

IN THE HIGH COURT OF JHARKHAND AT RANCHI**W.P. (Cr.) No. 283 of 2020**

M/s Amalgam Steel and Power Ltd. (formerly known as Adhunik Alloys and Power Ltd.), a company incorporated under the Companies Act, 1956, having its registered office at Avani Signature, Unit 401A, 4th Floor, 91A-1, Park Street, P.O. & P.S. Park Street, District Kolkata, West Bengal and its Unit at Kandra-Chowka Road, P.O. and P.S. Kandra, District Seraikela Kharsawan, Through its Senior General Manager and Authorized Signatory, Sri Basant Kumar, son of Late D.K. Gupta, aged about 48 years, Resident of Adityapur, P.O. and P.S. Adityapur, District Seraikela Kharsawan

... .. Petitioner

Versus

1. State of Jharkhand
2. Sub-Divisional Officer, P.O. & P.S. Seraikela, District Seraikela Kharsawan, Jharkhand
3. Officer in Charge, Kandra Police Station, P.O. and P.S. Kandra, District Saraikela Kharsawan, Jharkhand
4. Adhunik Power and Natural Resources Ltd., a company incorporated under the Companies Act, 1956, having its registered office at 14, N.S. Road, 2nd Floor, P.O. and P.S. Netaji Subash Road, District Kolkata, West Bengal and its unit at village Padampur, Behind P.G.C.I.L. Substation, Adityapur-Kandra Road, P.O. and P.S. Kandra, District Seraikela Kharsawan, through its Managing Director

... .. Respondents

CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Petitioner	: Mr. Jitendra Singh, Senior Advocate Mr. Rohitashya Roy, Advocate Mr. Vibhor Mayank, Advocate
For the Respondent 4	: Mr. S.D. Sanjay, Senior Advocate Mr. Indrajit Sinha, Advocate Mr. Sumeet Gadodia, Advocate
For the State	Mr. Deepankar Roy, Advocate

Through Video Conferencing

CAV on 05.03.2021**Pronounced on 26.03.2021**

1. Heard Mr. Jitendra Singh, learned Senior Advocate along with Mr. Rohitashya Roy, Advocate appearing on behalf of the Petitioner.

2. Heard Mr. S.D. Sanjay, learned Senior Advocate along with learned counsels Mr. Indrajit Sinha and Mr. Sumeet Gadodia, Advocates, appearing on behalf of the respondent No. 4.

3. Heard Mr. Deepankar Roy, Advocate appearing on behalf of the respondent-State, who has supported the arguments of Respondent No.4

4. This writ petition has been filed for quashing the order dated 04.12.2020 (Annexure-19) as contained in Memo No. 1539 passed by the Respondent No. 2 in Misc. Case No. 213 of 2020-21, passed under Section 133 of the Code of Criminal Procedure whereby the Petitioner company has been directed to restore the water supply to respondent No. 4, company.

A further prayer has been made to restrain the respondent No. 2 from interfering in any manner in commercial/private dispute between the Petitioner and respondent No. 4.

5. The foundational admitted facts are as under: -

- a) The Petitioner, who was formerly known as *Adhunik Alloys & Power Ltd. (hereinafter referred to as 'AAPL')* had a common promoter as that of respondent No. 4-company.
- b) *Adhunik Power and Natural Resources Ltd. (Respondent No. 4) (hereinafter referred to as 'APNRL')* is a company engaged in production of power.
- c) The financial creditor of AAPL had initiated Corporate Insolvency Resolution Process against AAPL and ultimately on 07.12.2018, the National Company Law Tribunal, Kolkata Bench approved the resolution plan of the present management of the Petitioner.
- d) Thereafter, the name of the Petitioner was changed from Adhunik Alloys & Power Ltd. to the present name i.e., Amalgam Steel and Power Ltd. (ASPL)
- e) Consequently, present management took over AAPL along with its assets in December, 2018. The orders of NCLT have attained finality.

6. It has been stated by the writ Petitioner that the Petitioner paid an amount of Rs. 410 Crores as upfront payment in accordance with its resolution plan and thereafter the Petitioner has been continuously paying substantial amount.

7. It is the case of the Petitioner that the present management discovered that Respondent No. 4 has been using the Petitioner's water pipeline and other related infrastructure for pumping water for its industrial requirement at its power plant at Padampur and the said usage of the water pipeline and related infrastructure by the respondent No. 4 had originated as an informal arrangement between the two companies, i.e. AAPL and Respondent No. 4, when both the companies had common promoters. It is further specific case of the Petitioner that respondent No. 4 had no right over the infrastructure of pipeline and the auxiliary facilities.

8. In this background, the Petitioner issued a notice dated 04.10.2019 (Annexure-1) to the Respondent No. 4 that the Petitioner was planning capacity expansion for which the Petitioner will require more water as well as its own land, on which respondent No. 4 is using the pipeline to pump the water. It was also stated that after 30 days period, the Petitioner would prohibit the usage of its pipeline on its land by the Respondent No. 4. Thereafter, there have been a few correspondences between the Petitioner and respondent No. 4 including proposal and counter proposals for settlement of inter-se dispute, but nothing materialized even till October 2020. The various correspondences between the Petitioner and respondent no. 4 have been placed on record of this case.

9. It is further the specific case of the Petitioner that the expansion plan is essential for the revival of the plant as per the resolution plan and the pipeline to the premises of respondent No. 4, which is going through the premises of the Petitioner, is a hindrance to the expansion plan which compelled the Petitioner to take aforesaid steps. The Petitioner ultimately disconnected the

water pipelines through its premises to the Respondent no. 4 on 12.11.2020.

10. Thereafter the following developments have taken place: -

- a.** The Petitioner was shocked to receive letter dated 16.11.2020 from the Respondent No. 2 asking the Petitioner to restore the water supply to the Respondent No. 4 within 24 hours and also indicating that the if the water supply is not restored, the same may cause law and order problem. The letter also mentioned that a meeting was scheduled to be held on 17.11.2020, and the decision to be arrived at that meeting shall decide the future course of action.
- b.** On 17.11.2020, the Petitioner received a letter dated 16.11.2020 from Respondent No. 3 whereby the Petitioner was threatened of legal action in case the water supply is not restored to the Respondent No. 4.
- c.** The Petitioner filed a representation to the Deputy Commissioner on 17.11.2020 stating that the instrumentalities of the State cannot be approached for coercing a private party to part with its asset for the benefit of other private entity.
- d.** Thereafter, on 17.11.2020 itself, a meeting was held where the representatives of the Petitioner as well as Respondent No. 4 were present, but no agreement or settlement was arrived at between the Petitioner and the Respondent No. 4. However, a draft of the minutes of the meeting was prepared, but the same was not signed by the representatives of the Petitioner.
- e.** On 18.11.2020, the Petitioner made a representation to Respondent No. 2 requesting that the ex-parte directions contained in letter dated 16.11.2020 be revoked.
- f.** The Petitioner received a notice dated 01.12.2020 issued by the Respondent No. 2 directing the Petitioner to

appear before the said Authority on 02.12.2020.

- g.** On 02.12.2020, a meeting was held wherein the representatives of the Petitioner and Respondent No. 4 were present, but no settlement or agreement could be arrived at between the parties and on that day also, the State Authorities along with Respondent No. 4 again pressurised the representatives of the Petitioner to put their signature on the minutes of the meeting dated 17.11.2020. Since, the representative of the Petitioner was not authorized or competent to take any decision on behalf of the Petitioner, he sought time to consult the management of the Petitioner and made an appropriate request vide letter dated 02.12.2020.
- h.** Both the aforesaid letters dated 16.11.2020 as contained in Annexure-10 and 11 were challenged in writ petition being W.P. (C) No. 3721 of 2020.
- i.** The Petitioner was surprised to receive impugned order dated 04.12.2020 passed by the Respondent No. 2 in Misc. Case No. 213 of 2020-21 in purported exercise of power under Section 133 of the Cr. P.C. by which the Respondent No. 2 has directed the Petitioner to restore water supply through both water pipelines to the Respondent No. 4. It was also alleged in the order that the Petitioner has caused public nuisance by disconnecting the common water pipeline.
- j.** The present writ petition was filed on 07.12.2020 raising jurisdictional issues of the Respondent No. 2 in passing the impugned order in purported exercise of power under Section 133 of the Cr. P.C.
- k.** The earlier writ petition being W.P. (C) No. 3721 of 2020 challenging the aforesaid letters dated 16.11.2020 as contained in Annexure-10 and 11 was withdrawn on 16.12.2020 in view of subsequent development of passing

of the impugned order dated 04.12.2020 in purported exercise of power under Section 133 of the Cr. P.C.

Grounds of challenge of the impugned order dated 04.12.2020

11. While assailing the impugned order and action of the Respondent No. 2, the learned counsel submits as under: -

- i. The specific case of the Petitioner is that the condition precedent for passing order under Section 133 Cr.P.C. has not been satisfied and accordingly, the impugned order is wholly without jurisdiction. Accordingly, the Petitioner instead of approaching the Respondent No. 2 has filed this writ petition challenging the jurisdiction of the Respondent No. 2.
- ii. He submits that neither the Respondent No. 4 has any existing public right to receive water from Swernrekha River nor any public has a right to receive water through the pipelines involved in the present case.
- iii. On the point of right of the Respondent no. 4, it is submitted that the entire background of the arrangement between the Respondent No. 4 and the State of Jharkhand regarding supply of water is apparent from the order passed by this Court in the case filed by the Respondent No. 4 being W.P.(C) No. 5999 of 2019 disposed of on 07.07.2020. In the said writ petition, a prayer was made by the Respondent No. 4 to direct the Respondent State to forthwith execute an agreement for water supply from the said river for 17.60 MCM with effect from 30.08.2013. Vide order dated 07.07.2020, a liberty was given to the present Respondent No. 4 to file representation before the Secretary, Water Resources Department, State of Jharkhand who in turn passed a reasoned order dated 11.12.2020 holding that there are dues of more than Rs. 270 crores and a decision was taken to enter into fresh agreement within 3 months subject to certain conditions

including clearance of dues. It was also mentioned in the reasoned order that withdrawal of water without agreement would be illegal for which the present Respondent No. 4 would be responsible. He submits that admittedly the fresh agreement for water supply has not been entered between the present Respondent No. 4 and the State of Jharkhand and accordingly the Respondent No. 4 has no legal right to receive water from the aforesaid river. He also submits that otherwise also the Respondent No. 4 has no legal right to receive water through the pipeline which is admittedly running through the property of the Petitioner.

- iv. The learned counsel has also referred to the Memorandum of Understanding (MOU) dated 31.10.2005 entered between the Respondent No. 4 and the State to submit that the agreement itself contemplates that in case the Respondent No. 4 desires to meet the water requirement through tube wells, it shall make necessary provision for recharge of ground water as per provision of law. The learned counsel has also relied upon the concurrence letter dated 15.06.2007 issued by the Water Resources Department, Government of Jharkhand whose clause 12 reads as under:

“ 12. In case of non -availability of sufficient water to meet the full demand of water from the river/ nala, the consumer may go for the ground water tapping at appropriate location at their own cost to meet the balance requirement of water subject to undertaking simultaneous steps for ground water recharging as well as payment of water charges levied for use of ground water.”

- v. It is also the argument of the Petitioner that admittedly the water pipeline involved in the present case is being used for supply of water to the Petitioner and the Respondent No. 4 and none else, and accordingly the water through the pipeline is not being supplied to the public and hence,

no right of public regarding receipt of water through the pipeline is involved in the present case.

- vi.** It is further the argument of the Petitioner that the Respondent No. 2 initially tried to impose certain settlement upon the Petitioner at the instance of the Respondent No. 4 and having failed to do so has initiated and issued the impugned order in purported exercise of power under Section 133 of the Cr. P.C. and such action on the part of the Respondent No. 2 at the instance of the Respondent No. 4 is an abuse of the process of law calling for interference in the writ jurisdiction. This all happened when the earlier talks of settlement between the Petitioner and the Respondent No. 4 did not lead to any settlement.
- vii.** The Respondent No. 2 completely ignored the fact that the pipelines used by the Petitioner and Respondent No. 4 are private pipelines and there is no element of public nuisance involved in the case. The water pipelines were snapped by the Petitioner as it had to undertake the expansion of its unit as per the plan and also on account of persistent failure on the part of the Respondent No. 4 to pay the dues of the Petitioner and reach to a consensus regarding payment of such water supply through the premises and pipelines belonging to the Petitioner.
- viii.** In the aforesaid factual background, the learned counsel for the Petitioner has vehemently submitted that upon perusal of the impugned order dated 04.12.2020, the same is *ex-facie* wholly without jurisdiction. He submits that the said order has been passed in purported exercise of power under Section 133 of Cr. P.C., but the condition precedent for exercise of such power has not been satisfied. There is neither any public right of the Respondent No. 4 to receive water as explained above nor there is any supply of water to public through the pipelines involved in the present

case.

- ix. He has submitted that there is private dispute between the Petitioner and Respondent No. 4 in connection with the pipelines and to settle the dispute between the Petitioner and the Respondent No. 4, the Respondent No. 2 has intervened in the matter without authority of law and subsequently, having failed to settle the dispute through unauthorised mediation, the Respondent No. 2 has passed the impugned order.
- x. The learned counsel for the Petitioner has extensively placed the provisions of Section 133 of the Cr. P.C. and submitted that apparently, none of the sub clause of Section 133 (1) of the Criminal Procedure Code has been satisfied in the present case for initiating a proceeding under Section 133 Cr.P.C. Learned counsel has submitted that neither the pipelines are in public place nor the pipelines were catering to the need or right of the public to receive water through the pipeline.
- xi. He submits that admittedly the Respondent No. 4 is a power generating company and is not involved in distributing of any power to any private party, but is a bulk supplier of electricity to the various States including State of Jharkhand, who in turn distributes power to various consumers. He further submits that the concerned State Government, including the State of Jharkhand, obtain energy from numerous sources including the Petitioner and distributes electrical energy to the consumers. The learned counsel submits that merely because the Respondent No. 4 is power generation company and supplies energy to the State, the same by itself is not sufficient for exercise of power to initiate a proceeding under Section 133 Cr.P.C by Respondent No. 2 and intervene in purely private disputes between the

Petitioner and Respondent No. 4 by directing the Petitioner to restore water pipe lines to the Respondent No. 4. He submits that no element of public nuisance is involved in the present case and accordingly, initiation of proceedings under Section 133(1) has been passed by wrongful exercise of power and is an abuse of the process of law calling for interference in writ jurisdiction.

- xii.** Learned counsel submits that there have been repeated correspondences between the Petitioner and Respondent No. 4 regarding the dispute in connection with the water pipeline and the Respondent No. 4 instead of moving the civil court for declaration of its rights, if any, approached the Respondent No. 2, who in turn initiated a proceeding under Section 133 of Cr.P.C. without satisfying the condition precedent for initiating such proceeding. Learned counsel has also submitted that the permission of intake of water from *Swarnrekha* River has been taken by the Petitioner individually for its own use and for meeting the requirement of its own plan as such the same cannot be termed to be a common water pipeline.
- xiii.** Learned counsel for the Petitioner has relied upon the following judgments reported in:
- a. **(1996) 7 SCC 71 (C.A. Avarachan vs. C.V. Sreenivasan and Anr., Para 3 & 4,**
 - b. **(2005) 9 SCC 36 (Kachrual Bhagirath Agrawal and Ors. Vs. State of Maharashtra and Others) Para 10 to 13**
 - c. **(1995) Supp. (4) SCC 54 (Vasant Manga Nikumba and others vs. Baburao Bhikanna Naidu and Anr.) Para 3, 4 and 5.**
- xiv.** While referring to the said judgments, learned counsel has submitted that the scheme of the provisions of Chapter 10 of Code of Criminal Procedure relating to maintenance of public order and tranquillity including Section 133 of

Cr. P.C. has been dealt with in great detail in para 10 of the aforesaid judgment reported in *(2005) 9 SCC 36 (supra)* and he submits that the proceedings under Section 133 are not intended to settle private disputes between different members of public. They are in fact intended to protect the public as a whole against inconvenience.

- xv. By referring the aforesaid judgment reported in *1995 Supp. (4) SCC 54 (supra)*, the learned counsel has submitted that the proceeding under Section 133 Cr. P.C. is not intended to settle private disputes or act as a substitute to settle civil disputes though the proceeding under Section 133 is more in the nature of civil proceedings of a summary nature and the condition precedent to exercise power under Section 133 Cr. P.C is eminent danger to the property and consequential nuisance to the public. He has also submitted that it is also settled that recourse to Section 133 Cr.P.C could not be a substitute for civil proceeding and the party should have recourse to civil remedy available and should not be encouraged to take recourse to provisions of Section 133 Cr. P.C. to settle their private disputes.
- xvi. While referring to the judgment passed by the Hon'ble Supreme Court reported in *(1996) 7 SCC 71 (supra)*, the learned counsel submits that it has been held by the Hon'ble Supreme Court that non-compliance of mandatory requirement of drawing up a preliminary order before proceeding under Section 133 Cr.P.C vitiates the entire proceeding. Learned counsel has also submitted that the statutory form under Section 133 Cr. P.C. is contained in Form No. 20 appended to the Cr. P.C. itself. He submits that the nature of the impugned order indicates that the same is neither in Form-22 nor it satisfies the requirement of basic ingredients of Form-22. The

learned counsel submits that there is no preliminary observation/satisfaction recorded in the impugned order that the pipeline or water flowing through the pipeline is for public use. Moreover, it is not the case of the Respondent No. 4 also that the pipeline or water flowing through the pipeline is for public use.

- xvii.** Learned counsel submits that the law is well settled that one of the grounds for entertainment of the writ petition against the action of the executive is the absence of jurisdiction to exercise power by the executive. He submits that the authority assumes power only when the condition precedent to exercise such power is satisfied. In the instant case, the condition precedent having not been satisfied the entire action of the Respondent No. 2 is vitiated and is wholly without jurisdiction.
- xviii.** On the one hand, the Respondent No. 4 does not have a legal right to receive water from the State in absence of any subsisting agreement, on the other hand, no right of any public to receive water through the pipeline is affected by disconnection of water supply pipelines to the Respondent No. 4. It is submitted that there is no involvement of any public right and no occasion to cause any public nuisance in the instant case. It is submitted that merely because the Respondent No. 4 is one of the suppliers of power to the State who in turn distributes the power to the public at large, any impediment in generation of power occasioned as a consequence of disconnection of water pipelines cannot be said to be likely to cause law and order problem and hence to cause any public nuisance.
- xix.** It is also submitted that the water supply agreement entered into between the State and the Respondent No. 4 way back in the year 2008, which has expired in the year

2013, itself contemplates that in case Respondent No. 4 does not receive the water from *Swarnrekha* river through the pipelines, Respondent No. 4 will be entitled to dig ground water for its use. He submits that considering the repeated insistence from the side of the Petitioner, the Respondent No. 4 ought to have made alternative arrangement for water as per the agreement itself. This is without prejudice to the argument that the Respondent No. 4 has no right to use the land of the Petitioner for receiving water from the State.

- xx. Learned counsel has also submitted that the impugned order and action is an abuse of power by the Respondent No. 2 who had initially tried to mediate and pressurize the Petitioner to enter into some kind of arrangement with the Respondent No. 4 but having not succeeded, he has exercised his power under Section 133(1) (a) of Cr. P.C. directing the Petitioner to restore the water supply to the Respondent No. 4 through the pipelines, are causing recurring loss and inconvenience to the Petitioner. Such action on the part of the Respondent No. 2 is a direct interference in the private right of the Petitioner to use its land for expansion of its unit.
- xxi. Learned counsel has referred to the judgment passed by the Hon'ble Supreme Court reported in (1998) 5 SCC 749 (*Pepsi Foods Ltd. and Another vs. Special Judicial Magistrate and others*) and the judgment passed by the Hon'ble Supreme Court reported in (1998) 8 SCC 1 (*Whirlpool Corporation vs. Registrar of Trademarks, Mumbai*) to submit that in view of the aforesaid two judgments, the present writ petition is maintainable and the rights of the Petitioner be protected.

Submission on behalf of Respondents

12. It is the case of the Respondent No. 4 that two separate pipelines having total length of 9.5-kilometer pass through an area underneath the factory premises of the Petitioner to the extent of 972 meters and reach the factory premises of Respondent No. 4. There are rival claims raised by both the parties with respect to the construction and ownership of the said pipelines.

13. The learned counsel for the Respondent No. 4 submits that although the Petitioner claims that the land over which intake well has been constructed was allotted in their favour, but the Respondent No. 4 disputes the same as the allotment of the said land is no longer valid. He further submits that it is admitted between the parties that the intake well has been constructed by the Respondent No. 4. The learned counsel further submits that initially the electricity was provided by the Petitioner for running the intake well, but subsequently the electric line was disconnected by the Petitioner pursuant to which, the Respondent No. 4, after establishing necessary infrastructures and obtaining connection from Electricity Board, is having its own electricity to operate the intake well and pump from which water is admittedly supplied both to the Petitioner as well as the Respondent No. 4.

14. The learned counsel for the Petitioner has raised the issue of maintainability of the present writ petition and while advancing his argument, he has raised following four issues:

- (i)** The instant writ petition is not maintainable as the order passed by Respondent No. 2 is merely in the nature of interlocutory order, being a conditional order, which is subject to further adjudication by the Respondent No. 2 in terms of Sections 137 and 138 of Code of Criminal Procedure, 1973. The procedure prescribed under Sections 137 and 138 is an efficacious and alternative remedy provided in the Code itself to determine the question of violation of public right.
- (ii)** The Petitioner itself, by filing petition before the Respondent No. 2 under Sections 137 and 138, which was allowed vide

order dated 04.01.2021 has taken recourse to the procedure prescribed under the Code, and has thus opted and elected to surrender to the procedure prescribed and therefore cannot agitate the said issue before this Court.

- (iii) The determination of the existence of any public right is purely a question of fact to be determined in terms of Sections 137 and 138 of the Code of Criminal Procedure, 1973 and a writ is not maintainable when the issues involved are essentially questions of fact.
- (iv) The instant writ petition is barred by the principles of constructive res-judicata and/or under the principles of Order-II of Code of Civil Procedure, 1908 in view of the fact that the Petitioner had earlier challenged the order dated 16.11.2020 (Annexure-10) passed by the Respondent No. 2 directing the Petitioner to restore both the pipelines by filing the writ application being W.P.(C) No. 3721 of 2020 which was withdrawn by it without seeking any liberty to raise the grievances in any subsequent petition.

15. On the point of right of the Respondent No. 4 to receive water from the *Swernrekha* River, the specific case is that the Respondent No. 4 signed a Memorandum of Understanding on 31.10.2005 with the Government of Jharkhand having capacity of 1,000 MW in phases. Thereafter, there were two extensions regarding the Memorandum of Understanding on 18.01.2007 and 01.02.2008. The due permission was granted by the Department of Water Resources, Government of Jharkhand vide letter no. 701 dated 15.06.2007 for withdrawing 52.56 MCM of water on annual basis from river *Swarnrekha* for establishing 1,000-Megawatt thermal power project at Saraikella Kharsawan. Consequently, two pipelines were installed by Respondent No. 4 after duly entering into an agreement dated 29.08.2008 with the State of Jharkhand. The two units of the Respondent No. 4 were commissioned with the reduced capacity of 270 MW per unit. The filing of writ petition by

the Respondent No. 4 being *W.P.(C) No. 5999 of 2019*, as well as, the consequent order passed by Secretary, Water Resources Department is an admitted fact, but, the order passed by the Secretary, Water Resources Department pursuant to the order passed in *W.P.(C) No. 5999 of 2019* is under challenge in another writ petition and any pronouncement by this Court regarding the right of the Respondent No. 4 to receive water from Swarnrekha river will have adverse impact in the pending writ petition. However, the learned counsel submits that the Memorandum of Understanding to draw water from Swarnrekha river between the Respondent No. 4 and the State of Jharkhand is still existing and the dispute between the Respondent No. 4 and the State is regarding the rate only. He submits that accordingly, the Respondent No. 4 has an existing right to receive water from Swarnrekha river through the pipelines which is admittedly running through the premises of the Petitioner.

16. It is further case of the Respondent No. 4 that since the Petitioner disconnected the pipelines which pass underneath the Petitioner company premises and enter the premises of Respondent No. 4, a representation dated 14.11.2020 was filed before the Deputy Commissioner and copy of the same was handed over to the Respondent No. 2 requesting for intervention for immediate restoration of water supply. In view of the fact that hindrance in water supply due to disconnection was directly and adversely affecting the electricity generation and consequently affecting public at large, the Sub-Divisional Officer, Seraikella, on the basis of *prima facie* facts, issued a letter dated 16.11.2020 directing the Petitioner to restore the water supply to the Respondent No. 4 within 24 hours and informed the Petitioner that a meeting shall be held in this regard on 17.11.2020 to decide the future course of action. Simultaneously, the officer in-charge of the police station directed the Petitioner to restore the water pipeline, failing which appropriate legal proceeding shall be initiated against the

Petitioner. A meeting was held on 17.11.2020 pursuant to the aforesaid letter dated 16.11.2020 and it was decided in the meeting that the water supply will be immediately restored to the Respondent No. 4 upon payment of Rs. 20 lakhs as per Memorandum of Understanding between the two and they would settle their financial and infrastructural disputes regarding pipelines amicably amongst themselves. Further, the Respondent No. 4 would endeavor to re-route the water pipelines in co-ordination with the Petitioner. In the said meeting, it was also decided that in order to avoid any law-and-order problem, under no circumstances, the flow of water through the pipelines to the Respondent No. 4, would be disturbed. It has been submitted by the learned counsel appearing on behalf of the Respondent No. 4 that despite the said agreement, the Petitioner did not sign the minutes of meeting. However, only one pipeline was restored on 18.11.2020 which was insufficient for the generation of electricity by the Respondent No. 4.

17. The writ petitioner had filed W.P.(C) No. 3721 of 2020 which was registered on 27.11.2020 challenging the aforesaid two letters dated 16.11.2020. However, the said writ petition was withdrawn on 16.12.2020 by the Petitioner and thus, the order of Respondent No. 2 directing restoration of both the pipelines has attained finality and the Petitioner cannot now raise in substance similar issue as in the present writ petition. Consequently, the present writ petition is barred by the principles of constructive res-judicata as well as the principles enshrined under Order II of the Code of Civil Procedure.

18. On 28.11.2020, the Respondent No. 4 duly informed the Respondent No. 2 that despite decision arrived at after the meeting held between the parties on 17.11.2020 where it was mutually decided that the Petitioner shall restore both the pipelines, the Petitioner has acted in contravention of the said decision and restored only one pipeline.

19. The case of the Respondent No. 4 is that the proceedings under Section 133 (1) (a) of Cr.P.C. was initiated on the basis of the said communication dated 28.11.2020. Pursuant to the said letter dated 28.11.2020, a meeting was convened to be held on 02.12.2020 and was communicated to the Petitioner vide letter dated 01.12.2020. In the said meeting, representative of both the companies participated before the Respondent No. 2, but no consensus could be reached and the representative of the Petitioner again refused to sign the earlier minutes of meeting dated 17.11.2020. The Respondent No. 4 reiterated in the meeting that electricity generation is an essential service, but no consensus could be achieved in the meeting dated 02.12.2020. The aforesaid background ultimately led to passing of the impugned order dated 04.12.2020 wherein, after noticing the facts pertaining to meeting dated 17.11.2020 and 02.12.2020, it was recorded that the Petitioner has restored only one pipeline out of the two and that, the pipeline was common water pipeline from which the water is being drawn by both the units and that its disconnection has led to public nuisance. It was also recorded that the Respondent No. 4 is engaged in generation of power which is also supplied to the State of Jharkhand. A specific finding was given that disconnection of water pipelines, directly or indirectly have an effect in the maintaining of law and order and public peace and may have an adverse effect to the public at large including their safety and public health.

20. It has been submitted by the learned counsel appearing on behalf of the Respondent No. 4 that electricity generation is an essential service and therefore, non-generation of electricity by the Respondent No. 4 will have impact in the supply of electricity so generated to the State of Jharkhand and consequently, the public at large would suffer, which has been taken care of by the Respondent No. 2 while passing the impugned order dated 04.12.2020. The learned counsel has also submitted that though immediately after filing of present writ petition, the Petitioner on 12.12.2020 appeared

before the Respondent No. 2 and filed a time petition alongwith *Vakalatnama* as well as documents relating to filing of the present writ petition before this Court, wherein the jurisdiction of the Respondent No. 2 has been challenged.

21. The learned counsel further submits that in the meantime and during the pendency of the present writ petition, the Petitioner has already submitted to the jurisdiction of the Respondent No. 2 by filing an application under Section 137(1) and (2) and also under Section 138 of Cr.P.C. He submits that in case the Petitioner disputes the existence of any public right, it is for the Respondent No. 2 to decide the same in terms of the provisions of Section 137(1) of Cr.P.C. He further submits that an order dated 04.01.2021 has been passed by the Respondent No. 2, who deemed it appropriate to direct a local inquiry in order to ascertain as to whether a question of obstruction to public right subsists in the dispute. Consequently, Circle Officer, Gamharia and Executive Engineer, Drinking Water and Sanitation Department, were directed to conduct the enquiry and ascertain the existence or absence of question of public right.

22. The learned counsel further submits that a report has been submitted vide Letter No. 69 dated 09.01.2021 by the Executive Engineer, Drinking Water and Sanitation Department stating that electricity generation is included in the list of public infrastructure as per Government of India Gazette Notification dated 23.03.2012. The learned counsel for the Respondent No. 4 further reiterates that as the Petitioner has already submitted to the jurisdiction of Respondent No. 2, therefore, the present writ petition may not be maintained and it may be left to the Respondent No. 2 to decide the preliminary issue which is being raised by the Petitioner in the present writ petition and is also being raised by the Petitioner before the Respondent No. 2.

23. The learned counsel appearing on behalf of the respondent No. 4 has submitted that the order passed under Section 133(1) (a)

of Cr. P.C. is only a preliminary order and in case the Petitioner denies any public right, the Petitioner has to file his show-cause before the Authority and upon filing the show-cause, it is for the Authority to decide as to whether any public right is involved in the present case or not. The learned counsel further submits that instead of taking appropriate steps under the scheme of Chapter 10 of Cr. P.C., the Petitioner has rushed to this Court and filed the present petition which is fit to be dismissed on account of the alternative efficacious remedy available to the Petitioner under law. The learned counsel also submits that the nature of right involved in the present case is essentially a matter of evidence which has to be examined by the Respondent No. 2 at the threshold. The learned counsel submits that *prima facie* on the face of the impugned order, it appears that though the same is not in Form-22, but all the basic ingredients of Form-22 under Cr. P.C. are present in the said order.

24. He submits that the judgment which has been relied upon by the Petitioner, which has been reported in *(1996) 7 SCC 71 (supra)*, in that case, the preliminary order was not at all drawn by the Authority and accordingly the Hon'ble Supreme Court was of the view that omission to draw the preliminary order is fatal to the proceedings. He submits that in the instant case, preliminary order has been drawn, though not in proper form, but it contains all the ingredients of Form-22 and therefore, once the preliminary order is drawn, the Authority has to take charge and the Petitioner has to approach the Authority i.e. Respondent No. 2 by filing a show-cause. He has also submitted that in fact the Petitioner has already filed his show-cause before the Authority and is now sailing in two boats. Learned counsel submits that Respondent No. 2 was of the considered view that since the Respondent No. 4 is a power generating unit, therefore the entire State and its consumers are going to be affected if the unit of the Respondent No. 4 does not work in absence of water supply.

25. The learned counsel has also submitted that the State has not taken any steps to disconnect the water line to the Respondent No. 4 and accordingly the use of water by the Respondent No. 4 cannot be said to be illegal. He further submits that the conduct of the Petitioner does not inspire confidence and the Petitioner itself has not come with clean hands in view of the fact that the Petitioner has taken the law in his own hand by disconnecting the water supply to the Respondent No. 4 instead of approaching the civil court for the aforesaid purpose.

26. The learned counsel for the Respondents has referred to the following judgments:

- (i) *(1995) SCC OnLine Raj. 223 (Budh Singh and Ors. vs. Hapur Ram and Ors.)*
- (ii) *Punjab State Electricity Board Ltd. vs. Zora Singh and Others reported in (2005) 6 SCC 776 para 3 to 7;*
- (iii) *Carona Ltd. vs. Parvathy Swaminathan and Sons. Reported in (2007) 8 SCC 559 para 29 to 36;*
- (iv) *Gobind Singh vs. Shanti Sarup reported in (1979) 2 SCC 267 Para 6 and 7.*
- (v) *(2010) 10 SCC 677 (Ritesh Tewari and Anr. Vs. State of Uttar Pradesh and Others)*

27. The learned counsel has referred to a judgment passed by the Hon'ble Rajasthan High Court reported in *(1995) SCC OnLine Raj. 223 (Budh Singh and Ors. vs. Hapur Ram and Ors.)* to submit that in order to find out as to whether there is public nuisance or not, it is not necessary that the entire public should be put to inconvenience. It can arise even by inconvenience to any individual person. He refers to para 18 and 19 of the said judgement which are quoted as under:

"18. Before addressing the questions argued by the learned counsel for the Petitioner I consider it proper to observe that the aim and object of the legislature in enacting Sec. 133 Cr.P.C. is to enable the District Magistrate or a Sub-Divisional Magistrate or any other Executive Magistrate specially empowered in this behalf by the State Government on receiving of the report of a police officer or other information and on taking such evidence as he thinks fit to

pass quick orders and deal speedily with the cases where public nuisance or any other kind of obstructions have been made in the right of public.

19. In my considered opinion for invoking jurisdiction under Sec. 133(1), Cr.P.C. of a District Magistrate or a Sub-Divisional Magistrate or any other Executive Magistrate specially empowered in this behalf by the State Government it is not necessary that there should always be danger or inconvenience to public at large in a particular case even if danger or inconvenience is about to be caused to an individual over a public right, it would be sufficient. In fact public way creates a public right to each and every individual to use it and any obstructions, danger or inconvenience even to an individual is actionable under Sec. 133(1) and 138, Cr.P.C."

28. The learned counsel for the Respondent No. 4 has also referred to a judgement passed by the Hon'ble Supreme Court reported in **(2007) 8 SCC 559 (Carona Ltd. vs. Parvathy Swaminathan and Sons.)** (para 29 to 36) to submit that for assumption of jurisdiction by a court or a tribunal, the existence of a jurisdictional fact is a condition precedent, but, once the jurisdictional fact is found to exist, the court or tribunal has the power to decide adjudicatory fact or the fact in issue. The learned counsel submits that the point raised by the Petitioner is an adjudicatory fact and not a jurisdictional fact and accordingly, it is for the Respondent No. 2 to decide the adjudicatory fact and accordingly, the writ petition is not maintainable.

29. The learned counsel has also referred to another judgement passed by the Hon'ble Supreme Court reported in **(1979) 2 SCC 267 (supra)** (para 6 and 7) to submit that matters which involve not merely the right of a private individual, but the health, safety and convenience of public at large, under such circumstances, the proceeding under Section 133 of Cr.P.C. would be maintainable.

30. The learned counsel has thereafter referred to the judgement passed by Hon'ble Supreme Court reported in **(2005) 6 SCC 776 (supra)** (para 3 to 7) to submit that it has been held by the Hon'ble Supreme Court that electrical undertakings acquired a character of public utilities and accordingly, there can be no doubt that the activity of the Petitioner comes within the meaning of public utility services. Accordingly, it is submitted that the right of the public to

receive energy cannot be jeopardized by the unilateral action of the Petitioner and accordingly, the Respondent No. 2 has rightly initiated the proceedings under Section 133(1) (a) of Code of Criminal Procedure.

31. Learned counsel has referred to judgment passed by the Hon'ble Supreme Court reported in (2010) 10 SCC 677 (*supra*) to submit that the jurisdiction under Article 226 of the Constitution of India is equity jurisdiction and there is no equity in favour of the Petitioner who has taken law in his own hand to disconnect the water supply of the Petitioner. He has also submitted that equitable jurisdiction can be invoked where there is a grave miscarriage of justice and flagrant violation of law.

Findings of the Court

A. The impugned order

32. In the aforesaid factual background, as narrated by the learned counsel for the parties on 04.12.2020, the impugned order was passed in purported exercise of power under Section 133 (1) of Cr.P.C. The gist of the impugned order is as follows:-

- i. In the impugned order after noticing the facts pertaining to the meetings dated 17.11.2020 and 02.12.2020, it was recorded *inter alia* that the Petitioner **had only restored one pipe line instead of both the pipe lines**, which was disconnected by it earlier.
- ii. It was observed that the disconnection of pipelines was on account of dispute regarding payable amount between the Petitioner and the Respondent No. 4. It was also recorded that inspite of arriving at amicable settlement on 17.11.2020 only one pipeline out of the two was restored by the Petitioner.
- iii. It was recorded that the pipeline is common water pipeline from which water is drawn by both the units and its disconnection has led to public nuisance.

- iv. It was also observed that prior to disconnection of pipelines no legal notice /information was given by the Petitioner to the Respondent No. 4.
- v. It was further noticed that Respondent No.4 is engaged in generation of power, which is also supplied to the State of Jharkhand and therefore there is a strong likelihood that the disconnection of water pipe lines would directly or indirectly have an effect in maintaining of Law and Order and Public peace and may have an adverse effect to the public at large including their safety and public health. Accordingly, a direction was issued to the Petitioner to restore water pipe lines as before within 24 hours and remove aforesaid public nuisance. In addition, the Petitioner was asked to appear and show-cause on 12.12.2020 at 1.00 p.m. as to why the order be not enforced.

B. Scope of exercise of power under Section 133 Cr.P.C.

33. Both the parties have relied upon Section 133(1)(a) of Code of Criminal Procedure and during the course of arguments, it has been specifically argued by the learned counsel appearing on behalf of the respondent no. 4 that the respondent no. 2 has exercised his power under Section 133(1)(a) of Code of Criminal Procedure. Thus, the purported exercise of power by the Respondent No. 2 under Section 133(1)(a) of Code of Criminal Procedure is under challenge in this writ proceeding.

34. The term public nuisance has been defined under Section 268 of Indian Penal Code. Section 268 of Indian Penal Code read as under:

“268. Public nuisance.- A person is guilty of a public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right.

A common nuisance is not excused on the ground that it causes some convenience or advantage.”

35. In the judgement passed by the Hon'ble Supreme Court reported in **1995 Suppl. (4) SCC 54 (Vasant Manga Nikumba v. Baburao Bhikanna Naidu)**, the scheme of the provisions of Section 133 Cr.P.C. read with Section 268 of Indian Penal Code has been considered. In the said judgement, it has been held in para 3 as under:

"3. Nuisance is an inconvenience materially interferes with the ordinary physical comfort of human existence. It is not capable of precise definition. It may be public or private nuisance. As defined in Section 268 IPC, public nuisance is an offence against public either by doing a thing which tends to the annoyance of the whole community in general or by neglect to do anything which the common good requires. It is an act or omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy the property in the vicinity. On the alternative it causes injury, obstruction, danger or annoyance to persons who may have occasion to use public right. It is the quantum of annoyance or discomfort in contra distinction to private nuisance which affects an individual, is the decisive factor. The object and public purpose behind Section 133 is to prevent public nuisance that if the Magistrate fails to take immediate recourse to Section 133 irreparable damage would be done to the public. The exercise of the power should be one of judicious discretions objectively exercised on pragmatic consideration of the given facts and circumstances from evidence on record. The proceedings under Section 133 is not intended to settle private disputes or a substitute to settle civil disputes though the proceeding under Section 133 is more in the nature of civil proceedings in a summary nature."

36. Thus, it has been held by the Hon'ble Supreme Court that it is the quantum of annoyance or discomfort in contradistinction to private nuisance which affects an individual which is the decisive factor to determine as to whether there is public nuisance or not. The object and purpose behind Section 133 of Code of Criminal Procedure is to prevent public nuisance and that, if the Magistrate fails to take immediate recourse to Section 133 Cr.P.C., irreparable damage would be done to the public. The exercise of power should be one of judicious discretion and the proceedings under Section 133 Cr.P.C. is not intended to settle private disputes or to substitute to settle civil disputes though the proceedings under

Section 133 Cr.P.C. is more in the nature of civil proceedings in a summary nature.

37. The scheme of the provisions of Section 133 of Cr.P.C. has also been considered in the judgement passed by the Hon'ble Supreme Court in the judgement reported in (2005) 9 SCC 36 (*Kachrural Bhagirath Agrawal and Ors. v. State of Maharashtra and Ors.*) wherein the applicability of Section 133(1)(b) of the Cr.P.C. was under consideration. Paragraphs 10, 11 and 12 of the aforesaid judgement read as under:

"10. A proceeding under Section 133 is of a summary nature. It appears as a part of Chapter X of the Code which relates to maintenance of public order and tranquility. The chapter has been classified into four categories. Sections 129 to 132 come under the category of "unlawful assemblies". Sections 133 to 143 come under the category of "public nuisance". Section 144 comes under the category of "urgent cases of nuisance or apprehended danger" and the last category covers Sections 145 to 149 relating to "disputes as to immovable property". Nuisances are of two kinds i.e. (i) public; and (ii) private. "Public nuisance" or "common nuisance" as defined in Section 268 of the Indian Penal Code, 1860 (in short "IPC") is an offence against the public either by doing a thing which tends to the annoyance of the whole community in general or by neglecting to do anything which the common good requires. It is an act or omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity. "Private nuisance" on the other hand, affects some individuals as distinguished from the public at large. The remedies are of two kinds – civil and criminal. The remedies under the civil law are of two kinds. One is under Section 91 of the Code of Civil Procedure, 1908 (in short "CPC"). Under it a suit lies and the plaintiffs need not prove that they have sustained any special damage. The second remedy is a suit by a private individual for a special damage suffered by him. There are three remedies under the criminal law. The first relates to the prosecution under Chapter XIV of IPC. The second provides for summary proceedings under Sections 133 to 144 of the Code, and the third relates to remedies under special or local laws. Sub-section (2) of Section 133 postulates that no order duly made by a Magistrate under this section shall be called in question in any civil court. The provisions of Chapter X of the Code should be so worked as not to become themselves a nuisance to the community at large. Although every person is bound to so use his property that it may not work legal damage or harm to his neighbour, yet on the other hand, no one has a right to interfere with the free and full enjoyment by such person of his property, except on clear and absolute proof that such use of it by him is producing such legal

damage or harm. Therefore, a lawful and necessary trade ought not to be interfered with unless it is proved to be injurious to the health or physical comfort of the community. Proceedings under Section 133 are not intended to settle private disputes between different members of the public. They are in fact intended to protect the public as a whole against inconvenience. A comparison between the provisions of Sections 133 and 144 of the Code shows that while the former is more specific, the latter is more general. Therefore, nuisance specially provided for in the former section is taken out of the general provisions of the latter section. The proceedings under Section 133 are more in the nature of civil proceedings than of criminal nature. Section 133(1)(b) relates to trade or occupation which is injurious to health or physical comfort. It itself deals with physical comfort to the community and not with those acts which are not in themselves nuisance but in the course of which public nuisance is committed. In order to bring a trade or occupation within the operation of this section, it must be shown that the interference with public comfort was considerable and a large section of the public was affected injuriously. The word "community" in clause (b) of Section 133(1) cannot be taken to mean residents of a particular house. It means something wider, that is, the public at large or the residents of an entire locality. The very fact that the provision occurs in a chapter with "public nuisance" is indicative of this aspect. It would, however, depend on the facts situation of each case and it would be hazardous to lay down any straitjacket formula.

11. The guns of Section 133 go into action wherever there is public nuisance. The public power of the Magistrate under the Code is a public duty to the members of the public who are victims of the nuisance, and so he shall exercise it when the jurisdictional facts are present. "All power is a trust – that we are accountable for its exercise – that, from the people, and for the people, all springs and all must exist." The conduct of the trade must be injurious in presenti to the health or physical comfort of the community. There must, at any rate, be an imminent danger to the health or the physical comfort of the community in the locality in which the trade or occupation is conducted. Unless there is such imminent danger to the health or physical comfort of that community or the conduct of the trade and occupation is in fact injurious to the health or the physical comfort of that community, an order under Section 133 cannot be passed. A conjoint reading of Sections 133 and 138 of the Code discloses that it is the function of the Magistrate to conduct an enquiry and to decide as to whether there was reliable evidence or not to come to the conclusion to act under Section 133.

12. Section 133 of the Code as noted above appears in Chapter X of the Code which deals with maintenance of public order and tranquility. It is a part of the heading "Public nuisance". The term "nuisance" as used in law is not a term capable of exact definition and it has been pointed out in Halsbury's Laws of England that:

“Even in the present day there is not entire agreement as to whether certain acts or omissions shall be classed as nuisances or whether they do not rather fall under other divisions of the law of tort.”

38. It has also been held that the object and purpose behind Section 133 of the Code is essentially to prevent public nuisance and involves a sense of urgency in the sense that if the Magistrate fails to take recourse immediately, irreparable danger would be done to the public. It has been held in the aforesaid judgement that proceedings under Section 133 Cr.P.C are not intended to settle private disputes between different members of the public. They are in fact intended to protect the public as a whole against inconvenience. A comparison between the provisions of Sections 133 and 144 of the Code shows that while the former is more specific, the latter is more general. Therefore, nuisance specially provided for in the former section is taken out of the general provisions of the latter section. The proceedings under Section 133 are more in the nature of civil proceedings than of criminal nature.

39. Section 133 (1) (a) of Cr.P.C provides for passing of Conditional order for removal of nuisance whenever the authorized officer of the State Government receives a report of a police officer or other information and on taking such evidence (if any) as he thinks fit, considers that any unlawful obstruction or nuisance should be removed from any public place or from any way, river or channel which is or may be lawfully used by the public. It also provides that the authority may make a conditional order requiring the person causing such obstruction or nuisance, within a time to be fixed in the order to remove such obstruction or nuisance in the manner provided in the said order; or, if he objects so to do, to appear at a time and place to be fixed by the Order, and show cause, in the manner provided in subsequent sections of Cr.P.C as to why the order should not be made absolute.

40. In the judgement passed in the case of *Carona Ltd. v. Parvathy Swaminathan & Sons*, (2007) 8 SCC 559, it has been held

that for assumption of jurisdiction by a court or a tribunal, existence of jurisdictional fact is a condition precedent. But once such jurisdictional fact is found to exist, the court or tribunal has power to decide adjudicatory facts or facts in issue.

41. The learned counsel for the Respondent No. 4 has heavily relied upon the judgement of *Punjab SEB Ltd. v. Zora Singh*, (2005) 6 SCC 776. This judgement does not apply to the facts of the present case as the Respondent No. 4 has no obligation to supply electricity to the public at large i.e to the consumers.

42. In the said judgement, the Hon'ble Supreme Court while considering the statutory obligation on the licensee to supply the electrical energy to the consumer held that Electrical undertakings acquire the character of public utilities by reason of their virtually monopolistic position and their profession to serve the public. The State in exercise of its legislative power had a right to compel the licensees to render service efficiently, promptly and impartially to the members of the public.

43. In the case of *Gobind Singh v. Shanti Sarup*, (1979) 2 SCC 267, the evidence disclosed that the smoke emitted by the chimney was "injurious to the health and physical comfort of the people living or working in the proximity" and there was no justification for discharge of the smoke on the G.T. Road. Finding of the Magistrate that it was not only an encroachment upon a public place but its construction led to a graver consequence and was "virtually playing with the health of the people". The Hon'ble Supreme Court was of the view that in a matter of this nature where what is involved is not merely the right of a private individual but the health, safety and convenience of the public at large, the safer course would be to accept the view of the learned Magistrate, who saw for himself the hazard resulting from the activity.

44. This judgement does not apply to the facts of the present case as the impugned order has been passed by expressing that

disconnection of water supply to the Respondent No. 4 would disrupt the generation of electricity and supply to the State being one of the suppliers of electricity to the State for further distribution and the impugned order has been passed on the likelihood of causing inconvenience to the public at large and other consequences. The aforesaid discomfort to public at large is neither a direct nor an immediate consequence of disconnection of water supply and is apparently based on apprehension. Admittedly, no present crisis arising therefrom has been reflected in the impugned order. In case of an emergent situation of any apprehension of law-and-order problem, the competent authority has the power to pass an order under Section 144 Cr.P.C even against a private party even when there is no involvement of any public right and the orders passed thereunder has limited life. Admittedly, the Respondent No. 2 in the present case has exercised power under Section 133(1) (a) of Cr.P.C and not under Section 144 Cr.P.C.

45. As per the scheme of Sections 133 to 143 of Cr.P.C upon satisfaction of any of the conditions under Section 133 (1), the Magistrate is required to make a conditional order requiring the person causing such obstruction or nuisance to remove the same within a time fixed in the order, or, if he objects to do so, to appear and show-cause in the manner provided in subsequent sections, as to why the order should not be made absolute.

46. This Court finds that the essential scope of consideration is as to whether the jurisdictional fact existed for exercise of power by the learned Magistrate to pass an order under Section 133(1) of Cr.P.C.

It is not in dispute that no public as such has right to receive water through the pipeline and the pipeline is catering to the need of the Petitioner and the Respondent No. 4 only. It is further not in dispute that a portion of the pipeline is going through the property of the Petitioner before it enters into the property of the Respondent No. 4 and at one point of time, the Petitioner and the Respondent

No. 4 had common promoter, but the Petitioner has entered into picture pursuant to order passed by N.C.L.T., Kolkata and the petitioner has invested huge amount in the property. It is the specific case of the Petitioner that the land through which the pipeline is passing towards the premises of the Respondent No. 4 is required by the Petitioner for its expansion plan.

47. As per the Respondent No. 4 that two separate pipelines having total length of 9.5-kilometer pass through an area underneath the factory premises of the Petitioner to the extent of 972 meters and reach the factory premises of Respondent No. 4. There are rival claims raised by both the parties with respect to the construction and ownership of the said pipelines.

48. It is important to note that admittedly,

- a) There are disputes between the Respondent No. 4 and the State in connection with supply of water.
- b) The water through the pipelines is being used both by the Petitioner and the Respondent No. 4 and they have rival claims against each other not only in connection with the pipelines, but also other matters.
- c) The pipe lines do not supply water to public or any third party.
- d) The Respondent No. 4 does not supply electricity directly to the consumers. It supplies electricity to the State of Jharkhand and other States for further supply to the consumers. The State also has multiple sources of electricity.
- e) As long as the petitioner and the Respondent No. 4 had common promoters, there were no differences over the water pipelines which are partly running through the premises of the petitioner before entering into the premises of the Respondent No. 4.
- f) The present Management of the Petitioner came into picture in terms of corporate insolvency resolution process as per order dated 07.12.2018 passed by NCLT, Kolkata.

49. From the perusal of the records of this case, it appears that admittedly a letter dated 04.10.2019 was issued by the Petitioner to the Respondent No. 4 indicating that the Respondent No. 4 has been using their water pipelines and other related infrastructure for pumping water for their industrial requirement at their Padampur Power Plant. It was also mentioned that the aforesaid is a result of an informal arrangement between the Petitioner and the Respondent No. 4, without any monetary or business consideration, when both the companies had common promoters. It was asserted in the letter that the entire pipeline, right of way for pipeline and land for the water pumping station is under the ownership and possession of the Petitioner. The letter also indicated that the Petitioner had undergone resolution under Insolvency and Bankruptcy Code and the present Management has taken over the ownership and control of the Petitioner company with effect from 07.12.2018 vide National Company Law Tribunal's order 07.12.2018. With this background, it was stated in the letter that the Petitioner has decided to go for capacity expansion and will have enhanced water requirement and also needs land on which the Respondent No. 4 has put its pipeline to pump water, for the purposes of expansion of the plant of the Petitioner and the entire present arrangement is financially detrimental to the Petitioner company. Accordingly, the Petitioner requested the Respondent No. 4 to make alternative arrangement within a period of 30 days whereafter the Petitioner shall prohibit the usage of its pipelines by the Respondent No. 4 and also dismantle the pipelines of the Respondent No. 4 on its land.

50. In response to the said letter dated 04.10.2019, the Respondent No. 4 issued a communication dated 16.11.2019 asserting that the water pipelines and related infrastructure were developed jointly by both the companies having a common promoter at that time, and with common interest. It was further asserted by the Respondent No. 4 that the developmental cost of this infrastructure facility was

jointly incurred by both the companies and therefore, it was incorrect to state that the entire pipelines alongwith pumping station and auxiliary facilities are entirely owned by the Petitioner and they have exclusive right to avail this facility. It was also proposed by the Respondent No. 4 that as the facility is vital and important for interest of both the companies and has been jointly developed, it would be appropriate to discuss the issue related to the facility across the table and resolve it in the interest of both the organizations.

51. Vide communication dated 08.05.2020, the Respondent No. 4 gave a proposal for settlement to the Petitioner. In the said communication, while giving the background, the Respondent No. 4 indicated that it was an independent power plant in the State of Jharkhand generating 540 MW of power and giving 25% of the power to the State of Jharkhand under the Memorandum of Understanding signed with the Government of Jharkhand and balance outside the Jharkhand. It was also indicated that while setting up the plant in the year 2008, the Respondent No. 4 was allotted water from river Subarnarekha and an agreement between Respondent No. 4 and the Government of Jharkhand dated 29.08.2008 for supply of 35.60 MCM water, in phased manner, was entered into for setting up 1,000 MW power plant. The agreement was valid for a period of five years renewable in every five years. However, unfortunately the Respondent No. 4 has been able to install 540 MW power generation capacity and the first unit was commissioned on 21.03.2013 and second unit on 19.05.2013. It was asserted that the total arrangement was developed and mutually agreed since both the companies were group companies. The said proposal also referred to three agreements which were executed between the Petitioner and the Respondent No. 4 and out of the three, one relating to water supply was as follows:

“AAPL is supplying power to intake well and meeting other manpower and administrative cost for the maintenance of the well. For this, one Memorandum of Agreement was signed

between the two parties on 26.07.2017 and according to which AAPL will raise bill of Rs. 20,00,000/-+ Taxes on APNRL every month towards maintenance of the intake well."

The said communication also referred to some encashment of bank guarantee by CCL and some dispute in connection with the encashment of bank guarantee resulting in further litigation between the Petitioner and the Respondent No. 4. The said proposal of the Respondent No. 4 was as follows:

"Since both the parties want to amicably settle the issues, we propose the following-

(1) APNRL will pay 50% of the total outstanding of Rs. 7,93,44,000/- as on date in one go as final settlement of their claim as on 31.03.2020 subject to the final settlement of the case filed by CCL. A formal process to recover the Rs. 13.46 Crores shall then be implemented by APNRL.

(2) Since both the companies use the water from the same intake well, we propose that:

- APNRL shall pay Rs. 12.50 Lakhs per month towards the electricity charges for the pump used there.

- Water charges and any other maintenance/ fixed costs shall be paid at actuals in the proportion of 1:2 wherein APNRL shall pay 2/3rd of the actual water bill received.

(3) APNRL would like to purchase the 5-decimal land on which the intake well is constructed. This purchase can be done at the fair market value.

(4) APNRL will be pleased to use the railway siding at AAPL for their coal movement. The cost for the same shall be negotiated separately."

52. The aforesaid proposal was responded to by the writ petitioner vide email dated 25.05.2020 and certain changes were suggested.

53. From the perusal of the aforesaid background, it appears that admittedly the two companies initially had common promoter, but subsequently through certain orders by NCLT at Kolkata, the present Management of the Petitioner came into picture and asserted its rights which was disputed by the Respondent No. 4. Admittedly, the said dispute *inter alia* relates to intake well and water pipelines and the pipelines are entering into the premises of

the Respondent No. 4 through a portion of the property belonging to the Petitioner.

54. This Court further finds that when ultimately the Petitioner and the Respondent No. 4 could not settle the dispute amongst themselves, on 03.11.2020, the electricity line to the intake well was disconnected by the Petitioner and it is the specific case of the Respondent No. 4 that the Respondent No. 4 had to bear a heavy cost for installation of electricity generator and subsequent infrastructure for supply of electricity by JUVNL.

55. It further appears from the records that on 12.11.2020, the Petitioner disconnected pipelines of water passing through the premises of the Petitioner and this all happened when in spite of efforts from both the sides, the parties could not enter into any settlement amongst themselves.

56. Immediately after disconnection of water supply, the Respondent No.4 approached the Deputy Commissioner on 14.11.2020 and gave the background of the matter and raised the following grievance:

“The Power Plant was commissioned in the year 2012 and since then is drawing water from intake well to meet the requirement of Power plant. This is needless to mention that this Power plant falls in essential services category. The company has constructed intake well, Power sub station to meet the requirement. The water pipeline to Adhunik Power Plant is routed via AAPL (Adhunik Alloys & Power ltd.) now named as Amalgam Steel.

Today morning, our team after starting the pumping station, observed that water is not flowing through pipeline, after inspection it was found that the pipeline valve is closed and illegally without information, inside the Amalgam Steel Plant. Our team approached the Security and CEO of Amalgam Steel Plant and their team to restore normalcy, but they denied doing so and replied that you may do whatever you like, but line will not be normalized.

Sir, at present we are having water storage of only one day, and power supply to the State may be stopped during this festive season in case the water supply line is not normalized. Therefore, we hereby request to you to intervene to restore the illegally isolated water pipeline through which the water is

reaching to Adhunik Power Plant to avoid unnecessary disruption in essential power supply from our plant to State of Jharkhand."

A copy of the said letter was also forwarded to the Respondent No. 2 as well as Officer In-charge of Kandra Police Station.

57. As a consequence of the aforesaid letter dated 14.11.2020, the Sub-divisional Officer, Seraikela (Respondent No. 2) issued a letter dated 16.11.2020 directing the Petitioner to restore the water supply to the Respondent No. 4 within 24 hours and informed the Petitioner that a meeting shall be held in this regard on 17.11.2020 to decide the future course of action. A letter dated 16.11.2020 was also issued by the Officer-in-charge of the police station directing the Petitioner to restore the disconnected pipelines. Thereafter, on 17.11.2020, a meeting was held between the representative of both the companies and following decision was alleged to be taken in the meeting:

- (a) *The water supply through the pipelines would be immediately restored to respondent no. 4 who would resume payment of Rs. 20 lakhs as per the earlier Memorandum of Understanding.*
- (b) *The two companies would settle their financial and infrastructural dispute regarding pipelines amicably and the respondent no. 4 would endeavor to re-route the water pipelines in coordination with the petitioner.*
- (c) *In order to avoid any law-and-order problem, under no circumstances, the flow of water through the pipelines would be disturbed.*

58. However, admittedly the Petitioner did not sign the minutes of meeting and restored only one of the pipelines out of the two and also represented before the Deputy Commissioner against the said decision.

59. Thereafter, the Petitioner filed writ petition being W.P.(C) No. 3721 of 2020, *inter alia*, challenging the letter dated 16.11.2020 whereby the Respondent No. 2 had directed for restoration of pipelines and the said writ petition was withdrawn on 16.12.2020 and there were intervening developments including passing of the

impugned order dated 04.12.2020 in purported exercise of power under Section 133 Cr.P.C.

60. It is the specific case of the Respondent No. 4 that on 28.11.2020, the Respondent No. 4 duly informed the Respondent No.2 that despite the decision arrived at in the meeting held between the parties on 17.11.2020 wherein it was mutually decided that the Petitioner shall restore both the pipelines, the Petitioner has acted in contravention of the said decision and restored only one pipeline. According to the Respondent No. 4, it is this particular letter dated 28.11.2020, on the basis of which a proceeding under Section 133 Cr.P.C. was initiated.

61. The Respondent No. 4 has raised a point that the writ petitioner, having filed the writ petition being W.P.(C) No. 3721 of 2020, challenging the letter for restoration of water pipeline issued vide letter dated 16.11.2020 and the said writ petition having been withdrawn on 16.12.2020, the said order has attained finality and is binding on the Petitioner.

The petitioner, has rightly justified the withdrawal of the writ petition being W.P.(C) No. 3721 of 2020 on account of the developments which had taken place after filing of the writ petition (filed on 27.11.2020) in view of the fact that on 28.11.2020, another petition was filed by the Respondent No. 4 on the basis of which a proceeding under Section 133 of Cr.P.C. was initiated vide impugned order dated 04.12.2020.

62. This Court finds that the Respondent No. 2, upon receipt of aforesaid application dated 14.11.2020, addressed to the Deputy Commissioner, with a copy marked to the Respondent No. 2, had directed the Petitioner to restore the water pipelines and also directed for their participation in the meeting to be held on 17.11.2020.

It appears that the Respondent No. 2 tried to mediate between the Petitioner and the Respondent No. 4, and a mutual decision was sought to be arrived at and reduced into writing on 17.11.2020 as

mentioned above, to which the Petitioner did not agree and ultimately did not sign. Another meeting was convened on 2.12.2020 and on that day also, the Petitioner was asked to sign on the minutes of meeting dated 17.11.2020, but the Petitioner refused to sign. This Court is of the considered view that neither the order dated 16.11.2020 nor the meetings held to resolve the dispute between the parties and presided over by the Respondent No. 2 were passed pursuant to any proceeding under Section 133 Cr.P.C. Rather, it was just an effort to ensure restoration of water supply pipelines to the Respondent No. 4 and get the matter amicably settled between the Petitioner and Respondent No. 4 which ultimately did not yield any result.

63. In aforesaid circumstances, this Court is of the considered view that the order dated 16.11.2020 directing the Petitioner to restore the electricity line and directing the Petitioner to attend the meeting on 17.11.2020 to decide the future course of action to amicably resolve the matter between the parties has no legal consequences and order dated 16.11.2020 cannot be said to be binding upon the Petitioner. The order dated 16.11.2020 was not passed under any provision of law and admittedly the said order was not passed under Section 133 Cr.P.C. which is the subject matter of the present case.

64. Thus, the plea of res-judicata / constructive res-judicata as raised by the Respondent No. 4 stating that the aforesaid order dated 16.11.2020 passed by the Respondent No. 2 asking the Petitioner to restore pipelines of the Respondent No. 4 has attained finality is rejected. In the present case, the initiation of proceedings under Section 133(1) (a) of Cr.P.C. is under challenge whereby a direction has been issued by the Respondent No. 2 to the Petitioner to restore water pipelines to the Respondent No.4.

65. This Court also finds that there have been subsequent material developments post filing of the writ petition being W.P.(C) No. 3721 of 2020 challenging the order dated 16.11.2020. A

proceeding under Section 133 of Cr.P.C. was ultimately initiated vide impugned order dated 04.12.2020 pursuant to a petition dated 28.11.2020 filed by the Respondent No. 4 before the Respondent No. 2 wherein a grievance was raised by the Respondent No. 4 that inspite of the aforesaid developments, the Petitioner had restored only one pipeline out of the two. This Court finds that the impugned order was passed after the Respondent No. 2 failed in his attempt to resolve the dispute between the parties, drawing a minute of meeting of amicably settlement as mentioned above, but the Petitioner refused to sign the same inspite of repeated attempt and restored only one pipeline out of the two prior to passing of the impugned order. At the time of passing of the impugned order, the grievance of the Respondent No. 4 was out of the two pipelines only one has been restored though as per minutes of meeting dated 17.11.2020 (not signed by the Petitioner), both the pipelines were to be restored. It is further not in dispute at least from the side of the Respondent No. 4 that in the minutes of meeting dated 17.11.2020 (not signed by the Petitioner) the Respondent No. 4 was to endeavor to re-route the water pipelines in coordination with the Petitioner.

66. It is not in dispute that the pipelines cater to the needs of the Petitioner and the Respondent No. 4 only. The water pipelines are not meant for supply of water to public. As such no right to receive water through the pipelines with respect of public in general *or* a section of public *or* public in the vicinity of the premises of the Petitioner / Respondent No. 4, is involved in the present case.

67. As per the impugned order, the Respondent No. 4 is the supplier of electricity to the State and disruption in water supply to the Respondent No. 4 would directly/indirectly affect the supply of electricity by the State to the public which may in turn create law and order/health problem and hence may create public nuisance. Admittedly, the Respondent No. 4 does not supply electricity to any

consumer. The Respondent No. 4 is only one of the suppliers of electricity to the State of Jharkhand amongst other States.

68. Both the parties have relied upon Section 133(1)(a) of Code of Criminal Procedure and during the course of arguments, it has been specifically argued by the learned counsel appearing on behalf of the Respondent No. 4 that the Respondent No. 2 has exercised his power under Section 133(1)(a) of Code of Criminal Procedure. Thus, the purported exercise of power by the Respondent No. 2 under Section 133(1)(a) of Code of Criminal Procedure is under challenge in this writ proceeding. The Respondent No. 4 has raised an issue of maintainability of the writ petition by stating that once jurisdiction facts exist for exercise of power by the Respondent No. 2 under Section 133(1)(a) of Code of Criminal Procedure, the adjudicatory facts are for the Respondent No. 2 to consider on the basis of the show-cause of the Petitioner.

69. The solitary issue which is required to be determined in the present writ petition is-

whether the jurisdictional fact exists in the facts and circumstances of this case for the Respondent No. 2 to initiate a proceeding under Section 133(1)(a) of Code of Criminal Procedure?

If the jurisdictional fact to assume jurisdiction is found to be present, a corollary to the aforesaid issue would be,

whether the impugned order is a conditional order as contemplated under section 133 (1) of Cr.P.C or is in the nature of a final order directing the Petitioner to restore water pipe line to the Respondent No. 4 within 24 hours and show cause after about 7 days on 12.12.2020 at 1.00 P.M as to why the order be not enforced?

70. The learned counsel for the Petitioner has argued that the Respondent No. 4 does not have a subsisting right to receive water through Swernrekha river and for this, he has referred to the order dated 7.7.2020 passed in W.P.(C) No. 5999 of 2019 and also the

follow up order passed by the Secretary, Water Resources Department of the State of Jharkhand dated 11.11.2020.

71. Upon perusal of the said order dated 7.7.2020, it appears that the Respondent No. 4 signed a Memorandum of Understanding (MoU) on 31.10.2005 with the Government of Jharkhand for setting up a Power Project in the State of Jharkhand having capacity of 1000 MW (04 units of 250 MW) in two phases which was valid for a period of 12 months. Thereafter, two subsequent MoUs were signed on 18.01.2007 and 01.02.2008 for first extension of 12 more months effective from 31.10.2006 and second extension of 36 months effective from 31.10.2007 respectively. Thus, the validity period of the MoU was effective up to 31.10.2010.

The State Government vide Notification No. 1938 dated 06.09.2007 allowed the Respondent No. 4 to draw 40 Cusecs of water for the said purpose and an agreement between the Respondent No. 4 and the Government of Jharkhand was executed on 29.08.2008 for supply of 40 Cusecs of water from Swarnrekha river in a phased manner. The said agreement remained valid for a period of five years i.e. till 28.08.2013 and was renewable after every five years. After expiry of the agreement dated 29.08.2008, the Respondent No. 4 requested for renewal of the same for a further period of five years from 29.08.2013 to 28.08.2018.

The Respondent No. 4 vide letter dated 10.07.2014 also requested for reduction of quantity of water consumption to 17.60 MCM, however no action was taken by the authorities, rather the invoices were allegedly raised for a higher quantum than the actual withdrawal of water in connection with which writ petition being *W.P.(C) no. 4693 of 2015* was filed by Respondent No. 4.

During the pendency of the above writ petition and expiry of the earlier agreement dated 29.08.2008, the Respondents have continued to raise bills for the entire quantity. Hence another writ petition *W.P.(C) No. 5999 of 2019* was filed seeking a direction upon the Water Resources Department, Government of Jharkhand,

to forthwith execute an agreement for water supply from Subarnrekha river for 17.60 MCM with effect from 30.08.2013. In **W.P.(C) No. 5999 of 2019**, it was submitted by the learned counsel for the State that the matter requires factual verification at an appropriate level of the Government and if a fresh representation is preferred before the Respondent No.2 - The Secretary, Department of Water Resources, Government of Jharkhand, the same will be considered and an appropriate decision will be taken. In the aforesaid background, the following order was passed by this Court in **W.P.(C) No. 5999 of 2019:-**

“5. Having heard learned counsel for the parties and keeping in view the nature of the prayer made in the writ petition, without going into the merit of the case, the petitioner is given liberty to prefer a fresh representation before the respondent no.2 on the present issue. On receipt of the said representation, the respondent no. 2, after providing due opportunity of hearing to the representative of the petitioner, shall take an appropriate decision within a period of four months from the date of filing of the representation.”

72. Pursuant to the aforesaid order passed in W.P.(C) No. 5999 of 2019, Secretary, Water Resources Department, State of Jharkhand passed a reasoned order dated 11.12.2020 stating that there are dues of more than Rs.270 crores and a decision was taken to enter into fresh agreement within 3 (three) months subject to certain conditions including clearance of dues. It was also mentioned in the reasoned order that withdrawal of water without agreement would be illegal for which the present Respondent No. 4 would be responsible.

73. Admittedly, the fresh agreement has not been entered into till date between the present Respondent No. 4 and the State of Jharkhand. It has been brought to the notice of this Court that a fresh writ petition has been filed challenging the aforesaid order dated 11.12.2020 and it has been submitted by the learned counsel for the Respondent No. 4 that if any observation is made by this Court in the present writ petition that may prejudice the case of the Respondent No. 4 in the pending writ petition.

74. Considering the fact that a writ petition has been filed by the Respondent No. 4 challenging the aforesaid order dated 11.12.2020 passed by the Secretary, Water Resources Department, State of Jharkhand, this Court is not inclined to deliberate upon the agreement/MOU between the Respondent No. 4 and the State and the aforesaid factual background is sufficient for disposal of this case.

75. In the aforesaid background, it is sufficient to note that admittedly there are disputes between the Respondent No. 4 and the State in connection with supply of water. Admittedly, the Respondent No. 4 has been requesting the State to reduce the water supply to the Respondent No. 4 from 40 Cusecs to 17.60 MCM with effect from 30.08.2013, but the same was allowed by the State subject to clearance of dues coupled with an observation that withdrawal of water without agreement would be illegal for which the present Respondent No. 4 would be responsible. Thus admittedly, the Respondent No. 4 has less requirement of water as compared to the original agreement with the State which was being supplied through the two pipelines and out of the two pipelines, one pipeline was already connected prior to the impugned order and the second pipeline was directed to be connected by the impugned order.

76. Admittedly, the Petitioner and the Respondent No. 4 have rival claims against each other in connection with the water pipelines through which only they are supplied water from Swernrekha River. As long as the unit of the Petitioner and unit of the Respondent No. 4 had common promoters, there was no differences over the water pipelines which are partly running through the premises of the Petitioner before entering into the premises of the Respondent No. 4.

77. During the course of argument, it is not in dispute that the Respondent No. 4 is not supplying electricity to any consumer, but is supplying electricity to the State of Jharkhand and other States

who in turn supply to the consumers. It is further not in dispute that Respondent No. 4 is not the only supplier of electricity to the State of Jharkhand.

78. Thus, the dispute between the Petitioner and the Respondent No. 4 in connection with the pipelines and disruption of water supply is essentially a private civil dispute between two parties which has nothing to do with public or a section of public.

Initially the Petitioner and the Respondent No. 4 tried to amicably resolve the dispute which failed;

Thereafter, the matter of amicable settlement was undertaken by the Respondent No. 2 at the instance of the Respondent No. 4, which also failed but resulted in restoration of water through one of the two water pipelines. The Respondent No.2 has wrongly recorded that amicable settlement was arrived at between Petitioner and Respondent No.4 in meeting held on 17.11.2020 though admittedly the Petitioner neither signed the minutes on 17.11.2020 nor signed the same on 02.12.2020 when another meeting was convened and the Petitioner was asked to sign the minutes dated 17.11.2020.

79. As per the impugned order, disruption of water supply to the Respondent No. 4 has an adverse effect on the generation of electricity and its supply to the State, and consequently an apprehension is reflected in the impugned order dated 04.12.2020 that this would directly/indirectly affect the supply of electricity to public which in turn may lead to law and order/health problems etc.

80. Admittedly, the Respondent No. 4 is not directly supplying electricity to any consumer and the water supply through the pipelines is a private arrangement for supply of water exclusively to the Petitioner and the Respondent No. 4, this Court finds that there is no direct effect or discomfort on any public right effecting the public at large or the public in part or the public in the vicinity of the neighborhood of the parties in the matter of right to receive

water through the pipelines or right to receive electricity supply from the Respondent No. 4 even as per the impugned order. This is coupled with the fact that out of the two pipelines, only one remained disconnected.

81. This Court further finds that so far as indirect effect on public is concerned, the same is also in anticipation, based on imagination and on mere saying of the Respondent No. 4 who has serious and highly contested private dispute with the Petitioner over the water pipelines. Admittedly, no such enquiry regarding the impact/extent of impact of the action of the Petitioner on power supply to the public at large has been made from any corner including from the State authorities who are responsible for power supply to the consumers. Admittedly, the Respondent No. 4 is only one of the suppliers of electricity to the State amongst others. In fact, no enquiry for that purpose to figure out the impact of the act of the Petitioner on public or section of the public has been conducted by the Respondent No. 2 before passing the impugned order.

82. In view of the aforesaid findings, this Court is of the considered view that there is no such emergent situation appearing from the records or from the impugned order, indicating existence of jurisdictional facts for the Respondent No. 2 to assume jurisdiction and exercise power under Section 133, much less under section 133(1) (a) of the Code of Criminal Procedure. This Court also finds that while exercising the power under Section 133 of Code of Criminal Procedure, the Respondent No. 2 has entered into purely private dispute between the Petitioner and the Respondent No. 4. The Respondent No. 2 initially tried to resolve the dispute through mediation and having failed in his attempt, exercised power under Section 133 of the Code of Criminal Procedure directing the Petitioner to restore water supply to the Respondent No. 4 through one of the water pipelines as water supply through

the other one was already restored by the Petitioner prior to passing of the impugned order.

83. So far as the argument of the Respondent No. 4 that the Petitioner has already submitted to the jurisdiction of the Respondent No. 2 by filing his show-cause and other steps is concerned, this Court finds that immediately after filing of this writ petition, the Petitioner had informed the Respondent No. 2 and certainly had no option but to participate in the proceedings. However, as this Court has found that the jurisdictional facts for exercise of power under Section 133 of Code of Criminal Procedure is absent, the entire proceedings are vitiated for want of jurisdiction.

84. Since the jurisdictional issue is decided in favour of the Petitioner, there is no need to go into the issue as to whether the impugned order is in the nature of final order or is just a conditional order.

85. Accordingly, the impugned order dated 04.12.2020 (Annexure-19) as contained in Memo No. 1539 passed by the Respondent No. 2 in Misc. Case No. 213 of 2020-21, passed under Section 133 of the Code of Criminal Procedure is hereby set-aside and the present writ petition is hereby allowed.

(Anubha Rawat Choudhary, J.)