

GAHC010050812021



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/1881/2021

SAMIR DAS

S/O. LT. GOBINDA RAM DAS, R/O. MANPARA, HOUSE NO.14, BYE LANE
NO.4, P.O. AND P.S. FATASIL AMBARI, GUWAHATI-781025, KAMRUP (M),
ASSAM.

VERSUS

ASSAM POWER DISTRIBUTION COMPANY LIMITED AND 2 ORS
REP. BY ITS CHAIRMAN AND MANAGING DIRECTOR, HAVING OFFICE AT
APDCL, 5TH FLOOR, BIJULEE BHAWAN, PALTAN BAZAR, GUWAHATI-
781001.

2:SUB DIVISIONAL ENGINEER

FATASIL ELECTRICAL SUB DIVISION
APDCL LAR
GUWAHATI-781009.

3:SUB MANAGER (REV) FATASIL ELECTRICAL SUB-DIVISION

APDCL (LAZ)
GUWAHATI-781009

For the Petitioner (s) : Mr. S. Sharma, Advocate.

For the Respondent (s) : Mr. K.P. Pathak, Advocate.

Date of Hearing & Judgment : **25.08.2023**

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH
JUDGMENT AND ORDER(ORAL)

The instant writ petition has been filed challenging the Notice No. Ft ESD/APDCL/MP-2020-2021 dated 24.2.2021 and the Provisional Assessment Bill dated 24.2.2021 being Bill No.900091134 dated 25.2.2021 as well as for refund of an amount of Rs.58,616/- which the Petitioner had to pay pursuant to the said bill issued to the Petitioner within a period of 7 days stated therein.

2. From a perusal of the materials on record, it is alleged by the Petitioner that the Petitioner did not receive the bill for the month of December, 2020, but for the month of January, 2021, he received an SMS on 21.2.2021 wherein the due date of the bill was mentioned as 17.02.2021. However, on account of the preoccupation, the Petitioner could not pay the said bill. On 23.2.2021, the Petitioner found that there was no electricity in his premises. The Petitioner called some technicians and found out that the line was disconnected. On 24.02.2021, the Petitioner went to the Office of the Respondent No. 2 to inform about the whole incident and also to make the payment of the bill which he received on 21.02.2021. The Petitioner also informed that the meter which was provided to the Petitioner had certain broken seal. It is the case of the Petitioner that the Petitioner honestly

and bonafidely had brought it to the attention of the Respondent No.2, but instead the Respondent No. 2 rebuked the Petitioner. Subsequent thereto, on the very date, the Petitioner was served with the initial assessment bill dated 24.02.2021, wherein it was informed that the Petitioner should pay the initial assessment bill within 7 days from the date of presentation of the bill failing which the electricity connection will be disconnected as per Section 126 of the Electricity Act, 2003. Alongwith the said initial assessment bill dated 24.02.2021, the Petitioner was also issued a provisional assessment bill, wherein it was mentioned that there was an unauthorized reconnection of electric line by breaking the meter seal of an amount of Rs.58,616/-. It the further case of the Petitioner that the Petitioner out of great difficulty could manage the said amount of Rs.58,616/- and paid the said amount on 25.2.2021. The Petitioner thereupon on 26.02.2021 submitted an objection against the compensation bill as well as the Bill dated 24.2.2021 to the Sub-Divisional Engineer, Fatasil Electrical Sub-Division, APDCL. However, there was no redressal to the grievances of the Petitioner for which the Petitioner had filed the instant writ petition.

3. It reveals from the records that this Court vide an order dated 19.03.2021 directed the matter to be listed for motion on 09.04.2021 and further directed that the power supply to the premises of the Petitioner shall not be disconnected. Subsequent thereto vide order

dated 9.4.2021, this Court issued notice and the Respondent/ADCL was directed not to disconnect the power supply to the premises of the Petitioner unless the Petitioner defaulted in paying the regular bills.

4. It appears from the records that on 21.6.2021 an affidavit-in-opposition was filed. In the said affidavit-in-opposition, it was mentioned that the Petitioner himself had accepted that he had failed to make payment towards electricity bill for a period of two months i.e. for January, 2021 and February, 2021 and as such the electricity connection to the premises of Petitioner was liable for disconnection as per the Rules. It was further mentioned that the Petitioner's electricity supply to the premises of the Petitioner was disconnected on 23.02.2021 on account of non-payment of the regular Bills further two months. While denying in the affidavit-in-opposition that the petitioner tried to contact the lineman, it was mentioned that in the said affidavit in opposition that upon payment of the amount of Rs.6,194/- on 24.02.2021 alongwith RCDC charges of Rs.700/- as his electric connection was in disconnected condition, the service connection of the Petitioner was ordered for reconnection on 24.02.2021. It was only when an attempt was made for reconnection by the line maintenance staff, it was seen that the seal of the meter was in broken condition and the electricity to the premises of the Petitioner was already in running condition. Under such

circumstances, an inspection team comprising of the Sub-Divisional Engineer, the Assistant Manager (Rev.) and the Senior Meter Reader visited the premises of the Petitioner and found that the meter seal was in broken condition alongwith the unauthorized reconnection of the electricity by the Petitioner. An inspection report was prepared regarding the findings at the site. However, the Petitioner refused to accept the inspection report. On the basis of the inspection report, an assessment bill amounting to Rs.58,616/- was prepared for unauthorized use of electricity by the Writ Petitioner as per the provisions of the AERC Regulation, 2017 and the same was served alongwith the notice to the Petitioner on 24.02.2021 which the Petitioner duly received. It was further mentioned that the Petitioner had duly accepted the assessment bill and paid the said amount of Rs. 58,616/- and as such the Petitioner cannot agitate the said grievances before this Court.

5. I have heard the learned counsel for the parties and have perused the materials on record.

6. This Court finds it relevant at this stage to take note of Section 126 of the Electricity Act, 2003 which pertains to assessment. Section 126 being relevant is quoted hereinbelow :-

“(1) If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorised use

of electricity, he shall provisionally assess to the best of his judgment the electricity charges payable by such person or by any other person benefited by such use.

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

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

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

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

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

7. A perusal of the provisions of Section 126 of the Act of 2003 shows that the provisions of Section 126 of the said Act would be applicable to cases where there is no theft of electricity but the electricity is being consumed in violation of the terms and conditions of supply leading to malpractices which may squarely fall within the

expression “unauthorized use of electricity” This assessment proceedings would commence on the basis of the inspection of the premises or equipments, gadgets, etc or after inspection of records and thereupon the Assessing Officer comes to a conclusion that such consumer is indulging in “unauthorized use of electricity”; then the Assessing Officer shall provisionally assess, to the best of his judgment, the electricity charges payable by such consumer, as well as pass a provisional assessment order in terms with Section 126 (2) of the Act of 2003. Section 126 (3) enables the person on whom an order has been served under Sub-Section (2) of Section 126 to file objections if any, against the provisional assessment before the Assessing Officer, who shall, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment within 30 days from the date of service of such order of provisional assessment of the electricity charges payable by such person. Sub-Section (4) of Section 126 stipulates that any person served with the order of provisional assessment may accept such assessment and deposit the assessed amount with the licensee within 7 days of such provisional assessment order served upon him. The order of assessment under Section 126 and the period for which such order would be passed has to be in terms with Sub-Sections (5) and (6) of Section 126 of the Act of 2003.

8. Therefore from the above, it would be seen that in terms with

the mandate of Section 126 of the Act of 2003, the order of provisional assessment has to be served upon the person in occupation or possession or In-Charge of the place or premises in such manner as may be prescribed. Admittedly in the instant case, there is no order of provisional assessment so served upon the Petitioner. The impugned notice dated 24.2.2021 under no circumstances, can be said to be a provisional assessment order. Further to that, in terms with Subsection (3) of Section 126 of the Act of 2003, the person to whom the provisional assessment order has been served has a right to file objection if any against the provisional assessment order before the Assessing Officer as well as also a right of a reasonable opportunity of hearing before a final order of assessment is passed within the time stipulated in subsection (3) of Section 126 of the Act of 2003. However, in the instant case, there is neither any provisional assessment order nor any opportunity was given to the Petitioner to file objection as well as an opportunity of being heard which is otherwise the mandate of Subsection (2) and Subsection (3) of Section 126 of the Act of 2003. In fact a perusal of the initial assessment bill dated 24.02.2021 even does not mention that the Petitioner has a right to file objection against the same.

9. Though Mr. K.P. Pathak, the learned counsel appearing on behalf of the APDCL submits that the Petitioner having accepted the bill and made payment in terms of Subsection (4) of Section 126 of the Act of

2003 cannot re-agitate the matter but in the opinion of this Court without the compliance of Subsection (2) and Subsection (3) of Section 126 of the Act of 2003, the question of the Petitioner having accepted the amount by making payment would not arise. Under such circumstances, this Court sets aside the initial assessment bill dated 24.2.2021 as well as the provisional assessment bill dated 24.2.2021.

10. The Respondent APDCL authority is given the liberty to serve the petitioner with the order of provisional assessment within 15 days from the date a certified copy of this order is served upon the Assessing Officer, thereby granting the reasonable opportunity to the Petitioner to file objection. It is observed and directed that if the Petitioner files objection, the Assessing Officer shall after giving the Petitioner a reasonable opportunity, pass such orders of assessment as deemed fit within a period of 30 days from the date of service of such order of provisional assessment. It is further provided that if the order of provisional assessment is not served upon the Petitioner within the time stipulated above, then the amount which the Petitioner had duly deposited i.e. Rs.58,616/- be refunded to the Petitioner forthwith and not later than 15 days. It is further observed that in the eventuality, the final order is passed, the payment so made of Rs.58,616/- by the Petitioner shall be subject to it.

11. Before parting with the records, this Court deems it proper to

observe and clarify that the bill dated 12th of March, 2021 of an amount of Rs.58,616/- as per the learned counsel representing the APDCL is nothing but a continuation of the initial assessment bill which the Petitioner had duly paid on 25.2.2021.

12. With the above observations and directions, the petition stands disposed.

JUDGE

Comparing Assistant