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**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Reserved for orders on : 01/09/2022**

**Order delivered on :03/12/2022**

**WP227 No. 196 of 2013**

- Chhattisgarh State Power Distribution Company Limited, Address – Power Distribution Company Campus, Gudhiari, Post Office Gudhiari, Police Station Gudhiari, Tahsil and District Raipur (C.G.)

---- Petitioner

**Versus**

- Anil Kumar Agrawal S/o Shri Chandrasen Agrawal, Aged About 38 Years, R/o Near Sindhi Gurudwara, Naharpara, Raipur (C.G.) Post Office Ganj, Police Station Ganj, Tahsil and District Raipur (C.G.), Chhattisgarh

---- Respondent

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For Petitioner : Mr. Sudeep Agrawal, Advocate  
For Respondent : Ms. Sameeksha Gupta, Advocate on behalf of  
Mr. B.P. Sharma, Advocate.

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**Hon'ble Shri Justice Rakesh Mohan Pandey**

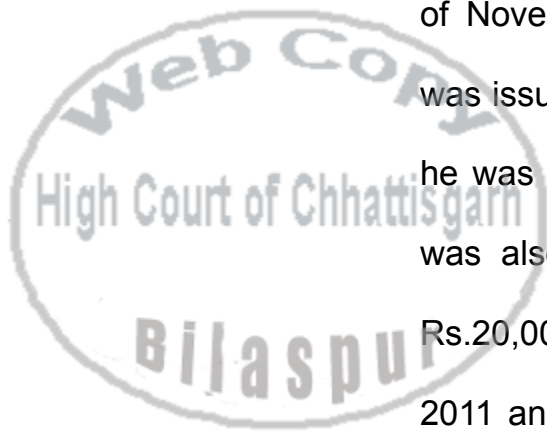
**CAV ORDER**

- 1) The petitioner has filed this petition against the judgment passed by Chairperson, Public Utility, Permanent Lok Adalat, Raipur (C.G.) in Case No.07/2011 dated 31-01-2013 whereby the application moved by respondent under Section 22 of Legal Services Authorities Act, 1987 for refund of Rs.48,000/- of penalty amount, disconnection charges Rs.450/- (three times) and Rs.40,000/- as compensation for mental agony was partly allowed.



2) The case in brief is that, the respondent is consumer of the petitioner and his electricity connection service No. is 100184945551460015-00-271067. He has one more electricity connection bearing service No.1000859096. On 01-09-2010, an inspection was carried out by the officials of the petitioner in the residential premises of the respondent and the inspection report was prepared in presence of the respondent. In inspection, total load of 8465 watt was found which was in excess of the connected load as per agreed 6986 watt and 100 watt was also illegally used for commercial purposes. Thereafter, in the month of November 2010, electricity consumption bill of Rs. 54020/- was issued to the respondent. The respondent objected to it, but he was asked to pay Rs.25,000/- and his electricity connection was also disconnected and out of compulsion, he deposited Rs.20,000/- on 13-01-2011 and thereafter on 28-02-2011, 03-02-2011 and 10-05-2011, he deposited Rs. 6000/-, Rs.5000/- and Rs.21,000/-, respectively and connection charges Rs.450/-. He further pleaded that in the inspection report there are mistakes and representation was moved in this regard before the authorities, but the same was not considered and Rs.48,000/- have been recovered from him. According to the respondent, cause of action arose on 13-01-2011 and thereafter, on 03-03-2011 and 29-04-2011 when the petitioner company recovered Rs.48,000/- from him. He claimed Rs.48,000/- as the amount of penalty, Rs.450/- as connection charges and Rs.40,000/- as compensation for mental agony and harassment.

The petitioner company filed reply to the above stated





application and stated that service connection no. of the respondent is 271067 and it is registered for domestic purposes and the permitted load is 6986 watt. On inspection dated 01-09-2010, the load was found 8565 watt, a report was prepared and its copy was served upon the respondent and there was excess load of 100 kilowatt which was being used for commercial purposes. No objection was raised by the respondent at that time. The act of the respondent is covered under Section 126(4) of the Electricity Act and likewise, according to the clause 11.4 sub-clause (2) of C.G. Electricity Supply Act, 2005, if the load is in excess than permitted, it would come within the purview of Section 126 of the Electricity Act.

The permanent Lok Adalat vide judgment dated 31-01-2013 held that on 01-09-2010 there was no excess load of 100 watt which was being used for commercial purposes, it is not proved that the respondent was using domestic connection for commercial purposes on 01-09-2010, the respondent has deposited Rs.25,000/-, Rs.5000/-, Rs.6000/-, Rs.21,000/- and Rs.450/- on 13-01-2011, 03-02-2011, 28-02-2011, 10-05-2011, respectively, this court has jurisdiction to entertain the application moved by the respondent, said application has been moved within limitation and further, the respondent is entitled to recover Rs.48,000/- as penalty amount.

- 3) Learned counsel for the petitioner submits that the judgment passed by the permanent Lok Adalat is without jurisdiction and the order of the provisional assessment was passed in accordance with Section 126(2) of the Electricity Act, 2003 and

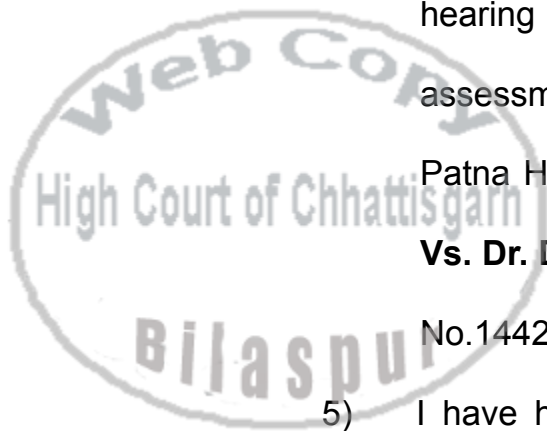




order of final assessment was passed as per the provisions of Section 127 of the Electricity Act, 2003, therefore, the respondent has remedy to prefer appeal before the appellate authority within 30 days.

- 4) Learned counsel for the respondent has not filed return to the petition, but Ms. Sameeksha Gupta submits that the order passed by the learned Permanent Lok Adalat is well within its jurisdiction, the petitioner company has not complied with the provisions enumerated in Section 126 and 127 of the Electricity Act 2003, there was no excess load and no opportunity of hearing was afforded to the respondent before passing the final assessment order. She would rely upon the judgment of the Patna High Court rendered in **Meena Choudhary and another Vs. Dr. Dilip Choudhary and others** Civil Writ Jurisdiction Case No.14426 of 2009 decided on 6-11-2009.

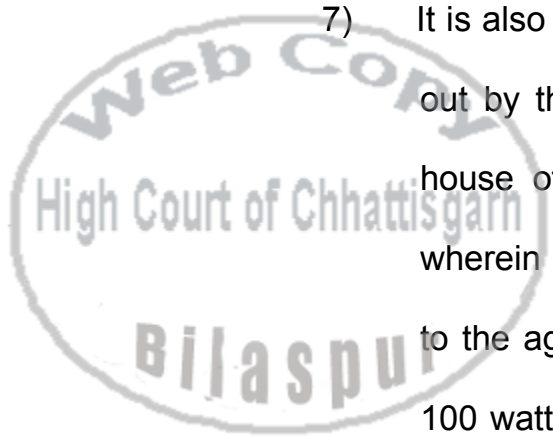
- 5) I have heard learned counsel for the parties and perused the record.
- 6) Perusal of the record shows that the application was moved by the respondent before the Permanent Lok Adalat for refund of penalty amount of Rs.48,000/-, connection charges Rs.450 and compensation of Rs.40,000/- for mental agony and harassment. The application moved by the respondent was replied to by the petitioner company. Objection was also raised by the petitioner company that the learned Permanent Lok Adalat has no jurisdiction to entertain the complaint as in Section 145 of the Electricity Act, 2003 there is provision that jurisdiction of civil court would be barred against any decision taken in pursuance





of Section 126 of the Electricity Act, 2003. The learned Permanent Lok Adalat in para 20 of its judgment held that on 15-12-2010 the electricity bill of Rs.54020/- was issued against the respondent and he was directed to deposit Rs.25,000/-. The respondent deposited the same with protest and a letter was also written to the Divisional Engineer on 19-04-2011 to decide the issue within 15 days for which he has clearly stated that if his matter is not considered and decided, he will approach the Court. But no action was taken; therefore, he filed the instant application.

- 7) It is also apparent that, on 01-09-2010 an inspection was carried out by the officials of the petitioner company in the residential house of the respondent and inspection report was prepared wherein total load of 8465 watt was found which was in excess to the agreed load of 6986 watt. Further, it was also found that 100 watt of electricity was being used for commercial purposes. The report was sent to the respondent and the same was duly received by him. On 12-10-2010, provisional assessment for unauthorized use of electricity was prepared according to the provision of Section 126(2) of the Electricity Act, 2003 and copy was supplied to the respondent. It appears from the documents that the respondent never raised any objection to the provisional assessment, particularly within the period of 30 days as stipulated under sub-section (3) of Section 126 of Electricity Act, 2003. On 13-01-2011 the respondent requested the officials of the petitioner company to convert his electricity connection service No. 1000859096 for commercial purposes. Vide letter





dated 13-01-2011, the respondent requested to clear the dues in installments which was acceded to by the officers of Petitioner Company. The final assessment order was issued on 09-05-2011 and after 11 months, the respondent preferred a case before Permanent Lok Adalat.

- 8) For decision of this case Section 126, 127 and 145 of the Electricity Act, 2003 are relevant and they are reproduced herein:-

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

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

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

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





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

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

**Section 127. Appeal to Appellate Authority** – (1) Any person aggrieved by the final order made under section 126 may, within thirty days of the said order, prefer an appeal in such form, verified in such manner and be accompanied by such fee as may be specified by the State Commission, to an appellate authority as may be prescribed.

(2) No appeal against an order of assessment under sub-section (1) shall be entertained unless an amount equal to half of the assessed amount is deposited in cash or by way of bank draft with the licensee and documentary evidence of such deposit has been enclosed along with the appeal.

(3) The appellate authority referred to in sub-section (1) shall dispose of the appeal after hearing the parties and pass appropriate order and send copy of the order to the assessing officer and the appellant.

(4) The order of the appellate authority referred to in sub-section (1) passed under sub-section (3) shall be final.

(5) No appeal shall lie to the appellate authority referred to in sub-section (1) against the final order made with the consent of the parties.

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





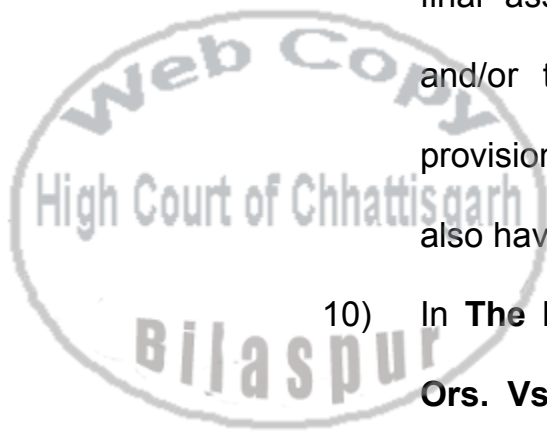
**Section 145. Civil court not to have jurisdiction** – No Civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an assessing officer referred to in section 126 or an appellate authority referred to in section 127 or the adjudicating officer appointed under this Act is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act”

9) In **Metaldyne Industries Ltd. Vs. State of Jharkhand & Ors., AIR 2013 Jharkhand 22**, the Jharkhand High Court has observed that “exercise contemplated for the provisional and final assessment in cases of unauthorized use of electricity and/or theft of energy can be done only in terms of the provisions of Section 126 of the act, for which the consumers also have a remedy of appeal under Section 127 of the act.”

10) In **The Executive Engineer, KPTCL now GESCOM, Bidar & Ors. Vs. Ishwaramma & Anr., AIR 2006 Karnataka 23**, the Karnataka High Court has dealt with the provisions of Section 145 of the Electricity Act, 2003 wherein it was observed as under

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“8. This question regarding the civil courts or any other forums having jurisdiction to deal with the situation on hand fell for consideration before the Apex Court in the case of Punjab State Electricity Board v. Ashwani Kumar, 1997 (5) JT(SC) 182. The Apex Court while interpreting the scope of Section 9 of the Code of Civil Procedure was of the opinion that by necessary implication the cognizance of the civil Court as contemplated in the present set of circumstances is ousted. As a consequence, the Apex Court held that the civil court in the circumstance will not be justified in entertaining the







complaint or giving a declaration when an adequate remedy is provided under the Act for the redressal of the grievances. The relevant discussion is to be found at para 10 which reads as hereunder :-

“10. The question then arises : whether the Civil Court would be justified in entertaining the suit and issue injunction as prayed for? It is true, as contended by Shri Goyal, learned senior counsel, that the objections were raised in the written statement as to the maintainability of the suit but the same given up. Section 9 of C.P.C. provides that Civil Court shall try all suits of civil nature, subject to pecuniary jurisdiction, unless their cognizance is expressly or by necessary implication is barred. Such suit would not be maintainable. It is true that ordinarily, the Civil Court has jurisdiction to go into and try the disputed questions of civil nature, where the fundamental fairness of procedure has been violated. The statutory circulars adumbrated above do indicate that a fundamental fairness of the procedure has been prescribed in the rules and is being followed. By necessary implications, the cognizance of the civil cause has been excluded. As a consequence, the Civil Court shall not be justified in entertaining this suit and giving the declaration without directing the party to avail of the remedy provided under the Indian Electricity Act and the Indian Electricity (Supply) Act and the instructions issued by the Board in that behalf from time to time as stated above.”

- 11) In **Tata Power Delhi Distribution Limited Vs. Rampal**, in the judgment passed on 30-06-2020 in W.P. (C) No.7749/2016 the





issue before the High Court of Delhi was akin to the present case. In para 17(5) of the judgment the jurisdiction of Permanent Lok Adalat in the matter of Electricity Act, 2003 is dealt. In para 30 and 34 it was observed thus:-

“30. Besides, the provisions of section 145 of the Electricity Act also stand in the way of the forum having entertained the dispute. Since the case at hand relates to misuse of electricity, it is covered under section 126 of the Electricity Act. The dispute is therefore amenable to determination by the assessing officer under section 126, by the appellate authority under section 127 and by the adjudicating officer under section 143 of the Electricity Act, by reason of which even the jurisdiction of Civil Court was barred under section 145. So the Presiding Officer could not have entertained the dispute and no injunction could have been granted.

“34. In view of the above discussion this court is of the opinion that :

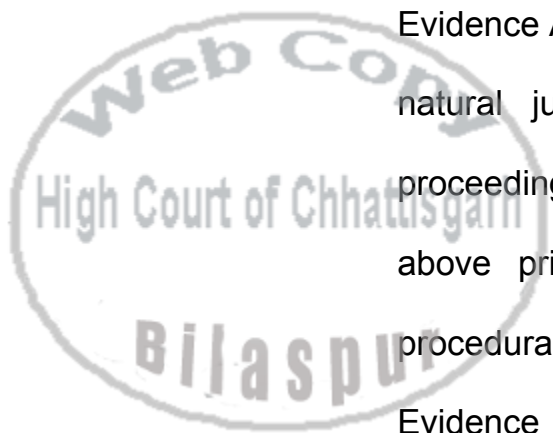
.....d. Fourthly, since the statute provides the mechanism to address the dispute at hand under the scheme of section 126 and 127 of the Electricity Act, a Lok Adalat could not have entered upon any form of adjudication of the dispute and could not have granted interim relief.”

- 12) On the other hand, learned counsel for the respondent has relied upon **Meena Choudhary (supra)**, wherein it was observed that powers of Lok Adalat are not co-extensive with that of civil courts that have full power to take evidence including oral evidence and also to exercise necessary powers under Section 151 of the Code of Civil Procedure. The person will be entitled to invoke plenary jurisdiction of civil court to claim necessary relief on the ground of fraud or other grounds available to the petitioner.





- 13) Sum and substance of the decisions relied upon by the learned counsel for the respondent is that despite bar created under Section 145 of the C.P.C., the Permanent Lok Adalat may exercise powers given in the Civil Procedure Code. The ratio laid down in the cases cited by the respondent do not touch the issue involved in the present case.
- 14) In the case of **Ambika Kumary Vs. State of Kerala, 2011 Lawsuit(Ker) 790**, it is held that Section 22D of the Legal Services Authorities Act, 1987 makes it clear that P.L.A. shall not be bound by the provisions of the Code of Civil Procedure and Evidence Act and all what is required of it is to follow principles of natural justice, objectivity, fair play and equity and if the proceedings are completed and decision rendered following the above principles, then the award cannot be invalidated for procedural non-compliance or other technical non-compliance of Evidence Act or Code of Civil Procedure. By virtue of Sub-sections (2) & (4) of Section 22 E, award of P.L.A. is a decree and the same shall be final and shall not be called in question in any suit, application or in execution proceedings.
- 15) From bare perusal of the provisions given in Section 126 of the Electricity Act, it appears that the consumer has to be served with the notice inviting him to file objection, if any, within stipulated time in terms of Section 126(3). If excess load of consumption is found, assessing officer is required to pass the final order within 30 days from the date of service of such notice of provisional assessment. If the consumer fails to pay the provisional assessment amount as required under Section 126(4) and files an objection under

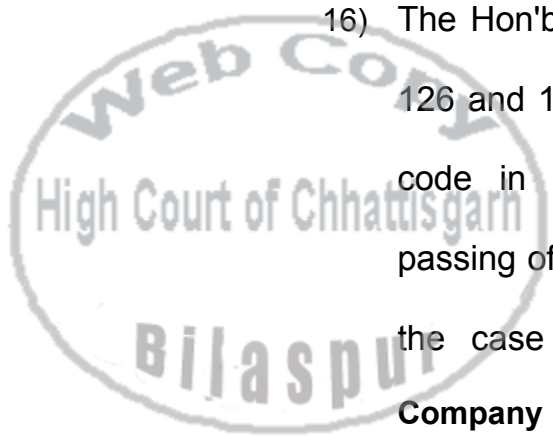




Section 126(3), then after affording opportunity to the consumer, the assessing officer shall assess the amount and pass the order of fine in terms of Section 126(5) of the Electricity Act. Section 126(6) contemplates that the assessment under this Section shall be made at a rate equal to twice the tariff rates applicable for the relevant category of services. After passing of the final assessment order, the consumer has to pay such charges or he may prefer appeal under Section 127 of the Electricity Act, 2003. The appeal under Section 127 would lie only against the final order passed under Section 126 within 30 days.

16) The Hon'ble Supreme Court has held that provisions of Sections 126 and 127 of the 2003 Act read together constitute a complete code in themselves covering all relevant considerations for passing of an order of assessment. The Hon'ble Supreme Court in the case of **Executive Engineer, Southern Electricity Supply Company of Orissa Limited (SOUTHCO) and another Vs. Sri Seetaram Rice Mill, (2012) 2 SCC 108**, while dealing with the provisions of Section 126 and 127 of the Electricity Act, 2003 held thus :-

16. First and foremost, we have to examine how provisions like Section 126 of the 2003 Act should be construed. From the objects and reasons stated by us in the beginning of this judgment, it is clear that "revenue focus" was one of the principal considerations that weighed with the legislature while enacting this law. The regulatory regime under the 2003 Act empowers the Commission to frame the tariff, which shall be the very basis for raising a demand upon a consumer, depending upon the category to which such consumer belongs and the purpose for which the power is sanctioned to such consumer. We are not prepared to accept the contention on behalf of the respondent that the provisions of Section 126





of the 2003 Act have to be given a strict and textual construction to the extent that they have to be read exhaustively in absolute terms.

24. Upon their plain reading, the marked differences in the contents of sections 126 and 135 of the 2003 Act are obvious. They are distinct and different provisions which operate in different fields and have no common premise in law. We have already noticed that sections 126 and 127 of the 2003 Act read together constitute a complete code in themselves covering all relevant considerations for passing of an order of assessment in cases which do not fall under section 135 of the 2003 Act.
37. Whenever the assessing officer arrives at the conclusion that unauthorised use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorised use of electricity has taken place and if such period cannot be ascertained, it shall be limited to a period of 12 months immediately preceding the date of inspection and the assessment shall be made at the rate equal to twice the tariff applicable for the relevant category of service specified under these provisions. This computation has to be taken in terms of Sections 126(5), 126(6) and 127 of the 2003 Act. The complete procedure is provided under these sections. Right from the initiation of the proceedings till preferring of an appeal against the final order of assessment and termination thereof, as such, it is a complete code in itself.
49. Once the court decides that it has to take a purposive construction as opposed to textual construction, then the legislative purpose sought to be achieved by such an interpretation has to be kept in mind. We have already indicated that keeping in view the legislative scheme and the provisions of the 2003 Act, it will be appropriate to adopt the approach of purposive construction on the facts of this case. We have also indicated above that the provisions of Section 126 of the 2003 Act are intended to cover the cases over and above the cases which would be specifically covered under the provisions of section 135 of the 2003 Act.
87. Having dealt with and answered determinatively the questions framed in the judgment, we consider it necessary to precisely record the conclusions of our judgment which are as follows:-
1. whenever the consumer commits the breach of the terms of the agreement, Regulations and the provisions of the Act by consuming electricity in excess





of the sanctioned and connected load, such consumer would be “in blame and under liability” within the ambit and scope of section 126 of the 2003 Act.

2. The expression “unauthorised use of electricity means” as appearing in section 126 of the 2003 Act is an expression of wider connotation and has to be construed purposively in contrast to contextual interpretation while keeping in mind the object and purpose of the Act. The cases of excess load consumption than the connected load inter alia would fall under Explanation (b)(iv) to section 126 of the 2003 Act, besides it being in violation of Regulations 82 and 106 of the Regulations and terms of the Agreement.
3. In view of the language of section 127 of the 2003 Act, only a final order of assessment passed under Section 126(3) is an order appealable under Section 127 and a notice-cum-provisional assessment made under 126(2) is not appealable.
4. Thus, the High Court should normally decline to interfere in a final order of assessment passed by the assessing officer in terms of Section 126(3) of the 2003 Act in exercise of its jurisdiction under Article 226 of the Constitution of India.
5. The High Court did not commit any error of jurisdiction in entertaining the writ petition against the order raising a jurisdictional challenge to the notice/provisional assessment order dated 25-07-2009. However, the High Court transgressed its jurisdictional limitations while travelling into the exclusive domain of the assessing officer relating to passing of an order of assessment and determining the factual controversy of the case.
6. The High Court having dealt with the jurisdictional issue, the appropriate course of action would have been to remand the matter to the assessing authority by directing the consumer to file his objections, if any, as contemplated under Section 126(3) and require the authority to pass a final order of assessment as contemplated under Section 126(5) of the 2003 Act in accordance with law.”



- 17) After going through the law laid down by the Hon'ble Supreme Court and various High Courts, it is quite vivid that the provisions contemplated under Section 126 and 127 of the Electricity Act constitute a complete code in itself and there is remedy of appeal against the final assessment order.
- 18) The Permanent Lok Adalat is not competent to maintain an application under Section 22 of Legal Services Authorities Act, 1987 against the final order passed under Section 126(5) of the



Electricity Act. In the case of **Metaldyne Industries Ltd. Vs. State of Jharkhand & Ors.**, (supra) the High Court of Jharkhand has also taken similar view and held that the Permanent Lok Adalat has no jurisdiction to entertain any complaint against the order of final assessment arrived at in accordance with Section 126(5) of the Electricity Act.

- 19) For the foregoing reasons, the impugned order passed by the Permanent Lok Adalat is not sustainable, therefore, the present writ petition is allowed and the impugned order dated 31-01-2013 passed by the Permanent Lok Adalat Raipur (C.G.) in Case No.07/2011 is set aside. The respondent shall be at liberty to prefer appeal in accordance with Section 127 of the Act, 2003 before the competent authority.

- 20) With the aforesaid observation/s, this petition stands disposed of. No cost(s).

Sd/-  
**(Rakesh Mohan Pandey)**  
Judge