CGHC010350222024 2026:CGHC:41105



**NAFR**

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**WPC No. 5378 of 2024**

**Order Reserved on 12.08.2026**

**Order Delivered on 22.09.2026**

**1 -** Acc Limited A Limited Company Registered Under The Companies Act. 1913, Having Its Registered Office At Adani Corporate House, Shantigram. Near Vaishno Devi Circle, S.G. Highway, Khodiyar, Ahmedabad 382421 And Its Manufacturing Unit At Jamul Cement Works, Jamul District Durg (Chhattisgarh), Through Its Authorised Signatory Sudipta Mondal

--- **Petitioner(s)**

**versus**

**1 -** State Of Chhattisgarh Through The Secretary, Water Resources Department Mantralaya, Mahanadi Bhawan, Naya Raipur (Chhattisgarh)

**2 -** Engineer In Chief Water Resources Department Government Of Chhattisgarh Mantralaya, Mahanadi Bhawan, Naya Raipur (Chhattisgarh)

**3 -** Chief Engineer Water Resources Department, Government Of Chhattisgarh Mahanadi Godawari Kachar Raipur (Chhattisgarh)

**4 -** Superintending Engineer Water Resources Department, Government Of Chhattisgarh, Shivnath Division Durg (C.G.)

**5 -** The Executive Engineer Tandula Water Resources Division, Government Of Chhattisgarh Durg (C.G.)

**6 -** General Manager District Industries And Trade Centre Durg (Chhattisgarh) **... Respondents**

**(Cause-title taken from the Case Information System)**

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For Petitioner **:-** Mr. Ashish Shrivastava, Senior Advocate along with Mr. Rahul Ambast and Mr. Ashutosh Shrivastava, Advocates

For State :- Mr. Shobhit Mishra, Dy. G.A.

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**<u>SB-Hon'ble Shri Justice Amitendra Kishore Prasad</u>**

**<u>CAV Order</u>**

**1.** By way of the present writ petition, the petitioner-Company has invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, challenging the demand notices dated 13.06.2024, whereby demands of ₹1,81,32,897/- towards the Captive Power Plant and ₹1,99,26,915/- towards the Cement Plant have been raised towards alleged unauthorised use of water for the period from 01.04.2020 to 31.05.2024, along with levy of charges at three times the normal rate and interest. The petitioner has also questioned the inaction of the respondents in not considering its applications dated 03.06.2020 and 10.03.2023 for sanction/allotment of surface water, while simultaneously treating the consumption as unauthorised and imposing penal charges. It is contended that the impugned demands are contrary to the order dated 11.01.2022 passed by the Hon'ble Supreme Court in *ACC Ltd. v. State of Chhattisgarh & Others*, in Civil Appeal No.316/2019 arising out of SLP(C) No.24414/2019.

**2.** Following reliefs have been prayed in this petition:-

> *"10.1 That, this Hon'ble High Court may kindly be pleased to call for the entire records of the petitioner Company from the possession of the respondents relating to issuance of impugned letter/demand letter for its kind perusal;*
>
> *10.2 That, this Hon'ble Court may kindly be pleased to issue appropriate writ quashing and setting aside both the impugned memo/letter dated 13.06.2024 (ANNEXURE P/1 & P/2) by declaring the same to be illegal, arbitrary, void, and inoperative in law as far as it relates to charging @three times of water charges and interest on delayed payments;*
>
> *10.3 The Hon'ble High Court may be pleased to issue a writ in the nature of mandamus directing*

*the Respondents state to issue necessary order OR execute an agreement with the Petitioner for sanction of allotment of surface water pursuant to the application dated 03.06.2020 & 10.03.2023 preferred by the Petitioner;*

*10.4 The Hon'ble High Court may be pleased to issue a writ in the nature of mandamus forbearing the respondents from raising any demand or Bill for levy of water charge three times the rate & along with interest in respect of use of water by the petitioner; which gets collected in the natural course in the worked out pits in the leased area in the course of mining.*

*10.4 Any other relief/reliefs, which this Hon'ble Court may think fit and proper in the facts and circumstances of the case, with cost of thepetition, may also please be granted to the petitioner."*

**3.** Facts of the case in brief are that the petitioner-Company is engaged in the business of manufacture and sale of cement and clinker and operates its unit at Jamul Cement Works, Jamul, District Durg, Chhattisgarh. For ensuring uninterrupted power supply to its manufacturing unit, the petitioner has established a 25 MW Captive Power Plant at the same premises. The petitioner also holds a mining lease dated 12.06.1963 for extraction of limestone, which is the basic raw material for manufacture of cement and clinker. In the mined-out areas, certain ponds have naturally/self-formed and the rainwater accumulated therein is utilized by the petitioner for the requirements of its Cement Plant and Captive Power Plant. The petitioner contends that such water is neither supplied through any canal or irrigation system established by the Government nor is it used for irrigation/agricultural purposes. Earlier, the respondent authorities issued demand notices dated 06.02.2013 demanding alleged water charges of ₹1,89,12,368/- in respect of the Cement Plant and ₹1,55,39,922/- in respect of the Captive Power Plant. The petitioner sought the basis and relevant notifications for such demands and was supplied the notifications dated 21.03.2006 and 31.05.2010. The petitioner submitted representations contending that Sections 37 and 40 of the Chhattisgarh Irrigation Act, 1931 and the aforesaid notifications were not applicable, as the water being utilized by it was not supplied from any Government canal or irrigation source. Despite the representations, the authorities threatened levy of penalty at three times the water charges and insisted upon payment. Aggrieved by the aforesaid action, the petitioner approached this Court by filing W.P.(C) No.519/2013. By order dated 17.07.2014, this Court observed that the demand had been raised for the first time after several years without affording an opportunity of hearing to the petitioner and directed the authorities to provide post-decisional hearing and decide the petitioner's representation in accordance with law. The petitioner thereafter preferred W.A. No.340/2014. During the pendency of the appeal, this Court directed that no coercive steps be taken against the petitioner in respect of the impugned demand. Subsequently, issues relating to the validity and interpretation of Rules 71-A and 73 of the Chhattisgarh Irrigation Rules, 1974 arose, whereafter the petitioner was permitted to challenge the said provisions separately. Accordingly, the petitioner filed W.P.(C) No.774/2015 challenging the validity of Rules 71-A and 73 of the Chhattisgarh Irrigation Rules, 1974 and the consequential demand of water charges. The said writ petition was dismissed by this Court on 02.08.2019, upholding the validity of the aforesaid provisions. The petitioner challenged the said order before the Hon'ble Supreme Court by filing SLP(C) No.24414/2019. During the proceedings, the Hon'ble Supreme Court, vide order dated 22.11.2021, directed the State to recompute the water consumption for the relevant period by associating representatives of the petitioner and thereafter compute and communicate the water charges on the basis of such assessment.

**4.** Pursuant thereto, the respondent authorities recomputed the water consumption and issued a revised bill dated 09.12.2021 for the period from 2010-11 to 2019-20. The petitioner deposited the amount demanded pursuant to the revised assessment. Thereafter, on 11.01.2022, the Hon'ble Supreme Court, while disposing of Civil Appeal No.316/2019 arising from SLP(C) No.24414/2019, considering the peculiar facts and the dispute regarding water consumption by the petitioner for its Cement Plant and Captive Power Plant, directed the petitioner to pay the outstanding water consumption charges within the stipulated period and specifically directed that no penalty be imposed.

**5.** During the pendency of the proceedings before the Hon'ble Supreme Court, the petitioner had already submitted an application dated 03.06.2020 before the competent authority seeking sanction/allotment of surface water for its Cement Plant and Captive Power Plant. The petitioner requested that its application be considered so that water could be utilized upon obtaining the requisite allotment and further requested waiver of the additional/penal charges. However, no decision was communicated by the respondents. Subsequently, on the instructions of the respondents, the petitioner submitted another application in the prescribed format on 10.03.2023 seeking sanction/allotment of surface water. Despite the same, no final decision was taken by the respondent authorities. In the meantime, the petitioner continued to pay water charges at the normal applicable rate. The petitioner also submitted a representation dated 15.03.2024 against the water charges bill dated 01.02.2024, requesting waiver of the three-times charges in view of the order dated 11.01.2022 passed by the Hon'ble Supreme Court and pointing out that its applications for allotment of surface water were still pending consideration before the authorities. The said representation also did not receive any effective response. Subsequently, the petitioner received the impugned demand notices dated 13.06.2024 issued by the Executive Engineer, Tandula Water Resources Division, Durg, whereby an amount of ₹1,99,26,915/- was demanded in respect of the Cement Plant and ₹1,81,32,897/- in respect of the Captive Power Plant for the period from 01.04.2020 to 31.05.2024. The demands were raised by treating the alleged consumption as unauthorised and by applying three times the normal rate of water charges, besides levying interest for the alleged delayed payment. The petitioner submitted a representation dated 28.06.2024 challenging the aforesaid demands and specifically contended that the levy of three-times charges was contrary to the order dated 11.01.2022 passed by the Hon'ble Supreme Court. It was further pointed out that the petitioner had duly approached the department for allotment of surface water but the applications remained pending due to inaction on the part of the respondents. Without prejudice to its rights and contentions, the petitioner deposited the water charges at the normal rate for the relevant period, while disputing the penal component. Earlier, the aforesaid subsequent developments and the impugned demand were sought to be brought on record in W.P.(C) No.1598/2015. However, when the matter was taken up, the petitioner sought permission to withdraw the said writ petition with liberty to challenge the subsequent demand notices by filing a fresh writ petition. The petition was accordingly withdrawn with liberty. It is in the aforesaid factual background that the petitioner has filed the present writ petition, principally contending that the impugned demand notices dated 13.06.2024, insofar as they impose water charges at three times the normal rate along with interest, are arbitrary and contrary to the directions of the Hon'ble Supreme Court dated 11.01.2022. It is further contended that the respondents, having failed to decide the petitioner's applications for allotment of surface water, cannot subsequently penalize the petitioner by treating the use as unauthorised for the intervening period.

**6.** Learned counsel for the petitioner submits that the impugned demand dated 13.06.2024, whereby water charges have been levied at three times the normal rate for the Cement Plant as well as Captive Power Plant, is arbitrary, illegal and contrary to the judgment dated 11.01.2022 passed by the Hon'ble Supreme Court in *ACC Ltd. v. State of Chhattisgarh & Others*, Civil Appeal No.316/2022 arising out of SLP(C) No.24414/2019. It is submitted that the Hon'ble Supreme Court, after noticing the dispute regarding water consumption, specifically directed that no penalty be imposed and required the petitioner to pay only the outstanding water consumption charges. It is contended that the respondents, by the impugned demand for the subsequent period, are seeking to impose the very same penal liability which had already been disapproved by the Hon'ble Supreme Court. It is further submitted that Rule 73 of the Chhattisgarh Irrigation Rules, 1974 permits charging at three times the volumetric rate only in cases specifically contemplated therein, namely unauthorised use of water or wastage of water. According to the petitioner, the water in question was collected from natural sources in mined-out pits and the petitioner had already applied for allotment of surface water. Therefore, the respondents could not mechanically treat the entire consumption as unauthorised and levy three times the normal rate.

**7.** Learned counsel submits that the impugned demand, insofar as it seeks to impose penal charges, is also without jurisdiction. Rule 193 of the Chhattisgarh Irrigation Rules, 1974 specifically provides for imposition of penalty in case of delayed payment of water rate and confers such power upon the Canal Deputy Collector. The Executive Engineer, therefore, could not have assumed such jurisdiction and imposed an additional penal liability upon the petitioner. It is further submitted that the respondents have illegally added interest to the alleged water charges without there being any substantive statutory provision authorising such levy under the Chhattisgarh Irrigation Act, 1931 or the Rules of 1974. Relying upon ***India Carbon Ltd. v. State of Assam*****, (1997) 6 SCC 479,** ***V.V.S. Sugars v. Government of A.P.*****, (1999) 4 SCC 192,** ***J.K. Synthetics Ltd. v. Commercial Taxes Officer*****, (1994) 4 SCC 276** and ***Shree Bhagwati Steel Rolling Mills v. Commissioner of Central Excise, (2016) 3***

***SCC 643***, learned counsel submits that interest can be levied only where the statute itself contains a substantive provision authorising such levy. In the absence of such provision, the demand of interest is wholly without authority of law.

**8.** Learned counsel submits that the petitioner had submitted an application dated 03.06.2020 for allotment of surface water and subsequently submitted the prescribed application dated 10.03.2023. Despite the applications remaining pending and never having been rejected, the respondents have failed to take a decision thereon, while simultaneously treating the petitioner's consumption as unauthorised and imposing penal charges. It is contended that the respondents cannot take advantage of their own inaction and penalise the petitioner for non-allotment of water when the petitioner had duly approached the competent authority for regularisation/allotment. Learned counsel further submits that there was no wilful default on the part of the petitioner. The issue regarding levy and payment of water charges remained the subject matter of proceedings before this Court and the Hon'ble Supreme Court, and the petitioner had continuously contested the additional penal liability while making payment of the principal water charges. In such circumstances, levy of penalty and interest is unjustified.

**9.** It is also contended that the impugned demands were issued without any prior show-cause notice or opportunity of hearing and without following the procedure contemplated under Rules 75 to 78 read with Rule 71-A of the Chhattisgarh Irrigation Rules, 1974. The demand, therefore, violates the principles of natural justice and Articles 14 and 265 of the Constitution of India. In substance, learned counsel for the petitioner submits that the respondents, despite the specific order of the Hon'ble Supreme Court not to impose penalty, have again imposed water charges at three times the normal rate and interest, while simultaneously failing to decide the petitioner's applications for allotment of surface water. The impugned demands are, therefore, arbitrary, without jurisdiction and liable to be quashed.

**10.** Learned counsel appearing for the respondents/State, opposing the writ petition, submits that the impugned demand notices dated 13.06.2024 have been issued strictly in accordance with the provisions of the Chhattisgarh Irrigation Act, 1931, the Chhattisgarh Irrigation Rules, 1974 and the notifications/circulars issued by the State Government from time to time. It is submitted that the petitioner Company has been using water from self-constructed groundwater/surface water sources for its Cement Plant and 25 MW Captive

Power Plant for commercial and industrial purposes without obtaining the requisite permission/allotment from the competent authority. In view of Section 26 of the Act, all rights in the water of natural sources vest in the State Government, while Section 40 specifically empowers the State Government to regulate the supply of water for industrial purposes and determine the charges payable therefor. It is further submitted that the petitioner had been using such water without obtaining valid permission and, therefore, the water charges were liable to be recovered in accordance with the applicable statutory provisions and rates prescribed by the State Government. The demand for the period from 01.04.2020 to 31.05.2024 was calculated on the basis of the actual quantity of water consumed by the petitioner, as verified by the authorities, and after giving credit for the amounts already deposited by the petitioner. The demand raised in respect of the Captive Power Plant was Rs.2,64,10,250/-, out of which Rs.82,77,353/- had already been paid, leaving an outstanding amount of Rs.1,81,32,897/-. Similarly, in respect of the Cement Plant, the total demand was Rs.2,92,21,181/-, against which Rs.92,94,266/- had been deposited, leaving Rs.1,99,26,915/- outstanding.

**11.** Learned State counsel further submits that the order dated 11.01.2022 passed by the Hon'ble Supreme Court in Civil Appeal No.316/2022 arising out of SLP (C) No.24414/2019 does not prohibit the respondents from recovering the legitimate water consumption charges for the subsequent period. It is contended that the Hon'ble Supreme Court had directed that no penalty be imposed for the period then in dispute, whereas the present demand pertains to the subsequent period from April 2020 to May 2024. According to the State, the amount described by the petitioner as penalty at three times the rate is the rate applicable under the statutory scheme for unauthorized use of water, and the respondents have otherwise acted in accordance with the applicable provisions. It is also submitted that the petitioner cannot claim any right to use the water merely on the basis of the mining lease, particularly when the earlier proceedings between the parties had already recognized the requirement of obtaining permission for appropriation and use of water from the leased area. The petitioner had also not obtained the requisite allotment of surface water from the competent authority during the relevant period. The subsequent application made by the petitioner for allotment of surface water is still under consideration and mere pendency of such application cannot be treated as a grant of permission or confer any deemed right to use the water without payment of applicable charges.

**12.** Learned State counsel submits that the petitioner itself had earlier litigated the issue before this Court and thereafter before the Hon'ble Supreme Court, and the State authorities, pursuant to the directions of the Hon'ble Supreme Court dated 22.11.2021, had recomputed the water consumption for the period April 2010 to March 2020 in association with the petitioner. The petitioner thereafter deposited the principal water charges, and the Hon'ble Supreme Court, vide order dated 11.01.2022, merely waived the penalty for the period in dispute and directed payment of the outstanding water consumption charges. The said order, according to the State, cannot be construed as conferring upon the petitioner a perpetual exemption from payment of water charges or from liability arising from subsequent unauthorized use. It is further submitted that the levy of interest is consequential upon the petitioner's failure to pay the water charges within the prescribed period and that the petitioner cannot take advantage of its own failure to make timely payment. The State therefore submits that the impugned demands do not suffer from want of jurisdiction, arbitrariness or violation of the principles of natural justice and that no interference under Article 226 of the Constitution of India is warranted. On these grounds, learned State counsel prays for dismissal of the writ petition.

**13.** I have heard learned counsel for the petitioner as well as learned State counsel appearing for the respondents and have perused the pleadings, documents placed on record and the material available before this Court.

**14.** The principal challenge in the present petition is to the two demand notices dated 13.06.2024 issued by respondent No.5, whereby demands of Rs.1,81,32,897/- in respect of the Captive Power Plant and Rs.1,99,26,915/- in respect of the Cement Plant have been raised against the petitioner for the period from 01.04.2020 to 31.05.2024. The petitioner does not dispute the actual consumption of water as such, but essentially questions the authority of the respondents to levy charges at three times the normal rate by treating the use as unauthorised and further questions the levy of interest on the outstanding amount.

**15.** From the material placed on record, it is not in dispute that the petitioner-company is operating its Cement and Clinker manufacturing unit at Jamul, District Durg and is also operating a 25 MW Captive Power Plant. It is also not in dispute that the petitioner has been using water from the sources situated in the mining/leased area for its industrial activities. The earlier proceedings between the parties disclose that the issue regarding levy of water charges on the petitioner has been the subject matter of adjudication before this Court as well as before the Hon'ble Supreme Court. The petitioner had earlier challenged the demand raised by the authorities in WPC No.519 of 2013. The said petition was disposed of by this Court on 17.07.2014 with a direction to provide post-decisional hearing to the petitioner and to decide its representations in accordance with law. Thereafter, Writ Appeal No.340 of 2014 was preferred and, subsequently, WPC No.774 of 2015 was instituted wherein the petitioner also questioned the validity/applicability of Rule 71-A and Rule 73(1) of the Chhattisgarh Irrigation Rules, 1974. WPC No.774 of 2015 was dismissed by this Court on 02.08.2019. While doing so, this Court noticed, inter alia, the terms of the mining lease and held that appropriation or use of water from or collected in the leased land could be made only with the written permission of the District Collector and that the petitioner had not obtained such permission. The authority of the State to levy water charges under the statutory provisions was also noticed. The matter thereafter travelled to the

Hon'ble Supreme Court in SLP (C) No.24414 of 2019, which was subsequently converted into Civil Appeal No.316 of 2022. During the proceedings before the Hon'ble Supreme Court, the question of actual consumption of water for the period from April, 2010 to March, 2020 was considered. By order dated 22.11.2021, the respondents were directed to recompute the water consumption in association with the representatives of the petitioner and communicate the amount of water consumption charges to the petitioner. The question of penalty was kept open. Pursuant thereto, the consumption was reassessed and the respondents quantified the water charges for the aforesaid period. Thereafter, by order dated 11.01.2022, the Hon'ble Supreme Court disposed of the appeal with a specific direction that it was appropriate not to impose any penalty and directed the petitioner to pay the outstanding amount of water consumption charges within the stipulated period.

**16.** The significance of the aforesaid order of the Hon'ble Supreme Court cannot be lost sight of. The direction was in the context of the dispute relating to the period up to March, 2020 and, therefore, the respondents could not treat the said order as permitting them to recover, for the same period, any amount by merely changing the nomenclature of the demand from "penalty" to "interest". At the same time, the order dated 11.01.2022 does not amount to a declaration that the petitioner is permanently exempted from payment of water charges or that its subsequent use of water would automatically become authorised.

**17.** The petitioner has principally relied upon the direction of the Hon'ble Supreme Court that no penalty be imposed. The respondents, on the other hand, contend that the impugned demands are not penalties imposed pursuant to Rule 73 but represent water charges calculated with reference to the rate applicable to unauthorised use and that the amount remaining unpaid has further been subjected to interest. Thus, the real controversy is not merely one of nomenclature but whether the respondents have correctly exercised the statutory power while raising the impugned demands.

**18.** Section 26 of the Chhattisgarh Irrigation Act, 1931 declares the rights of the Government in respect of water in rivers, natural streams, natural drainage channels, natural lakes and other natural collections of water, subject to the statutory exceptions. Section 40 further contemplates supply of water for industrial, urban or other purposes not connected with agriculture and provides that the conditions of supply and charges are to be fixed in accordance with the Act and the

Rules framed thereunder. Therefore, the petitioner's contention that merely because the water was collected in the mined-out area or was drawn from a self-constructed source, the same automatically became the petitioner's exclusive property and fell outside the regulatory framework of the Irrigation Act, cannot be accepted in view of the earlier adjudication between the parties. More particularly, this Court in the earlier proceedings had already considered the petitioner's rights under the mining lease and the requirement of permission for appropriation/use of water. However, the aforesaid conclusion does not by itself answer the legality of the particular computation made in the impugned notices dated 13.06.2024. The statutory authority is bound to demonstrate that the particular rate and the particular component of the demand have been imposed strictly in accordance with the Act, Rules and the applicable notifications/circulars. A demand raised by a statutory authority must have a clear statutory foundation and cannot be sustained merely on the assertion that the use was unauthorised.

**19.** In this regard, Rule 73(1) of the Chhattisgarh Irrigation Rules, 1974 provides for charging water used in an unauthorised manner, otherwise than on cultivated land, at thrice the prescribed volumetric rate. The respondents have relied upon this provision for justifying the higher rate. The petitioner, however, submits that its case does not fall within the statutory expression of unauthorised use and that, in any event, the order of the Hon'ble Supreme Court dated 11.01.2022 prohibits imposition of penalty.

**20.** Having considered the rival submissions, this Court is of the view that the expression "penalty" and the statutory rate applicable to unauthorised use cannot be treated as wholly interchangeable without examining the statutory scheme and the factual basis on which the demand has been calculated. The mere description of an amount as "water charges" cannot validate a demand which, in substance, imposes a penal liability, nor can the earlier order of the Hon'ble Supreme Court be circumvented by adopting a different nomenclature.

**21.** The respondents have also relied upon the fact that the petitioner had been using water for commercial and industrial purposes without obtaining requisite permission/allotment. That aspect gives the respondents authority to regulate the use and recover lawful water charges. However, before imposing a charge at three times the normal rate for the subsequent period, the authority is required to clearly establish the factual and statutory basis for treating the particular consumption as unauthorised and to apply the correct statutory provision and applicable rate. There is another important aspect. The petitioner asserts that it had approached the competent authority for allotment/permission for surface water and that its application remained pending. The respondents also admit that an application for allotment of surface water was subsequently submitted and remained pending consideration. Thus, while pendency of an application by itself cannot confer a deemed statutory permission upon the petitioner in the absence of a provision creating such a deeming fiction, the competent authority was nevertheless required to consider and decide the application in accordance with law.

**22.** Consequently, the petitioner's submission that the application should automatically be deemed to have been allowed merely because it was not rejected cannot be accepted. At the same time, the respondents cannot indefinitely keep the petitioner's application pending and simultaneously proceed on the footing that the petitioner is an unauthorised user, without taking a decision upon its request for regularisation/allotment in accordance with the governing statutory framework.

**23.** The petitioner has further challenged the levy of interest. On this aspect, the legal position is well settled that interest on a statutory liability cannot ordinarily be recovered unless there is substantive statutory authority for such levy.

**24.** The Hon'ble Supreme Court in the matter of ***J.K. Synthetics Ltd. v. Commercial Taxes Officer, (1994) 4 SCC 276*** has held as under:-

> *"**16.** It is well-known that when a statute levies a tax it does so by inserting a charging section by which a liability is created or fixed and then proceeds to provide the machinery to make the liability effective. It, therefore, provides the machinery for the assessment of the liability already fixed by the charging section, and then provides the mode for the recovery and collection of tax, including penal provisions meant to deal with defaulters. Provision is also made for charging interest on delayed payments, etc. Ordinarily the charging section which fixes the liability is strictly construed but that rule of strict construction is not extended to the machinery provisions which are construed like any other statute. The machinery provisions must, no doubt, be so construed as would effectuate the object and purpose of the statute and not defeat the same. (See Whitney v. IRC [1926 AC 37 : 42 TLR 58] , CIT v. Mahaliram Ramjidas [(1940) 8 ITR 442 : AIR 1940 PC 124 : 67 IA 239] , India United Mills Ltd. v. Commissioner*

*of Excess Profits Tax, Bombay [(1955) 1 SCR 810 : AIR 1955 SC 79 : (1955) 27 ITR 20] and Gursahai Saigal v. CIT, Punjab [(1963) 3 SCR 893 : AIR 1963 SC 1062 : (1963) 48 ITR 1] ). But it must also be realised that provision by which the authority is empowered to levy and collect interest, even if construed as forming part of the machinery provisions, is substantive law for the simple reason that in the absence of contract or usage interest can be levied under law and it cannot be recovered by way of damages for wrongful detention of the amount. (See Bengal Nagpur Railway Co. Ltd. v. Ruttanji Ramji [AIR 1938 PC 67 : 65 IA 66 : 67 CLJ 153] and Union of India v. A.L. Rallia Ram [(1964) 3 SCR 164, 185-90 : AIR 1963 SC 1685] ). Our attention was, however, drawn by Mr Sen to two cases. Even in those cases, CIT v. M. Chandra Sekhar [(1985) 1 SCC 283 : 1985 SCC (Tax) 85 : (1985) 151 ITR 433] and Central Provinces Manganese Ore Co. Ltd. v. CIT [(1986) 3 SCC 461 : 1986 SCC (Tax) 601 : (1986) 160 ITR 961] , all that the Court pointed out was that provision for charging interest was, it seems, introduced in order to compensate for the loss occasioned to the Revenue due to delay. But then interest was charged on the strength of a statutory provision, may be its objective was to compensate the Revenue for delay in payment of tax. But regardless of the reason which impelled the Legislature to provide for charging interest, the Court must give that meaning to it as is conveyed* *by the language used and the purpose to be achieved. Therefore, any provision made in a statute for charging or levying interest on delayed payment of tax must be construed as a substantive law and not adjectival law. So construed and applying the normal rule of interpretation of statutes, we find, as pointed out by us earlier and by Bhagwati, J. in the Associated Cement Co. case [(1981) 4 SCC 578 : 1982 SCC (Tax) 3 : (1981) 48 STC 466] , that if the Revenue's contention is accepted it leads to conflicts and creates certain anomalies which could never have been intended by the Legislature."*

**25.**In the matter of ***India Carbon Ltd. v. State of Assam, (1997) 6 SCC 479,*** it has been held as under:-

*"5. It was contended before the learned third Judge that, there being no mention of interest in the first part of Section 9(2) of the Central Act, the appellants were not liable to pay interest as aforestated. Reliance was placed upon the judgment of this Court in Khemka & Co. (Agencies) (P) Ltd. v. State of Maharashtra [(1975) 2 SCC 22 : 1975 SCC (Tax) 227 : (1975) 3 SCR 753] . The learned third Judge noted the view taken by his two brother Judges on the first question and found that there was unanimity on the result, though for different reasons. He, therefore, took the same view and held that interest was payable by the appellants on account of delay in payment of Central sales tax*

*even though no specific provision had been made in the Central Act in this regard.*

*6. Our attention was invited to the Constitution Bench judgment in J.K. Synthetics Ltd. v. CTO [(1994) 4 SCC 276] where it has been held that provisions relating to the charging and levying of interest in a statute are provisions of substantive law. The relevant paragraph of the judgment may be extracted: (SCC pp. 291-92)*

*"16. It is well known that when a statute levies a tax it does so by inserting a charging section by which a liability is created or fixed and then proceeds to provide the machinery to make the liability effective. It, therefore, provides the machinery for the assessment of the liability already fixed by the charging section, and then provides the mode for the recovery and collection of tax, including penal provisions meant to deal with defaulters. Provision is also made for charging interest on delayed payments, etc. Ordinarily the charging section which fixes the liability is strictly construed but that rule of strict construction is not extended to the machinery provisions which are construed like any other statute. The machinery provisions must, no doubt, be so construed as would effectuate the object and purpose of the statute and not defeat the same. (See Whitney v. IRC [1926 AC 37 : 42 TLR 58] , CIT v. Mahaliram Ramjidas [(1940) 8 ITR 442 : AIR 1940 PC 124 : 67 IA 239] , India*

*United Mills Ltd. v. Commr. of Excess Profits Tax [AIR 1955 SC 79 : (1955) 27 ITR 20] and Gursahai Saigal v. CIT [AIR 1963 SC 1062 : (1963) 48 ITR 1] .) But it must also be realised that provision by which the authority is empowered to levy and collect interest, even if construed as forming part of the machinery provisions, is substantive law for the simple reason that in the absence of contract or usage interest can be levied under law and it cannot be recovered by way of damages for wrongful detention of the amount. (See Bengal Nagpur Rly. Co. Ltd. v. Ruttanji Ramji [AIR 1938 PC 67 : 65 IA 66] and Union of India v. A.L. Rallia Ram [AIR 1963 SC 1685 : (1964) 3 SCR 164] .) Our attention was, however, drawn by Mr Sen to two cases. Even in those cases, CIT v. M. Chandra Sekhar [(1985) 1 SCC 283 : 1985 SCC (Tax) 85] and Central Provinces Manganese Ore Co. Ltd. v. CIT [(1986) 3 SCC 461 : 1986 SCC (Tax) 607] , all that the Court pointed out was that provision for charging interest was, it seems, introduced in order to compensate for the loss occasioned to the Revenue due to delay. But then interest was charged on the strength of a statutory provision, maybe its objective was to compensate the Revenue for delay in payment of tax. But regardless of the reason which impelled the Legislature to provide for charging interest, the Court must give that meaning to it as is conveyed by the language used and the purpose to be* *achieved. Therefore, any provision made in a statute for charging or levying interest on delayed payment of tax must be construed as a substantive law and not adjectival law. So construed and applying the normal rule of interpretation of statutes, we find, as pointed out by us earlier and by Bhagwati, J. in the Associated Cement Co. case [Associated Cement Co. Ltd. v. CTO, (1981) 4 SCC 578 : 1982 SCC (Tax) 3] , that if the Revenue's contention is accepted it leads to conflicts and creates certain anomalies which could never have been intended by the Legislature."*

*7. This proposition may be derived from the above: interest can be levied and charged on delayed payment of tax only if the statute that levies and charges the tax makes a substantive provision in this behalf."*

**26.**Further, in the matter of ***V.V.S. Sugars v. Government of A.P., (1999) 4 SCC 192***, it has been held as under:-

*"6. This Court in India Carbon Ltd. v. State of Assam [(1997) 6 SCC 479] has held, after analysing the Constitution Bench judgment in J.K. Synthetics Ltd. v. CTO [(1994) 4 SCC 276] that interest can be levied and charged on delayed payment of tax only if the statute that levies and charges the tax makes a substantive provision in this behalf. There being no substantive provision in the Act for the levy of*

*interest on arrears of tax that applied to purchases of sugarcane made subsequent to the date of commencement of the amending Act, no interest thereon could be so levied, based on the application of the said Rule 45 or otherwise."*

**27.**Also, in the matter of ***Shree Bhagwati Steel Rolling Mills vs. Commissioner of Central Excise and Another (2016) 3 SCC 643***, the Hon'ble Supreme Court has held as under:-

*30. On merits, the matter is no longer res integra. A Constitution Bench decision of this Court in V.V.S. Sugars v. State of A.P. [V.V.S. Sugars v. State of A.P., (1999) 4 SCC 192] has held, following two earlier judgments of this Court, as follows : (SCC p. 195, para 6)*

*"6. This Court in India Carbon Ltd. v. State of Assam [India Carbon Ltd. v. State of Assam, (1997) 6 SCC 479] has held, after analysing the Constitution Bench judgment in J.K. Synthetics Ltd. v. CTO [J.K. Synthetics Ltd. v. CTO, (1994) 4 SCC 276] that interest can be levied and charged on delayed payment of tax only if the statute that levies and charges the tax makes a substantive provision in this behalf. There being no substantive provision in the Act for the levy of interest on arrears of tax that applied to purchases of sugarcane made subsequent to the date of commencement of the amending Act, no*

*interest thereon could be so levied, based on the application of the said Rule 45 or otherwise.”*

*31. Applying the Constitution Bench decision [V.V.S. Sugars v. State of A.P., (1999) 4 SCC 192] stated above, it will have to be declared that since Section 3-A, which provides for a separate scheme for availing facilities under a compound levy scheme, does not itself provide for the levying of interest, Rules 96-ZO, 96-ZP and 96-ZQ cannot do so and therefore on this ground the appellant in Shree Bhagwati Steel Rolling Mills has to succeed. On this ground alone therefore the impugned judgment [Shree Bhagwati Steel Rolling Mills v. CCE, 2006 SCC OnLine P&H 1434 : (2007) 2 RCR (Civil) 241] is set aside. That none of the other provisions of the Central Excise Act can come to the aid of the Revenue in cases like these has been laid down by this Court in Hans Steel Rolling Mill v. CCE [Hans Steel Rolling Mill v. CCE, (2011) 3 SCC 748] as follows : (SCC p. 751, para 13)*

*“13. On going through the records it is clearly established that the appellants are availing the facilities under the compound levy scheme, which they themselves opted for and filed declarations furnishing details about the annual capacity of production and duty payable on such capacity of production. It has to be taken into consideration that the compounded levy scheme for collection of duty based on annual capacity of*

> *production under Section 3 of the Act and the 1997 Rules is a separate scheme from the normal scheme for collection of Central excise duty on goods manufactured in the country. Under the same, Rule 96-ZP of the Central Excise Rules stipulates the method of payment and Rule 96-ZP contains detailed provision regarding time and manner of payment and it also contains provisions relating to payment of interest and penalty in the event of delay in payment or non-payment of dues. Thus, this is a comprehensive scheme in itself and general provisions in the Act and the Rules are excluded."*

**28.** The respondents have referred to Rule 193 of the Chhattisgarh Irrigation Rules, 1974 and have sought to justify the levy of additional liability on account of non-payment. Rule 193, however, specifically identifies the authority competent to impose the penalty for non-payment of canal revenue within the prescribed period. Therefore, the Executive Engineer cannot assume a power which the Rules confer upon another statutory authority. The source and extent of jurisdiction of the officer issuing the demand must be traceable to the statute or the Rules.

**29.** In the present case, the impugned notices have been issued by the Executive Engineer and the computation includes a substantial component described as interest. The respondents have not satisfactorily demonstrated before this Court the precise statutory provision under which the Executive Engineer was competent to impose such interest for the entire period from 01.04.2020 to 31.05.2024, particularly when the earlier dispute regarding water charges had remained subject matter of litigation and the Hon'ble Supreme Court had specifically directed that no penalty be imposed for the earlier disputed period.

**30.** It is also relevant that the impugned demands cover the period commencing immediately after the period considered by the Hon'ble Supreme Court. The respondents are, of course, entitled to recover lawful charges for actual consumption during the subsequent period, subject to the applicable statutory rates. But the respondents cannot mechanically apply the consequence of unauthorised use and add interest without first determining the petitioner's liability in accordance with the statutory procedure and by the competent authority.

**31.** The contention of the petitioner regarding absence of notice and opportunity of hearing also requires consideration.

Though in every case involving a mere arithmetical demand of admitted statutory dues a prior hearing may not necessarily be required, the present demand is not a simple computation of undisputed charges. It involves determination of whether the use was unauthorised, whether the enhanced rate of three times is attracted, the period for which such enhanced rate can be levied and whether interest is legally recoverable. These are matters involving determination of liability and civil consequences. Therefore, the principles of natural justice require that the petitioner be given an effective opportunity to place its objections before the competent authority ahead a final demand on such basis is enforced.

**32.** The impugned notices dated 13.06.2024, therefore, cannot be sustained in their present form to the extent they mechanically include the three-times rate and interest without a proper determination of the statutory liability. At the same time, this Court is not inclined to hold that the petitioner is wholly exempt from payment of water charges for the period in question. The petitioner has admittedly consumed water for its industrial units and its liability to pay lawful water consumption charges cannot be denied merely because the precise rate or additional component of the demand is under challenge.

**33.** Accordingly, the appropriate course would be to remit the matter to the competent authority for fresh determination. The competent authority shall examine the actual quantity of water consumed by the petitioner during the period from 01.04.2020 to 31.05.2024, the source of such water, the applicable rate under the statutory provisions and notifications/circulars prevailing during the relevant period, and whether the conditions necessary for invoking Rule 73(1) are in fact satisfied.

**34.** While undertaking such exercise, the authority shall also examine the effect and scope of the order dated 11.01.2022 passed by the Hon'ble Supreme Court in Civil Appeal No.316 of 2022, particularly the direction regarding non-imposition of penalty, and shall ensure that the petitioner is not subjected to any liability which is, in substance, a penalty contrary to the said order.

**35.** The competent authority shall further determine the question of levy of interest strictly in accordance with the statutory provisions. If there is no substantive statutory authority for charging interest for the relevant period and in the manner in which it has been calculated, the same shall not be recovered. Likewise, if any statutory provision is found applicable, the liability shall be determined only by the authority competent under such provision and after giving the petitioner an opportunity of hearing.

**36.**The application/representation of the petitioner for allotment/permission for use of surface water shall also be considered and decided by the competent authority in accordance with law. The pendency of such application shall not by itself be treated as deemed permission; however, the same shall be decided independently and expeditiously and its outcome shall be duly considered while determining the petitioner's future liability.

**37.**Consequently, without expressing any final opinion on the exact quantum of water charges payable by the petitioner, the impugned demand notices dated 13.06.2024 (Annexures P/1 and P/2) are set aside to the extent they impose the enhanced three-times rate and interest without a proper determination of the petitioner's statutory liability, and the matter is remitted to the competent authority for fresh consideration.

**38.**The petitioner shall submit its detailed objections along with all relevant documents, including proof of payments already made, within a period of **four weeks** from the date of receipt of a copy of this order. Thereafter, the competent authority shall afford an opportunity of hearing to the petitioner and pass a reasoned and speaking order determining the actual water charges, if any, payable by the petitioner, strictly in accordance with the Chhattisgarh Irrigation Act, 1931, the Chhattisgarh Irrigation Rules, 1974 and the applicable notifications/circulars.

**39.** The entire exercise shall be completed preferably within a period of **three months** from the date of submission of the objections by the petitioner. Any amount already deposited by the petitioner pursuant to the earlier assessment shall be duly adjusted against the amount, if any, found payable upon such fresh determination.

**40.** Needless to say, if any amount is found payable after such determination, the petitioner shall be liable to pay the same within the period stipulated by the competent authority, subject to its remedies available in law.

**41.** With the aforesaid directions, the writ petition stands **disposed of**.

**42.** No order as to costs.

**sd/-**

**(Amitendra Kishore Prasad)**
**Judge**

Vishakha