ble Apex Court has held that *"Though the nomenclature given to the levy is "fuel surcharge" it is really a surcharge levied to meet the increased cost of generation and purchase of electricity"*. In this background, the formula of Fuel Surcharge in the 1993 Tariff is reproduced herein below

Formula of Fuel Surcharge

$$S1 = \frac{A1 \times A3 + B1 \times B3 + C1 \times C3 + D1 \times D3 + E1 \times E3 + F1 \times F3 + G1 \times G3 + H1 \times H3}{(A2 + B2 + C2 + D2 + E2 + F2 + G2 + H2)}$$

S1 = Units generated x increase in cost of generation + Units purchased x increase in cost of purchased
 S1 = Units sold on which fuel surcharge is leviable out of (i) units generated +(ii) units purchased

WHEREAS

S1 = Average fuel surcharge per unit in paisa applicable during the financial year.

A1, B1, C1 = Units generated from PTPS, BTPS and MTPS respectively.

D1, E1, F1, G1, H1 = Units purchased from DVC, U.P. SEB, OSEB, NTPC, PGCIL and any other source respectively.

A3, B3, C3 = Increase in average cost of fuel surcharge in paise per unit computed for Board's generation at PTPS, BTPS and MTPS.

D3, E3, F3, G3, H3 = Increase in average unit rate of purchase of energy from DVC, U.P. SEB, NTPC, PGCIL and any other source respectively during the year for which the surcharge is to be calculated.

A2, B2, C2 = Units sold, out of generated from PTPS, BTPS, and MTPS on which fuel surcharge is leviable.

D2, E2, F2, G2, H2 = Units sold out of purchased from DVC, U.P. SEB, OSEB, NTPC, PGCIL, and any other source respectively during the year in Which fuel surcharge is leviable.

The said increase to be calculated with respect to the year 1992-1993 (after amendment, read 1991-1992).

(In the above, PTPS stands for Patratu Thermal Power Station, BTPS for Barauni Thermal Power Station, MTPS for Muzaffarpur Thermal Power Station. They are Board's own generating station. Likewise, DVC stands for Damodar Valley Corporation, U.P. SEB for Uttar Pradesh State Electricity Board, OSEB for Orissa State Electricity Board, NTPC for National Thermal Power Corporation, and PGCIL for Power Grid Corporation of India Limited. They are external sources of supply of electricity to the Board.)

12. From the impugned order it transpires that during the course of hearing, the writ Court culled out five issues which were for consideration before the Court. The same are as follows:[Refer: Para 17].

- I. *Whether the deletion of TVNL component from H1 & H2 along with H3 is against the mandates of the Hon'ble Patna High Court in M/s. Pulak Enterprises case and if so, on that ground the impugned Circulars are liable to be quashed?*
- II. *Whether while recalculating the rates of fuel surcharge, as per the decision of M/s Pulak Enterprises case, it was imperative for the Board to exclude the power supply by the DVC to the TISCO from the arena of consultation?*
- III. *Whether the Board can be directed to recalculate the rates of fuel surcharge after taking into account the unconsumed units of CS and LT consumers on which the Board levied fuel surcharge?*
- IV. *Whether the Board could be directed to recalculate the rates of fuel surcharge after adjusting Rs. 100 crores receivable by the Boards from the Coal Companies?*
- V. *Whether after the creation of the State of Jharkhand, the formula prescribed for calculation of the rates of fuel surcharge is required to be reformulated and consequently rates be reworked out ?*

13. Learned senior counsel representing the appellants had advanced his argument on the issues involved in this batch of appeals; which are summarized herein below:

- For the purpose of calculation of fuel surcharge in terms of the 1993 tariff, the base year taken by the B.S.E.B. to calculate the proportionate increase in rate of purchase from external sources, was 1991-92.
- Accordingly, since TVNL came into existence only in 1996 – 97, there could have been no increase from the base year of 1991-92 as TVNL did not exist during the base year.
- The Patna High Court in *Pulak Enterprises* has dealt with the Issue No.1 at para -34 & Para-35, Para 43 and para 44.
- The Division Bench of Patna High Court clearly stated that that “In my view, on the admitted facts, it is not possible

to allow the Board to include purchase of electricity as a component of H3 without suitably amending the formula in accordance with law.”

- Accordingly, the Division Bench directed the Board to re-work out the rate of fuel surcharge in the year 1996-97 after deleting the purchase of electricity from TVNL as component of H3.
- Though the Patna High Court directed the Board to delete TVNL from H3, it is discernible from a reading of the entire finding on this issue was that purchase from TVNL was not to be taken into consideration altogether, i.e., from the numerator side of the formula – both H1 and H3. This is because if the TVNL component in H3 is taken as ‘0’, then the TVNL component in ‘H1’ would also become ‘0’. Thus, purchases from TVNL would be excluded altogether.
- This is further evident from the fact that the counsel for BSEB had specifically contended before the Patna High Court that if TVNL is not to be included in H3, then consequence will be that units purchased from TVNL would have to be kept out. However, the Court negated the same by saying that it will create a different base year and that purchase from TVNL cannot be included unless the BSEB changes its formula, which it has admittedly not done.
- When the matter went to Hon’ble Supreme Court, the Hon’ble Court in its judgment dealt with this issue at para 61 to 62 and confirmed the findings of Patna High Court.
- It is also important to mention that H1 contains purchase from other sources ‘respectively’ meaning thereby that H1 also includes other sources apart from TVNL. Same is the position for H3. Thus, H1 and H3 are not just TVNL.
- He relied upon the judgments of Hon’ble Apex Court in ***Canara Bank v. Debasis Das, (2003) 4 SCC 557***, wherein it has been held that “*The expression “respectively” means*

belonging or relating separately to each of several people. It is a word of severance.”

- Therefore, it has been contended by the Sr. Counsel that essentially the BSEB had to take from H3, the TVNL component as ‘0’ and multiply it with the TVNL component in H1, which would result in excluding the purchase of electricity from TVNL altogether, as was the mandate of *Pulak Enterprises* by the Patna High Court and that of the Hon’ble Supreme Court. An illustration of the following formula has been tendered during the course of hearing; for brevity, the same is extracted herein below:

<u>Illustration</u>		
Other Sources (H): For eg., NTPC and TVNL		
Purchase Rate	Units	Purchased
<u>Originally</u>		
Others	1000	Rs. 0.50
TVNL	500	Rs. 0.10
Thus, increased cost = (1000 x 0.5) + (500 x 0.10)		
= 500 + 50		
= 550		
I) <u>As per HC direction</u>		
Others	1000	Rs. 0.50
TVNL	500	Rs. 0.00
Thus, increased cost = (1000 x 0.5) + (500 x 0.0)		
= 500 + 0		
= 500		
II) <u>Mischief by BSEB</u>		
Others	1000	Rs. 0.50
TVNL	500	-
Thus, increased cost = (1000 + 500) x 0.50		
= 1500 x 0.50		
= 750		

- It has been further submitted that the BSEB in purported compliance of the directions in *Pulak Enterprises* however, excluded TVNL from H1 and H2 also. They did this, in order to show that deleting all three components from ‘H’, would result in lower rate of Fuel Surcharge. Annexure-L to the additional counter affidavit dated 15.2.2001 was relied in this regard.

- However, reliance on the said annexure is a mere eyewash. It is evident that for the year 1996-1997, the total units purchased from other sources was 737.82 MkwH (H1) and the average rate of purchase was 60.57 (H3). Thus, the total cost of increase came to Rs. 4468.98 Lakhs (H1 x H3). As per the direction of High Court, purchases from TVNL were to be excluded altogether; however, in the column showing compliance of the High Court, a higher figure has been shown, i.e., Rs. 4872.56 Lakhs which cannot be possible if purchase from TVNL is altogether excluded. This has arisen due to the fact that BSEB has not reduced units purchased from TVNL from H1, which it ought to have done.
- Furthermore, it can be seen that in 1996-97, the BSEB has tried to show that by deleting H1, H2, and H3, the rate had come to 86.25 paise; whereas by deleting only H3, the rate was 88.06 paise. However, in the subsequent year, i.e., 1997-98, by deleting all three components, the rate comes to 137.20 paise; whereas by only deleting H3, the rate comes to 131.11 paise. Thus, it was clear that the BSEB misinterpreted the judgment and/or was flouting the judgment of the Patna High Court in *Pulak Enterprises*.
- However, in the impugned judgment, the Ld. Single Judge while dealing with this issue at para 18 to 26 has failed to apply the findings of the Patna High Court and the Supreme Court Judgments and has held at para 26 of the judgment that deletion of TVNL component from H1 and H2 is against the decision of the Division Bench Judgment of Patna High Court in *Pulak Enterprises*; however, by the aforesaid action of the Board, rate of fuel surcharge had not increased; rather the same has decreased. Therefore, the Court did not interfere with the said issue.
- It has been contended that the writ Court was duty bound to follow the Judgment of the Hon'ble Supreme Court.

In fact, reliance on annexure – L by the Ld. Single Judge was also totally misplaced as shown hereinabove.

- Further, the finding that if H3 is taken as 0, then entire component on the numerator side will become 0 and will result in excluding other sources apart from TVNL also, was patently incorrect. As stated above, H1 and H3 contains multiple other sources 'respectively'. TVNL can certainly be severed from H1 and H3 and excluded from the numerator side. It was never the contention of the petitioners that all other sources will also have to be excluded.
- The Judgment of Patna High Court and the Supreme Court never gave any permission to the Board to delete H2 in entirety; as the unit sold from energy purchased from TVNL is one of the sources of H2 and particularly because since the units purchased from TVNL were being sold by the Board. By deletion of sold units from denominator, obviously the rate of fuel surcharge would increase. Therefore, the Impugned Judgment so far TVNL issue is concerned is absolutely erroneous and is liable to be set aside.
- No party, defying the order of a High Court can take recourse to the fact that substantial injustice has not been done. The High Court has the power to reach injustice wherever it is found (**Refer: U.P. State Sugar Corpn. Ltd. v. Kamal Swaroop Tondon, (2008) 2 SCC 41 – Para 35**) and it cannot on the basis of certain erroneous calculations refuse to enforce the directions of the previous Division Bench or of the Hon'ble Supreme Court. Reference in this regard is also made to the judgment of the Hon'ble Supreme Court in **State of Bihar v. Kalika Kuer, (2003) 5 SCC 448** wherein it was held that "*The earlier judgment may seem to be not correct yet it will have the binding effect on the later Bench of coordinate jurisdiction*". Relying upon the above, Ld. Sr. Counsel contended that on this issue, the order passed by the writ Court requires interference.

14. In respect of TVNL issue, the Respondents primarily submitted the following:

(I) On a holistic and complete reading of the Judgment passed in *Pulak Enterprises*; it is evident that the entire component of TVNL had to be excluded all together, meaning thereby that even from H2, the TVNL component had to be excluded.

(II) Reliance was placed on Annexure-L to the Counter Affidavit filed in the Writ proceedings. It was submitted that by excluding all three components, a lower rate of fuel surcharge was being computed and hence deletion of TVNL from H1, H2 & H3 would inure to the benefit of the consumers.

(III) Reference was made to para 19 of the Impugned Order to submit that if the Petitioner's argument is accepted, then the entire component of H1 i.e., purchases from other sources would become zero.

15. Having heard learned counsel for the rival parties and after going through the documents available before us it appears that a complete reading of the Judgment in *Pulak Enterprises* would make it evident that the Patna High Court only directed that purchases from TVNL ought to be excluded i.e. only on the numerator side of the formula.

There is no direction that the TVNL component from H2 (denominator / units sold) also has to be deleted. As a matter of fact, para 18 of the Impugned Order records that deletion from H2 is against the Judgment of *Pulak Enterprises*. Therefore, there can be no quarrel that deletion of TVNL component from H2 was not contemplated by the Judgment in *Pulak Enterprises*.

Reference in this regard is also made to the Judgment of the Hon'ble Supreme Court in ***Ashwani Kumar Singh v. U.P. Public Service Commission***, reported in **(2003) 11 SCC 584**; wherein it was held that –

“10. ...Observations of courts are not to be read as Euclid's theorems nor as provisions of the statute. These observations must be read in the context in which they appear. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark upon lengthy discussions, but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.”

Therefore, the question of deducing something from a judgment which is not expressly stated therein does not arise. Moreover, such an argument made by the Respondents is clearly oblivious to the formula of fuel surcharge; more particularly that of H2. H2 has been defined to mean units sold from purchases made from other sources on which fuel surcharge is leviable.

Therefore, the units sold by which fuel surcharge leviable was had to be included in H2 i.e. on the denominator side. There is no dispute regarding the fact that units purchased from TVNL were sold by the Board and fuel surcharge was collected thereon. Therefore, TVNL cannot be excluded from H2 by any reason whatsoever.

As far as reliance on Annexure-L is concerned; the same can also not be countenanced for the following reasons:

- (a) Firstly, while demonstrating compliance with the High Court Order, the Board has not deducted TVNL component from H1. This is contrary to the dictum of *Pulak Enterprises*, which required the Board to exclude purchases from TVNL. If TVNL component in H3 is taken as zero and multiplied by the TVNL component in H1, it would result in excluding purchases from TVNL all together i.e. on the numerator side.
- (b) Even if it is assumed that calculation by the Board with respect to compliance of the High Court Order was correct, the benefit of deleting TVNL from H1, H2

& H3 was available only in 1996-97. However, a reference to the working for the year 1997-98 would show that deleting all three components would have resulted in a higher rate. Therefore, the mischief perpetrated by the Board was that it only showed figures of one year.

Reliance on para 19 of the Impugned Judgment was also inapposite. The Petitioner's argument was never that the entire component of H3 should be zero. H3 contains of many sources and only TVNL thereunder would have become zero. The remaining component would still be there. H1 and H3 are not just TVNL and only excluding TVNL component would not result in making H1 as zero.

16. For issue No. 2 which relates to DVC; Ld. Sr. Counsel contended that it relates to taking into consideration, the sale of supply by DVC to Tata Steel and thereby taking two rates of purchase i.e., one to BSEB by DVC and another to Tata Steel by DVC was not permissible. However, the issue has been erroneously framed by Ld. Single Judge in the Impugned Judgment. It was never the contention of the Petitioner that "deemed supply" was to be "excluded". He advanced following argument:

- DVC was selling electricity to Tata Steel, which was not in its command area and a Tripartite Agreement had been entered among DVC, Tata Steel and BSEB allowing sale of electricity by DVC to Tata Steel, at the BSEB rate. It was admitted that the BSEB rate was much higher than that of DVC. The arrangement was that whatsoever extra that DVC was realising from Tata Steel, was to be offset from the purchases made by BSEB from DVC.

- For an example, if rate of BSEB was Rs. 1.50 per unit and the rate of DVC was Rs. 1/- per unit, DVC realised the charges from Tata Steel @ Rs. 1.50 per unit which was the rate of JSEB, and difference of rate between BSEB and DVC i.e. 50 paise per unit was offset / credited from supplies made from DVC to BSEB.
- However, while making calculation of the formula for fuel surcharge, both the rates of sale by DVC to Tata Steel as well as sale by DVC to BSEB was taken, which the Patna High Court held to be illegal.
- The Division Bench of Patna High Court had dealt with this issue of dual rate of DVC at para 36, para 37, and gave findings at para 43 and 44. It was held that source being one, i.e., DVC, two rates cannot be taken for the purpose of computing D3.
- The Hon'ble Supreme Court dealt with this issue of "deemed supply" at para 51 and 52 and approved the Judgment of Patna High Court and Court in para 62 the Supreme Court held that they are in agreement with conclusion of the High Court and Appeal filed by the Board was accordingly dismissed.
- However, while issuing the circulars in purported compliance of the directions in *Pulak Enterprises*, it was evident that the BSEB had deliberately misread the judgment of the Hon'ble Court. The same is evident from the calculations provided by the Board itself at Annexure – D to the Counter Affidavit filed on 17.10.2000.
- From the calculation chart it is evident that the BSEB had taken the average rate for purchase by BSEB from DVC and TISCO from DVC, which was not in accordance with the judgment. The BSEB was to take original rate of DVC and not the weighted average. There was no such direction.

- Another issue was that despite the fact DVC increased its tariff on a few occasions after 1993, but the BSEB continued to pay at the tariff prevailing at 1993 to DVC and as a matter of fact, BSEB started paying at the current rate of DVC only from 1997-98. The said fact is also evident from Annexure - H to the additional counter affidavit filed by the Board on 15.2.2001, wherein the Board itself has stated that BSEB “*continued to admit the bill of DVC*” at the tariff of 1991 “*till 30.4.1997*”.
- The Ld. Single Judge dealt with this issue at para 27 of the Impugned Judgment and held that “*I find that the Board had substantially complied the direction given in M/s. Pulak Enterprises case*”.
- In this regard, the directions have to be fully complied with and not substantially complied. The BSEB was not allowed to take the weighted average, it had to be the rate of tariff of DVC as recognized by the BSEB. In fact, rather than “substantial compliance”, there has been “no compliance” by BSEB. The requirement of taking one rate for D3 as recognised by the Board, was a mandatory direction and not merely directory, thus the principle of substantial compliance would not apply at all in the present case.
- In this regard, reference is made to the judgment of the Hon’ble Supreme Court in **CCE v. Hari Chand Shri Gopal, (2011) 1 SCC 236**, wherein it was held that –

*32. The doctrine of substantial compliance is a judicial invention, equitable in nature, designed to avoid hardship in cases where a party does all that can reasonably be expected of it, but failed or faulted in some minor or inconsequent aspects which cannot be described as the “essence” or the “substance” of the requirements. Like the concept of “reasonableness”, the acceptance or otherwise of a plea of “substantial compliance” depends upon the facts and circumstances of each case and the purpose and object to be achieved and the context of the prerequisites which are essential to achieve the object and purpose of the rule or the regulation. **Such a defence cannot be pleaded if a clear statutory prerequisite which effectuates the object and the purpose of the statute has not been met.** Certainly, it means that the Court should*

determine whether the statute has been followed sufficiently so as to carry out the intent for which the statute was enacted and not a mirror image type of strict compliance. Substantial compliance means “actual compliance in respect to the substance essential to every reasonable objective of the statute” and the Court should determine whether the statute has been followed sufficiently so as to carry out the intent of the statute and accomplish the reasonable objectives for which it was passed.

- On this ground, Ld. Sr. Counsel contended that this issue of dual rate of DVC has also to be set aside.

17. With respect to DVC, the Respondents sought to argue that -

- (I) The Petitioner’s argument that sale by DVC to TISCO was to be excluded all together was against the decision of Pulak Enterprises, and such argument could not have been made by the Petitioner.
- (II) A single rate has been taken for calculating D3 and as such there is no deviation from the direction given by the Hon’ble Patna High Court in Pulak Enterprises and the Board has not taken an average rate.

18. On this issue, we are of the view that it was never the argument of the Petitioner-Appellant that deemed supplies have to be excluded all together. A wrong framing of question has led to an incorrect answer. Reference in this regard is made to the judgment of the Hon’ble Supreme Court in the case of **Cholan Roadways Ltd. v. G. Thirugnanasambandam**, reported in **(2005) 3 SCC 241** wherein it was held that –

“34. This decision also has no application to the facts of the present case. In the instant case, the Presiding Officer, Industrial Tribunal as also the learned Single Judge and the Division Bench of the High Court misdirected themselves in law insofar as they failed to pose unto themselves correct questions. It is now well settled that a quasi-judicial authority must pose unto itself a correct question so as to arrive at a correct finding of fact. A wrong question posed leads to a wrong answer.”

As a matter of fact; the Petitioner’s case throughout was that a single rate has to be taken for the purchases from DVC i.e. the rate at which BSEB purchases electricity from DVC.

A specific ground in this regard has been raised as

ground 'XX' of the LPA. In fact, reading of para 51 to 55 of the Judgment of the Hon'ble Supreme Court in *Pulak Enterprises* (Annexure-11) would show that it was never the case of any of the consumers that deemed supply to TISCO by DVC was to be excluded altogether.

Further, the argument that BSEB has taken a single rate for D3 is also not born out from the Respondents' own records. A perusal to Annexure-D of the Counter Affidavit filed in the Writ proceedings would show that BSEB has taken the weighted average of sale by DVC to BSEB & TISCO. In doing so, they have taken into account two rates which was not as per ratio laid down by *Pulak Enterprises* and as such was in direct conflict with the judgment.

Further, the Petitioner had also tendered separately Annexure-H to the Respondents' Counter Affidavit to show that DVC's increase in tariff had only been recognized by BSEB from 30.04.1997. Thus, in the year 1996-97 BSEB ought to have calculated D3 at the rate by which it was paying DVC irrespective of tariff rate.

Having regards to the above; the finding of the Writ Court on this issue cannot survive.

19. On the Issue No.III of Rs. 100 Crores, it has been contended by the appellants that the Board was supposed to consider credit of Rs. 100 Crores as agreed by the coal companies against the claim of BSEB towards slippage, short supply and supply of stone etc., to consider while calculating the rate of fuel surcharge for the year 1998-99. He further made following submissions:

- The High Court has at para 40,has dealt with issue of accounting of Rs. 100 Crores paid by the Coal Company to the Board. The Division Bench referred to Affidavit of Board that "*as against the total claim of Rs. 356.20 Crores, on account of loss due to grade slippage,*

*short supply of coal, supply of stones etc., the coal companies have agreed to pay Rs. 100 Crores in full and final settlement of the claim, but though such decision was taken on 30.08.1998”, but the actual payment had not been made till date. The Court further observed “it was pointed out payment of the amount would be relevant consideration while calculating the rate of fuel surcharge for the year **1998-99** and not **1997-98**”.*

- This issue was confirmed by Hon’ble Supreme Court at **para 63** and **64** of its judgment; wherein the Hon’ble Supreme Court has given specific direction that actuals will be worked out within 3 months from the date of Judgment and adjustment of Rs. 100 Crores are to be worked out accordingly.
- It has been further submitted that against this direction, the Board filed an I.A. Application before the Hon’ble Apex Court and the Order of which is annexed as Annexure-12; it is evident that time completion for adjustment of Rs.100 Crores has been extended for a period of four months from the date of the Order i.e., 25.01.2010.
- The Board thereafter issued an office Order at Annexure-13, on 22.10.2010, that in terms of the Judgment passed in Civil Appeal and also Civil I.A., the Board has decided to make an adjustment in the rate of fuel surcharge for the F.Y. 1998-99 by incorporating amount of Rs. 100 Crores receivable from Coal India Ltd. with regard to coal supplies including quality, quantity, all types of claims and damages up to 31.03.1997. However, rider was added that such adjustment was to be made effective as soon as the amount of Rs. 100 Crores is received, although no such direction was given by the Hon’ble Supreme Court.

- Ld. Sr. Counsel further contended that the Board further played fraud upon its consumers by issuing one Office Order dated 01.12.2010, (Annex-14) wherein it revised the rate of fuel surcharge for the year 1998-99 from which existing rate of fuel surcharge of 164.83 paisa per unit was revised to 158.79 paisa per unit. It was stated that the Board computed and modified the rate of fuel surcharge for the F.Y. 1998-99 by making adjustment of Rs. 100 Crores receivable from CIL and the said modified rate and unpaid accrued amount from them to the consumers shall be effective as soon as Rs. 100 Crores is received from M/s. CIL.
- The calculation was appended to such Office Order and from the perusal of calculation given as per para (b) is concerned, it would be evident that the Board had taken only Rs. 23.22 Crores which is related to “Fuel Related Loss” in the Chart. At column 4, it has been stated that amount of Rs. 23.22 Crores only has been taken which is benefit of fuel related loss to be passed to the fuel surcharge leviable consumers from Rs. 100 Crores receivable from CIL. This was again contrary to the direction of the Hon’ble Supreme Court.
- The Board does not actually receive money from the coal companies; rather a system of adjustment is followed vis-à-vis coal supplied by the coal companies and energy supplied by the Board.

The Board follows a mercantile system of accounting and not cash system. In mercantile system, since the amount become receivable, it becomes the part of the accounts and therefore, the stand of the Board that adjustment shall be given after the amount is received goes to show the misleading attitude of the Board.

- He contended that it is a fact that Board will never receive this amount directly from the coal companies since only adjustment are being made in the books and differential taken is being made on the basis of balance outstanding.
- Relying upon the above, Mr. Singh contended that:
 - (i) There was specific direction of the Supreme Court giving benefit of Rs. 100 Crores, without waiting for the money having been received or not.
 - (ii) Board on its own could not have reduced the benefit of Rs. 100 Crores for the purpose of adjustment for only Rs. 23.22 Crores which is against the specific direction of the Hon'ble Supreme Court.
- Ld. Sr. Counsel pointed out that the Impugned Judgment was reserved after completion of hearing on 20.04.2015 and the Judgment was pronounced on 08.05.2015, but by then JSEB had already received a sum of Rs. 100 Crores from CIL (as a successor of and on behalf of BSEB) which was not disclosed by JSEB during course of hearing.
- This is evident from the Judgment passed by the Patna High Court in the case of M/s. Pulak Enterprises reported in **2015 SCC OnLine Pat 2652** after remand from the Supreme Court and the said Judgment is dated 23rd March 2015, wherein the Patna High Court took cognizance of an Affidavit filed by BSEB wherein it was stated *"16. It is stated that since Rs. 100 Crores paid by CCL is lying with JSEB, the Board has filed Review Application before the Hon'ble Supreme Court for review of the Order"*.
- Therefore, from the above, it is evident that JSEB had already received Rs. 100 Crores from CIL, even before the hearing before the Ld. Single Judge had started,

but the JSEB did not apprise about the same to the Court.

- Therefore, immediately Board should be directed to calculate benefit based on the entire 100 Crores it has received and if the calculation on the basis of Rs. 23.22 Crores has been worked out from 164.83 per unit to 158.79 per unit, there is difference of about 6 paise, then if the entire 100 Crores is taken into consideration, the difference would be at least 25 paise per unit.
- This benefit has to be given to all the consumers which will result a downward revision of the bills and consequently deletion of the entire amount of Delayed Payments surcharge.
- The Ld. Single Judge had dealt with this issue in the Impugned Judgment at para 32 of the Judgment wherein the Ld. Single Judge has held that because the Circular has not been challenged in these writ petitions, therefore the said grievance cannot be entertained and the Court refused to adjudicate on the said issue.
- It has been submitted that when the direction of Rs. 100 Crores was given by the Hon'ble Supreme Court, then it may not have been necessary to challenge to follow up Order and Appellant can show that the follow-up Order was in contravention of the Supreme Court Judgment. As a matter of fact, actions of the Respondent Board, is absolutely contemptuous.
- In this regard, reliance is placed by him on the judgment of the Hon'ble Supreme Court in the case of ***Shree Bhagwati Steel Rolling Mills v. CCE***, reported in **(2016) 3 SCC 643**, wherein it was held that –

“29. Rules or regulations which are in the nature of subordinate legislation which are ultra vires are bound to be ignored by the courts when the

question of their enforcement arises and the mere fact that there is no specific relief sought for to strike down or declare them ultra vires would not stand in the court's way of not enforcing them. We also feel that since this is a question of the very jurisdiction to levy interest and is otherwise covered by a Constitution Bench decision of this Court, it would be a travesty of justice if we would not allow Shri Aggarwal to make this submission”

- A circular which is completely against the law declared by the Hon’ble Supreme Court would certainly be ultra vires and hence the Ld. Single Judge ought to have considered the submissions in this regard. The judgment of the Hon’ble Supreme Court *Shree Bhagwati Steel Rolling Mills* was also specifically followed by the Hon’ble Delhi High Court in the context of an office order in ***Unaided Recognized Private Schools v. DDA, (2020) 1 HCC (Del) 447.***
- Furthermore, the Circular itself stated that the benefit of 100 Crores will be given when the money is actually received. Till date, the Board has not given effect to such circular by reducing the rates. Therefore, when the Board has not even implemented the Circular, then there stood no occasion to challenge it.
- He lastly submits that even otherwise, in one of the cases before the Ld. Single judge, i.e., *M/s. Auto Profiles Ltd.*, the said circular was categorically challenged.

20. In response to the same, it has been argued by the Respondents that no relief or direction was given by the Hon’ble Patna High Court in *Pulak Enterprises* regarding this issue. Further, the ground that the Mercantile System of Accounting is to be used was never argued by the Petitioners.

21. Thus, we see that the Respondents have practically did not denied any of the contention of the appellants rather; made simple objection that no relief or direction was given by

the Hon'ble Patna High Court in *Pulak Enterprises* regarding this issue and the ground of Accountancy has been raised for the first time.

The above submissions are also incorrect for the reasons that since no specific direction was given by the Patna High Court in *Pulak Enterprises* on this issue; the consumers had approached the Hon'ble Supreme Court and a clear direction was given by the Hon'ble Supreme Court in para 64 of the Judgment that an adjustment of Rs. 100 Crores should be worked out within three months. Therefore, a direction is certainly there. In fact, the Board had also published an Office Order dated 22.10.2010 and 01.02.2010 for implementing of the Supreme Court direction.

Further, even assuming that Mercantile System of Accounting cannot be taken into consideration, still the Board has actually received Rs. 100 Crores and ought to have given effect to the Judgment of the Hon'ble Supreme Court and re-calculate rates of fuel surcharge.

It must also be noted that there was no response by the Respondent as to the following issues –

- (i) Actual receipt of Rs. 100 crores by JSEB.
- (ii) Reducing benefit of Rs. 100 Crores to only Rs. 23 Crores (approx.) when there was no direction in this regard.

22. On the Issue No. IV - Unconsumed units; Ld. Sr. Counsel made following submissions:

- Board has issued a circular dated 17.09.1999 (Annex-3, to the writ petition) by which it has been decided to levy fuel surcharge on unconsumed units on two categories of consumers namely CS and LT. A retrospective effect has also been given to this circular.
- By issuance of this circular the respondents have basically amended the formula of fuel surcharge. Since the present petitioner was a High-Tension consumer, it

had nothing to do with the circular as it dealt with Commercial Service consumers and Low-Tension consumers. Nor did the Board place the circular before the Patna High Court and subsequently there is no finding or direction for the same either in the High Court or in the Supreme Court's judgment. The Appellant has dealt with this issue in paragraph 90 to 92 of the Appeal.

- After proper effect is given to the circular, the effect would be lowering of rates of the fuel surcharge because the denominator consists only of the unit sold but if fuel surcharge is levied on unconsumed units, then those units have to be added to the denominator.
- An example would be if Rs. 100 is the cost of generation and Rs. 100 is the cost of purchase and 100 units are sold which would be worked out to Rs. 2 per unit, but if unconsumed units, for example say 100 units, are also added to the denominator then the cost of fuel surcharge would work out to Rs. 1. i.e., $\text{Rs. 100 (cost of generation) + Rs. 100 (cost of purchase) = Rs. 200}$ divided by 200 units sold.
- The formula of fuel surcharge is clear, inasmuch as, Denominator has to be the same number of units on which the fuel surcharge is being levied. In the present case, the Board has not considered the unconsumed unit while arriving at the denominator, hence the Board has to work out the rates of fuel surcharge by adding the unconsumed unit in the denominator.
- This issue was not raised before the Patna High Court and consequently also not before the Supreme Court, because at that time the consumers were not aware of the existence of that circular, since it was an internal circular. But however, before the Ld. Single Judge, this issue was raised by the Petitioner / consumers. It was

contended that since numerator consisted of the units purchased and units generated sold to fuel surcharge paying consumers, therefore, unconsumed units on which the Board is also levying fuel surcharge from the category of commercial service consumers and LTIS (Low Tension Industrial Services) also has to be added to the denominator. This would result in increasing the denominator and the moment the denominator increases, the rate of fuel surcharge will automatically decrease.

- However, the Ld. Single Judge in the Impugned judgment has held that the Petitioner at this stage is prevented from raising issue on the principle of *res judicata* and as such the Court was not inclined to interfere this ground attack and accordingly the same was rejected.
- The approach of the Ld. Single Judge on this issue was absolutely erroneous. The Hon'ble Single Judge fallen into error, as the Petitioner was prevented to raise ground of effect of unconsumed units on the principle of *res judicata* when there was neither any arguments made on this issue earlier. This issue also deserves to be decided in favour of the consumers because, it is directly co-related to the rate of fuel surcharge.
- In this regard, reference is made by the Ld. Sr. Counsel to the judgment of the Hon'ble Supreme Court in the case of ***Rural Litigation and Entitlement Kendra v. State of U.P.***, reported in **1989 Supp (1) SCC 504**, wherein the Hon'ble Supreme Court has held that –

“16. ... *At the same time it has to be remembered that every technicality in the procedural law is not available as a defence when a matter of grave public importance is for consideration before the court. Even if it is said that there was a final order, in a dispute of this type it would be difficult to entertain the plea of res judicata. As we have already pointed out when the order of 12-3-1985, was made, no reference to the Forest*

(Conservation) Act of 1980 had been done. We are of the view that leaving the question open for examination in future would lead to unnecessary multiplicity of proceedings and would be against the interests of society. It is meet and proper as also in the interest of the parties that the entire question is taken into account at this stage.”

- The issue regarding rate of fuel surcharge is a far reaching one as it impacts all the industrial (HT and LT) and Commercial category of consumers and hence merely on a technical plea of constructive res judicata, this issue cannot be brushed aside.

23. In response to the aforesaid arguments, the Respondent made following submissions:

- (I) The Petitioner’s apprehension that unconsumed units had not been taken into account was unfounded as the rate of fuel surcharge actually took into account the same.
- (II) Secondly, it was argued that this contention of the Petitioner regarding un-consumed units had never been raised in the first round of litigation and thus cannot be raised now.

24. In respect of the above, we are of the considered opinion that the argument of the Board that un-consumed units had been taken into account is absolutely incorrect. Reference is made to Annexure-5 of the LPA in which the Appellant-Petitioner has annexed calculations at Page-128, 129 and 130 (which are based on the Board’s own figures) to show that unconsumed units had in fact not taken into consideration.

Once such statement was made, onus lay on the Respondents. It is now well settled principles of law that, when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by

evidence which must appear from the writ petition and if he is the respondent, from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter-affidavit, as the case may be, the court will not entertain the point. In this context, it will not be out of place to point out that in this regard there is a distinction between a pleading under the Code of Civil Procedure and a writ petition or a counter-affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it.

In the case at hand, the appellant has given a calculation at Page-128, 129 and 130; which are based on the Board's own figures to show that unconsumed units had in fact not taken into consideration

Further, the Circular regarding taking into account of unconsumed units was issued only on 14.09.1999 and thus; consideration of unconsumed units on the denominator side of the formula, prior to such date cannot arise at all.

It is also pertinent to mention here that, the issue of unconsumed units was never raised in the first round of litigation and hence would not operate as res-judicata in the present proceedings. Further, it is trite law that the State cannot harp on technicalities and defeat the legitimate claims of the Petitioner. Reference is made to the Judgment of the Hon'ble Supreme Court in ***Hindustan Sugar Mills v. State of Rajasthan, (1980) 1 SCC 599***, wherein it was held that –

We hopefully expect that the Central Government will not try to shirk its legal obligation by resorting to any legal technicalities, for we maintain that in a democratic society governed by the rule of law, it is the duty of the State to do what is fair and just to the citizen, and the State should not seek to defeat the legitimate claim of

the citizen by adopting a legalistic attitude but should do what, fairness and justice demand.

The Respondent Board ought to have addressed on this issue on merits; rather than taking such technical pleas. It has recently been held by the Hon'ble Supreme Court in the case of ***State (NCT of Delhi) v. BSK Realtors LLP***, reported in **2024 SCC OnLine SC 1092** that *res-judicata* is in the realm of procedural law which cannot be pressed as a defense which public interest is involved (Para 25).

In the present case, the rate of fuel surcharge or any enhancement or decrease thereof would affect all the consumers in the State of Jharkhand. Therefore, this issue would certainly affect the public interest. Therefore, a technical plea of *res-judicata* ought not to have deterred on Learned Single Judge in deciding this issue.

Moreover, as stated herein above; the Circular dated 14.09.1999 was an internal Circular, and the consumers never had an opportunity to address the same in the first round of litigation.

25. The next issue argued by the Appellants, before the Ld. Single Judge was that the State was bifurcated as on 15.11.2000 and Jharkhand State Electricity Board came into existence on 01.04.2001. Though Jharkhand State Electricity Board adopted tariff of Bihar State Electricity Board till 31.12.2003, but the formula of fuel surcharge being based upon generation and purchase and as well as sale of units have to be worked out after bifurcation of the State and more so, after 01.04.2001, when JSEB came into existence.

On the issue of bifurcation of State and its impact; Ld. Sr. Counsel further contended that in terms of the formula, the generating station of Baruni and Muzzafarpur and purchases made by Bihar State Electricity Board ought to have been deleted from the numerator and so far as

Jharkhand is concerned, and only inclusion in the numerator should be that of Patratu Thermal Power Station and purchase of electricity by Jharkhand State Electricity Board. The denominator ought to have been only the sale of units of the fuel surcharge paying consumers in the State of Jharkhand and not in the entire State of Bihar.

This calculation in the formula will have resulted in great decrease of the fuel surcharge as almost 70% of the consumption of electricity of the unified State of Bihar was after the bifurcation in the new State of Jharkhand.

This aspect of the matter were legal issues which have not been considered by the writ Court, but in Para 36 of the Impugned Judgment, the Court discarded the contention of the Appellant consumers and wrongly observed that fuel surcharge circulars are operative in the State of Jharkhand before the date on which JSEB was created, ignoring the fact that the formula ought to have changed from 01.04.2001 till 31.12.2003, as energy generated in the Power Stations became only one instead of three, and also the purchase of energy by JSEB only should have been taken for consideration for calculations. Accordingly, the calculation of the fuel surcharge had to be changed on and from 01.04.2001.

26. Learned counsel for the respondent submitted that since JSEB's tariff only came into existence on 01.01.2004, therefore, fuel surcharges ought to be continued till 31.12.2003.

27. In this regard, we are of the view that the JSEB had already came into existence on 1.4.2001. The Books of Accounts for both JSEB and BSEB were maintained separately. Therefore, effect of bifurcation of the State must be taken into consideration while calculating fuel surcharge for consumers in the State of Jharkhand. The power generated by the power plants in Bihar and the power

purchased from other sources by BSEB as well as the units sold to consumers in Bihar could not have been taken into consideration while calculating the rate of fuel surcharge in the State of Jharkhand.

28. On the issue of “Delayed Payment Surcharge” it has been submitted that after the Judgment was delivered, all consumers were served with the bills based upon the circulars issued after Judgment in the case of *M/s. Pulak Enterprises* at Patna. However, almost all consumers had challenged those circulars and interim Orders were passed in favour of the consumers.

However, after the impugned judgment, the Board raised balance amount of bills and levied a phenomenal amount of interest which in almost all the cases was about four times of the balance principal amount. All the consumers had continued to make payment of fuel surcharge in terms of the interim orders and as a matter of fact, after the Judgment, the consumers also paid balance amount of principal amount of fuel surcharge. However, despite there being no direction in the Impugned Judgment, the Board levied interest for almost 16-17 years each from the F.Y. 1996-97 upon all consumers.

When the bills were raised after the impugned judgment, certain consumers approached the Hon’ble Supreme Court, and the Hon’ble Supreme Court was pleased to direct that DPS shall not be levied and the consumers were only required to the principal amount at this stage.

Learned senior counsel, lastly submitted that it is evident that working of the fuel surcharge by the Board was absolutely erroneous and was in gross contravention of the directions of the Hon’ble Supreme Court and all the five issues of the rates of fuel surcharge are to be answered in favor of the Petitioner consumers.

It is evident that the bills issued after the impugned judgment are unworkable and will have to be revised in light of the fact that even one of the issues being decided in favor of the consumers.

So far as the levy of delayed payment surcharge is concerned, there are a series of Judgments in respect of the issue that when electricity bills revised and found to be erroneous then in that event Delayed Payment surcharge has to be set aside. He relied upon the following judgments in this regard –

- (i) *M/s. Hotel Woodlands v. JSEB*, LPA No. 274 of 2004 – Para 5
- (ii) *M/s. Raj laxmi factories and Ceramic Works v. BSEB & Ors.*, (1999) 2 BLJR 508 – Paras 15 to 18
- (iii) *M/s. Gaya Roller Flour Mills Pvt. Ltd. v. BSEB*, (1995) 2 PLJR 715 – Paras 9 and 10
- (iv) *M/s. Incore Metal ndCmement (P) Ltd. v. State of Jharkhand*, WP(C) 6587 of 2009 – Paras 12 to 14
- (v) *ManvinderNarain Agarwal v. BSEB &Ors.*, (2002) 3 PLJR 510 – Para 10
- (vi) *Subodh Kumar Poddar v. BSEB &Ors.*, (2002) 3 PLJR 532 – Paras 2, 3 and 9
- (vii) *Kusumam Hotels Pvt. Ltd. v. KSEB &Ors.*, (2008) 13 SCC 213 – Para 45

On the strength of the above referred judgments and the factual background of this case, Ld. Sr. Counsel contended that the fact that bills have to be revised is evident from BSEB 's own Circular dated 01.12.2010 (Annexure-13 dated 22.10.2010, Annexure-14 dated 01.12.2010) wherein BSEB has stated that benefit of Rs. 100 Crores will be given to the consumers, once the amount is received from Coal Companies which would result in an alleged reduction of 6.04 P/KWh in the rates of fuel surcharge for the year 1998-99.

It has been further submitted that even ignoring the fact that BSEB's Circulars only gave benefit of reduction of Rs. 23.22 crores out of Rs. 100 crores, then also as per their

own admission, bills ought to have been revised by reducing 6.04 P/KWh for the year 1998-99.

Hence refund has to be done in any event. Once the revision is done, the question of DPS does not arise. In fact, at the time of raising of the bill after Impugned Order 2015, JSEB has already received Rs. 100 Crores and should have reduced rate for the year 1998-99 and thus no DPS ought to have levied at all.

29. On this last issue with respect to D.P.S., the Board contended that it would be equitable for D.P.S. to be levied as Board was deprived of fuel surcharge during the disposal of the Writ petition. Reference was also made to the Judgment rendered in (2003) 8 SCC 648.

30. In this regard, we are of the view that Board was never deprived of fuel surcharge. The consumers kept paying at old rate as per direction of this Court. Moreover, in the impugned judgment, there was no direction that bills should be raised along with DPS.

Further, the decision relied on by the Respondents is also inaccurate as this would not be a case where there is no change in the rate of fuel surcharge calculated by the Board. Only if there was any interference / no reduction in the calculation of fuel surcharge made by the Board, it would be justified in levying D.P.S. However, as per the Board's own case, the benefit of Rs. 100 Crores has to be given which would result in downward revision of fuel surcharge.

Further, from discussions made hereinabove, it can be seen that calculation of fuel surcharge is totally inaccurate; accordingly, we hold that the same needs to be revised. Once the rates are revised, the original bill will be deemed to be incorrect and there can be no question of levy of interest/DPS thereupon.

31. Hence, we deem it proper to allow the present batch of appeals. Accordingly, the impugned order passed by the writ

court is quashed. Consequently, all the bills which has been impugned in the respective writ applications, are hereby, quashed.

It is ordered that the Bills is to be rework out and the rates of Fuel Surcharge be revised strictly in the line of what has been held by the Patna High Court and the Hon'ble Apex Court and also the finding given by us hereinabove on each and every issue; keeping in mind the fact of Bifurcation of Boards i.e. BSEB and JSEB, amount of Rs.100 Crore received from coal Company and the observation given by us on DPS.

32. For making the revised calculations, we hereby appoint three men committee headed by Hon'ble Mr. Justice Amitabh Kumar Gupta (Retd.), Jharkhand High Court along with two chartered accountants to be nominated by the Chairman of the committee from the names given by both the parties i.e. Board and the Consumers; to examine the calculations.

The committee after coming to the conclusion shall send the calculation to the Board which shall issue fresh Bills to the Consumers for its payment.

The professional fees of the Committee shall be decided by its Chairman and the same will be borne by the appellants.

33. Consequently, all these appeals are disposed of in the manner indicated herein above.

34. Pending I.A.s, in respective appeals, if any, are also closed.

(Rongon Mukhopadhyay, J.)

(Deepak Roshan, J.)