

GAHC010076322022



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

**Case No. : WP(C)/2697/2022**

BIJAY PRASAD SAHU ALIAS B P SAHU  
S/O LATE KESHO PRASAD SAHU, R/O MANTRIPUKHRI, OPP. C.R.P.F. CAMP,  
P.O. AND P.S.-MANTRIPUKHRI, IMPHAL EAST, MANIPUR-795002

VERSUS

THE STATE OF ASSAM AND 3 ORS  
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.  
OF ASSAM, POWER DEPARTMENT, ASSAM SECRETARIAT, DISPUR,  
GUWAHATI-781006, ASSAM

2:THE MANAGING DIRECTOR  
ASSAM POWER DISTRIBUTION COMPNAY LTD.  
BIJULI BHAWAN  
PALTAN BAZAR  
GUWAHATI-781001  
ASSAM

3:THE CHIEF EXECUTIVE OFFICER (CEO)  
GUWAHATI ELECTRICAL GEC-I  
ASSAM POWER DISTRIBUTION CORPORATION LTD. (APDCL)  
KAMRUP  
GUWAHATI  
ASSAM  
PIN-781001

4:THE SUB-DIVISION OFFICER  
ASSAM POWER DISTRIBUTION CORPORATION LTD. (APDCL)  
ZOO ROAD ELECTRICAL SUB-DIVISION  
GUWAHATI ELECTRICAL CIRCLE-I  
GUWAHATI  
ASSAM

PIN-78100

**Advocate for the Petitioner** : MR D P SAHU

**Advocate for the Respondent** : GA, ASSAM

**BEFORE  
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

**ORDER**

**Date : 25-05-2023**

Heard Mr. D.P. Sahu, petitioner-in-person. Also heard Mr. S.P. Sharma, learned standing counsel for the respondents.

2. In this writ petition filed under Article 226 of the Constitution of India, the petitioner projects that without serving notice as required under the provisions of the Electricity Act, 2003 the electricity connection to his premises has been illegally and unlawfully disconnected, which is in infringement of his legal and constitutional rights and therefore, the petitioner has prayed for directing the respondents to restore and/or reconnect the electricity connection to his premises, to refund and/or reimburse to the petitioner amount realized from him illegally and to pay compensation and damages to the petitioner.

3. The petitioner-in-person has submitted that he has a premises at Guwahati. During corona pandemic, the electricity connection to the premises of the petitioner was disconnected without serving any notice on him. Nonetheless, the respondents continued to generate electricity bills and that prior to the expiry of the period allowed for payment of bills, without serving any notice, the electricity meter was removed, but in a most illegal manner, the entries in the bill continued to display the status of electricity meter as "running". It is also submitted that the disconnection notice annexed to the

affidavit-in-opposition is false and fabricated and manufactured for this case and that no proof of service is enclosed. It is also submitted that although the respondents made a demand for payment of pending electricity dues and disconnection/ reconnection charges, the demand was illegal but the petitioner had paid the amount on 29.03.2022, as he wanted restoration of electricity connection, but after receiving payment, the respondents asked the petitioner to apply for a new connection and that the electricity supply would not be restored under the previous consumer number. It is submitted that despite serving advocate's notice dated 06.04.2022, the electricity connection was not restored and therefore, the petitioner was compelled to approach this Court for relief including compensation. Apart from oral submissions, a written note of argument has been filed and reliance is placed on the following case, viz., *State of Orissa & Anr. v. Mamta Mohanty, (2011) 3 SCC 436 (para-37)*.

4. The learned standing counsel for the respondents has made his submissions justifying the action taken by the respondents in temporary disconnection, followed by permanent disconnection, raising of bills and removal of electricity supply meter. In support of his submissions, reliance is placed on the following cases, viz., *Prem Cottex v. Uttar Haryana Bijli Vitran Nigam Ltd. & Ors., (2021) SCC OnLine SC 870*, and *Assistant Engineer (D1), Ajmer Vidyut Vitran Nigam Ltd. & Anr. v. Rahamatullah Khan @ Rahamjulla, (2020) 4 SCC 650*.

5. The pleadings and case laws cited by both sides has been considered.

*Relevant provisions of the Electricity Supply Code:*

6. The relevant provisions of the "Assam Electricity Regulatory

Commission (Electricity Supply Code) Regulations, 2017” (hereinafter referred to as “AERC Supply Code” for short) are as follows:-

- a. Vide notification dated 06.11.2017, the AERC Supply Code was made in exercise of powers conferred by Section 50 and Clause (x) of sub-section (2) of Section 181 of the Electricity Act, 2003. It came into effect from 18.11.2017, the date of its publication in the Assam Gazette.
- b. Under Regulation 1.3.2 reference has been made to the related provisions of the Electricity Act, 2003, viz., (i) Section 50, amongst others, relating to recovery of electricity charges, intervals of billing and electricity charges, disconnection for non-payment of charges, restoration; (ii) Section 56, relating to disconnection of supply in default of payment.
- c. The contents of energy bill is provided for in Regulation 6.3.5.(a), which includes, amongst others, status of meter (i.e. OK/defective/not-available), and billing details are provided under Regulation 6.3.5.(c).
- d. Regulation 8.1 allows the licensee to disconnect supply temporarily or on a permanent basis, and it also allows removal of service line and meter only in case of permanent disconnection. A provision for temporary disconnection is contained in Regulation 8.2 and clauses thereunder. The proviso to Regulation 8.2.2 provides notice period of 15 days for all disconnection, except when requested by the consumer and it also provides that the licensee must intimate the consumer in case of his temporary disconnection in the Format-18 within 24 hours of disconnection. Provision for reconnection/restoration of power supply is provided under Regulation 8.2.3, and

provision for permanent disconnection is under Regulation 8.3, which amongst others provides that if the consumer remains continuously disconnected for 180 days, the agreement shall be deemed to be terminated on the expiry of 15 days or after expiry of the initial period of agreement, whichever is later, without prejudice to the rights of the licensee for recovery of any amount due. It is also provided that after termination of all the agreement, the licensee shall intimate the consumer under Format-20 of the AERC Supply Code.

*On status of bills and disconnection:*

7. In the writ petition, the petitioner has annexed a copy of bill dated 14.03.2022, with due date of 29.03.2022 for an amount of Rs.18,358.00. Payment receipt dated 29.03.2022 for the billed amount and a separate payment receipt dated 29.03.2022 for an amount of Rs.600/- towards disconnection/ reconnection charges. In the affidavit-in-opposition, the respondents have annexed bills dated 01.06.2020, 01.07.2020, 13.08.2020, 02.09.2020, 07.10.2020, 17.02.2021, 05.03.2021, 12.08.2021. On a perusal of the herein before referred bills, it is noted that the bill dated 14.03.2022 contains a statement "PDC". The learned standing counsel for the respondents has submitted that "PDC" is an abbreviation of "permanent dis-connection" and it indicates that the electricity connection of the petitioner is permanently disconnected.

8. Therefore, as the bill annexed to the writ petition is a "PDC" bill dated 14.03.2022, the Court is of the considered opinion that the said "PDC" bill is not a regular electricity energy bill. As per annexure-2 to the affidavit-in-opposition, the "intimation to consumer after temporary disconnection of

supply” is dated 16.11.2021, which mentions that the electricity supply of the petitioner was temporarily disconnected with effect from 20.08.2020. Therefore, 180 days would have expired on or about 16.02.2021. Therefore, by operation of proviso to Regulation 8.3 of the AERC Supply Code, the agreement between the petitioner and APDCL is deemed to have terminated.

9. Thus, the Court is constrained to hold that as the period of payment indicated in the regular electricity bills has expired, a right had accrued to the respondents to temporarily disconnect the electricity supply. The temporary disconnection has been continuous from 20.08.2020 for more than 180 days as on 16.02.2021, a right had accrued in favour of the APDCL to permanently disconnect the electricity supply to the premises of the petitioner. The power to do so as provided in the AERC Supply Code has been referred to herein before.

Disconnection notice:

10. The petitioner-in-person had submitted that there is a legal requirement of serving a separate disconnection notice under Section 56(1) of the Electricity Act, 2003 prior to temporary disconnection and permanent disconnection. It was submitted that the statement made in the energy bill regarding disconnection notice under Section 56(1) of the Electricity Act, 2003 would not constitute due service of disconnection notice. It was submitted that by not issuing a separate disconnection notice, the right of the petitioner to natural justice has been violated.

11. We are unable to accept the said contention of the petitioner-in-person. An electricity consumer cannot claim that he does not know the billing cycle and that he has a duty to pay electricity bills timely to have continuous

electricity energy supply. Therefore, the statement in the bill for current electricity charges regarding "disconnection notice" by mentioning that "*Under Section 56(1) of IE Act, 2003 power supply to your premises will be disconnected at any time due to non payment of arrear amount. Ignore if already paid*", in the considered opinion of the Court, would constitute due service of a disconnection notice. The respondents have annexed the temporarily disconnection notice issued to the petitioner on 16.11.2021 under Format-18.

*Analysis of materials on record to ascertain to what relief the petitioner would be entitled to:*

12. It is seen that along with the affidavit-in-reply, the petitioner has produced a copy of letter dated 08.04.2022, by Sub-Divisional Engineer, Zoo Road Electrical Sub-Division, which was in response to the advocate's notice dated 06.04.2022, by which the petitioner was informed that electricity supply to his premises was permanently disconnected on 14.03.2022. However, in the body of the said letter, there is a hand-written note, which appears to be made by the petitioner, mentioning that "*This is reply to the legal notice. It clearly demonstrates that notice, if at all, was given only on 16.11.2021, whereas it was temporarily disconnected on 20.03.2020, for which no notice was given.*"

13. Thus, it appears from the document produced by the petitioner that electricity energy supply was disconnected to his premises on 20.03.2020. Hence, as per the document produced by the petitioner, the permanent disconnection was done on 14.03.2022, was far beyond 180 days, as prescribed by Regulation 8.3 of the AERC Supply Code.

14. In this regard, we may refer to the observations made by the

Supreme Court of India in the case of *Prem Cottex (supra)*, which is reproduced below:-

**11.** *In Rahamatullah Khan (supra), three issues arose for the consideration of this Court. They were (i) what is the meaning to be ascribed to the term "first due" in Section 56(2) of the Act; (ii) in the case of a wrong billing tariff having been applied on account of a mistake, when would the amount become first due; and (iii) whether recourse to disconnection may be taken by the licensee after the lapse of two years in the case of a mistake.*

**12.** *On the first two issues, this Court held that though the liability to pay arises on the consumption of electricity, the obligation to pay would arise only when the bill is raised by the licensee and that, therefore, electricity charges would become "first due" only after the bill is issued, even though the liability would have arisen on consumption. On the third issue, this Court held in Rahamatullah Khan (supra), that "the period of limitation of two years would commence from the date on which the electricity charges became first due under Section 56(2)". This Court also held that Section 56(2) does not preclude the licensee from raising an additional or supplementary demand after the expiry of the period of limitation in the case of a mistake or bonafide error. To come to such a conclusion, this Court also referred to Section 17(1)(c) of the Limitation Act, 1963 and the decision of this Court in Mahabir Kishore & Ors. v. State of Madhya Pradesh, (1989) 4 SCC 1.*

**13.** *Despite holding that electricity charges would become first due only after the bill is issued to the consumer (para 6.9 of the SCC Report) and despite holding that Section 56(2) does not preclude the licensee from raising an additional or supplementary demand after the expiry of the period of limitation prescribed therein in the case of a mistake or bonafide error (Para 9.1 of the SCC Report), this Court came to the conclusion that what is barred under Section 56(2) is only the disconnection of supply of electricity. In other words, it was held by this Court in the penultimate paragraph that the licensee may take recourse to any remedy available in law for the recovery of the additional demand, but is barred from taking recourse to disconnection of supply under Section 56(2).*

**14.** *But a careful reading of Section 56(2) would show that the bar contained therein is not merely with respect to disconnection of supply but also with respect to recovery. If Subsection (2) of Section 56 is dissected into two parts it will read as follows:*

(i) *No sum due from any consumer under this Section shall be recoverable after the period of two years from the date when such sum became first due; and*

(ii) *the licensee shall not cut off the supply of electricity.*

**15.** *Therefore, the bar actually operates on two distinct rights of the licensee,*

*namely, (i) the right to recover; and (ii) the right to disconnect. The bar with reference to the enforcement of the right to disconnect, is actually an exception to the law of limitation. Under the law of limitation, what is extinguished is the remedy and not the right. To be precise, what is extinguished by the law of limitation, is the remedy through a court of law and not a remedy available, if any, de hors through a court of law. However, section 56(2) bars not merely the normal remedy of recovery but also bars the remedy of disconnection. This is why we think that the second part of Section 56(2) is an exception to the law of limitation.*

**16.** *Be that as it may, once it is held that the term "first due" would mean the date on which a bill is issued, (as held in para 6.9 of Rahamatullah Khan) and once it is held that the period of limitation would commence from the date of discovery of the mistake (as held in paragraphs 9.1 to 9.3 of Rahamatullah Khan), then the question of allowing licensee to recover the amount by any other mode but not take recourse to disconnection of supply would not arise. But Rahamatullah Khan says in the penultimate paragraph that "the licensee may take recourse to any remedy available in law for recovery of the additional demand, but barred from taking recourse to disconnection of supply under subsection (2) of section 56 of the Act".*

15. In the case of *Rahamatullah Khan (supra)*, it was held by the Supreme Court of India as follows:-

**8.** *Section 56(2) however, does not preclude the licensee company from raising a supplementary demand after the expiry of the limitation period of two years. It only restricts the right of the licensee to disconnect electricity supply due to non-payment of dues after the period of limitation of two years has expired, nor does it restrict other modes of recovery which may be initiated by the licensee company for recovery of a supplementary demand.*

**9.** *Applying the aforesaid ratio to the facts of the present case, the licensee company raised an additional demand on 18.03.2014 for the period July, 2009 to September, 2011. The licensee company discovered the mistake of billing under the wrong Tariff Code on 18.03.2014. The limitation period of two years under Section 56(2) had by then already expired.*

**9.1** *Section 56(2) did not preclude the licensee company from raising an additional or supplementary demand after the expiry of the limitation period under Section 56(2) in the case of a mistake or bona fide error. It did not however, empower the licensee company to take recourse to the coercive measure of disconnection of electricity supply, for recovery of the additional demand.*

16. The herein before referred advocate's reply dated 08.04.2022, indicates that the respondents had mentioned therein that notice before permanent disconnection was served on 16.11.2021. A legal duty is cast on the respondents to issue a prior notice before disconnection, which appears to have been issued.

17. Be that as it may, by service of energy bills referred in herein before, the respondents had given notice to the petitioner under Section 56(1) of the Electricity Act, 2003, which is contained in the body of the energy bill itself.

18. Therefore, from the herein before referred decisions, it appears that a duty was cast on the respondents to issue disconnection notice and not only it was done, but notice under Section 56(1) of the Electricity Act, 2003 was also served on the petitioner.

19. Moreover, it appears to be well settled that notwithstanding that the electricity energy supply was temporarily and/or permanently disconnected, it would not debar the respondents to raise bills for the due/overdue energy bills.

20. It appears that in respect of payment of energy bills, there are three aspects. Firstly, if the energy charge is paid before the due date of the current electricity energy bill, the supply of electricity energy would be maintained and/or continued without interruption. Secondly, if the electricity energy bill is not paid within due date, the respondents had a right to temporarily disconnect energy supply. Thirdly, if the payment of energy charges is made after the electricity energy supply is permanently disconnected, there

can be no question of a reconnection even after payment is made, and the consumer would have to apply for a fresh connection.

21. Thus, the Court is inclined to hold that the issuance of PDC bill dated 14.03.2022 cannot be said to be illegal. Moreover, the Court is also constrained to hold that the payment made by the petitioner on 29.03.2022 for a sum of Rs.18,358/- towards energy charges and Rs.600/- towards reconnection/ disconnection charges would not entitle the petitioner for restoration of supply through the permanently disconnected electricity meter and/or consumer number.

22. Under the circumstances, and in view of the prescription of the Electricity Act, 2003 and AERC Supply Code, which are referred and discussed above, the case of *Mamata Mohanty (supra)*, which was cited for the legal proposition that if a order was bad in inception, it does not get sanctified at a later stage, would have no application in this case.

23. Therefore, in order to avail electricity energy supply to his premises, the petitioner would have to make a fresh application before the respondent authority concerned and enter into a fresh energy supply agreement for the purpose.

24. The petitioner has admittedly paid reconnection charges to the respondents on 29.03.2022, which was not restored. Therefore, the Court is inclined to hold that petitioner would be entitled to adjustment of the component of reconnection charges that may be left after the disconnection charges is adjusted and/or apportioned by the respondents. The reconnection charges should be adjusted by the respondents against the energy supply bill

which would be issued after fresh electricity energy connection is provided to the petitioner. However, if the petitioner does not apply for a fresh electricity connection, then the respondents should refund the reconnection charges component to the petitioner on application for the same being made.

25. Therefore, in light of the discussions above, this writ petition stands partly allowed to the extent of the relief as granted vide observations made in para-24 above. All other reliefs as prayed for by the petitioner is refused.

26. However, before parting with the records, the Court is inclined to provide that if the petitioner makes a fresh application for supply of electricity energy supply, the respondents shall accept the application if it is complete and correct in all respects and after taking the prescribed load security and other costs and expenses as applicable, provide a fresh electricity energy connection to the petitioner in accordance with law, as electricity energy supply is otherwise an essential supply.

27. The parties are left to bear their own cost.

**JUDGE**

**Comparing Assistant**