

GAHC010123182012



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

WRIT PETITION (C) NO. 6343/2012

M/s Parvati Tea Company, a Partnership Firm Registered under Indian Partnership Act, 1932 having its registered office at Jyotinagar, Dibrugarh represented by Sri Bimal Kumar Goenka, partner of the petitioner firm and resident of Jyotinagar, Dibrugarh.

.....Petitioner

-Versus-

- 1) The State of Assam, represented by Department of Power and Electricity.
- 2) Managing Director, Assam Power Distribution Company Limited, Bijulee Bhavan, Panbajar, Guwahati.
- 3) The Appellate Authority for Assam Power Distribution Company Limited.
- 4) The Area Manager, DIRCA, DEC, Assam Power Distribution Company Limited, Dibrugarh.
- 5) The Assistant General Manager, T and C Division, DEC, Dibrugarh.

.....Respondents

Advocates :

Petitioner : Mr. K. Choudhury, Advocate
Mr. P.K. Borah, Advocate

Respondents : Mr. K.P. Pathak, SC, APDCL

Date of Hearing, Judgment & Order : 26.09.2023

BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY
JUDGMENT & ORDER [ORAL]

The present writ petition under Article 226 of the Constitution of India has been preferred to assail an Order dated 10.12.2012 passed by the Appellate Authority under Section 127 of the Electricity Act, 2003 in Appeal no. 12/2012 [M/s Parvati Tea Company vs. Area Manager, APDCL, Dibrugarh and others]. By the Appellate Order dated 10.12.2012, the Appellate Authority rejected the appeal preferred by the petitioner against the Final Assessment Bill amount of Rs. 12,66,844/-. By rejecting the appeal, it has upheld the Final Order of Assessment passed by the Assessing Officer and the petitioner has been directed to pay the balance 50% of the Final Assessment Bill dated 26.12.2012 with surcharge as per existing rules within 15 days from the date of the Appellate Order as the petitioner had deposited 50% of the Final Assessment Bill dated 26.12.2012 at the time of preferring the statutory appeal.

2. The facts necessary and relevant for the purpose of the instant writ petition can be exposited as follows :-

2.1. The petitioner, a registered partnership firm, is a consumer bearing Consumer no. TEE-2/48 with a connected load of 215 Kilowatt and transformer capacity of 500 KV under the respondent Assam Power Distribution Company Limited [APDCL].

2.2. An inspection of the electricity metering system installed in the factory premises of the petitioner firm was carried out on 22.03.2012 by the officials of the respondent APDCL and there was another such inspection on 16.06.2012. When the inspection was carried out on 22.03.2012 in the premises of the petitioner firm for checking the condition of the electricity metering system, analysis was carried out by Common Meter Reading Instrument [CMRI] and no irregularity was detected in respect of the electricity metering system installed inside the factory premises of the petitioner firm. The seals, cabinet box, optical port, etc. were found to be intact. But, when the electricity metering system/installation was checked by CMRI again on 16.06.2012, it was detected that the installation of cable meant for 15 [Bph], 38 & 35 [Bph] were found stripped off over a length of 5 mm to 6 mm before entering the meter terminals inside cabinet box. The Inspection Report, prepared on 16.06.2012, recorded that the stripped off portions were found to be covered with piece of PVC wraps. The Inspection Report further recorded that the pieces of wraps were removed and sealed in presence of the consumer and resealing was done without rectification of the metering system.

2.3. The inspection carried out on 16.06.2012 with the resultant Inspection Report, led to the issuance of a Provisional Assessment Bill no. 0783 dated 19.06.2012 for an amount of Rs. 53,76,720/-. The said Provisional Assessment Bill dated 19.06.2012 was served upon the petitioner with the further information that the said Provisional Assessment Bill had been prepared for malpractice under Clause 5.A.3 and Clause 5.A.4 of the Assam Electricity Regulatory Commission [Electricity Supply Code and Related Matters] Regulations, 2004, as amended, [‘the Regulation, 2004’, for short] and notified by the Assam Electricity Regulatory Commission [AERC]. On receipt of the Provisional Assessment Bill dated 19.06.2012, the petitioner submitted its objection against the Provisional Assessment Bill contending *inter alia* to the effect that there was no tampering in the electricity metering system. It was contended that whatever inspection team had found as per the Inspection Report dated 16.06.2012, was inside the metering cabinet without any broken seal and it was impossible to tamper with the metering system without breaking of seals, which were found intact. Reference was made to the previous inspection carried out on 22.03.2012 when no irregularity was detected with the metering system, to contend that it was impermissible on the part of the licensee to raise a

bill for a period of 12 months by the Provisional Assessment Bill dated 19.06.2012 when the CMRI analysis carried out on the metering system installed inside the premises of the petitioner on 22.03.2012, did not detect any irregularity. Assailing the Provisional Assessment Bill as unjustified and arbitrary, the petitioner requested the licensee to provide the CMRI reports, dated 22.03.2012 & dated 16.06.2012.

2.4. A hearing in relation to the Provisional Assessment Bill no. 0783 dated 19.06.2012 took place before the Assessing Authority on 22.06.2012 in presence of the representatives from both the sides. From the Minutes of the Hearing, which took place before the Assessing Authority, issued under the hand of the Assessing Authority, it goes to indicate that the points raised by the petitioner in the written objection were taken note of and other relevant documents were perused. The Assessing Authority had thereafter, made the following observations :-

1. There was a stripping off insulation of CT wires of R&B phase [S1, S2 point] inside the metering cabinet.
2. As per Report of T&C Division Dibrugarh the seals and the metering cabinet were found to be intact.
3. It was also found that T&C Division Dibrugarh inspected the premises of consumer on 22/03/2012 and CMRI data's were taken for analysis and found no any abnormalities in the metering system.

The Committee view of the above has decided that quantum of energy to be calculated as per terms & condition of supply.

The final bill may be served accordingly. However, the consumer is free to appeal to the appellate authority if he desires observing all formalities within 15 days from the date of issue of the final bill.

2.5. By a subsequent Letter dated 25.06.2012 on the subject : Assessment in reference to the Provisional Assessment Bill no. 0783 dated 19.06.2012 and subsequent hearing held on 22.06.2012, the decision of the Committee was conveyed to the petitioner. It was informed to the petitioner that the Committee had decided to assess the quantum of energy loss from

22.03.2012, that is, from the date of the last inspection carried out by T&C Division in the premises of the petitioner. By the Letter dated 25.06.2012, the petitioner was served with a Final Order of Assessment, Assessment Order no. 144[a] amounting to Rs. 12,66,844/- and the petitioner was directed to deposit the said amount within 15 days from the date of issuance of the Final Assessment Bill. The petitioner was also informed that if the petitioner intended to prefer any appeal, the same could be preferred before the Appellate Authority after observance of all the formalities.

2.6. Aggrieved by the Final Order of Assessment for an amount of Rs. 12,66,844/-, made under Section 126 of the Electricity Act, 2003 vide Assessment Order no. 144[a] dated 25.06.2012, the petitioner firm preferred an appeal under Section 127 of the Electricity Act, 2003 by depositing 50% of the Final Assessment Bill amount in compliance of the provisions of sub-section [2] of Section 127 of the Electricity Act, 2003. On receipt of the appeal, the Appellate Authority registered the appeal as Appeal no. 12/2012. As the appeal was found to be within time, the Appellate Authority proceeded to hear the appeal. During the course of hearing, which took place on 25.07.2012 and 20.11.2012, the appellant, the respondents and the inspecting officers were present. The appellant was represented by its Authorized Representative, that is, a partner of the partnership firm before the Appellate Authority. After hearing both the sides, the Appellate Authority reached a conclusion that the Final Assessment Bill of Rs. 12,66,844/- raised by the Assessing Authority needed no review. By concluding so, the appeal was dismissed and the Final Order of Assessment passed by the Assessing Officer was upheld. The appellant-petitioner was directed to pay the balance 50% of the Final Assessment Bill dated 22.06.2012 with surcharge as per existing rules within 15 [fifteen] days from the date of passing of the Appellate Order. Aggrieved by and dissatisfied with the Appellate Order dated 10.12.2014, the petitioner has preferred the instant writ petition.

3. I have heard Mr. K. Choudhury, learned Counsel appearing through virtual mode assisted by Mr. P.K. Bora, learned counsel for the petitioner firm and Mr. K.P. Pathak, learned Standing Counsel, APDCL.

4. It is contended on behalf of the petitioner that the electricity metering system was installed in the premises of the tea factory of the petitioner. When an inspection was carried out, just about three month prior to the inspection on 16.06.2012, that is, on 22.03.2012, no abnormality was detected and it was accordingly recorded in the Inspection Report, prepared after the inspection. Thus, in such situation, the act of raising a Provisional Assessment Bill for a period of 12 months was clearly an arbitrary act and it goes to signify that there was no application of mind on the part of the Assessing Authority at the time of raising the Provisional Assessment Bill when he was exercising the jurisdiction under Section 126 of the Electricity Act, 2003. It was only after the petitioner had raised a valid objection through its written objection dated 20.06.2012, the Final Assessment Bill was prepared for a period of 3 [three] months. It has been contended that as the seals of the electric metering system were found to be completely intact during the inspection on 16.06.2012, it is clear that no tampering with the electricity metering system had taken place. While contending that it is not possible on the part of the consumer to effect such tampering, an allegation is levelled that the act of tampering, if any, would have been possible on the part of the APDCL personnel at the time of inspection. The petitioner firm has contended that the Appellate Authority had dealt with the appeal in a casual manner and without any proper appreciation of the actual facts, came to the conclusion that the allegation made against the petitioner was true and there could be no way the APDCL personnel could be held responsible for such mischief. The finding recorded by the Appellate Authority as regards stripping off the cable in the metering system was challenged on the premise that such kind of alleged tampering could not have been possible on the part of the petitioner firm i.e. the consumer but it could have been possible on the part of the personnel from the inspection team as they were trained and experienced with such kind of metering system installed inside the premises of the petitioner.

4.1. The learned counsel for the petitioner has contended that the findings recorded by the Appellate Authority in the impugned Order dated 10.12.2012, are perverse ones as there was no proper discussion and appreciation of the contentions advanced from the end of the petitioner. In support of his submissions, a decision of the Hon'ble Delhi High Court in **Mukesh Mehra vs. B.S.E.S. Yamuna Power Limited**, reported in 2010 SCC OnLine Del 723, and a decision

of this Court in **Rajshree and Industries P. Limited vs. Assam Power Distribution Company Limited and others**, reported in [2019] 2 GLR 116, have been placed.

5. Mr. Pathak, learned Standing Counsel, APDCL has submitted that there is no ground to interfere with the findings recorded either by the Assessing Authority or by the Appellate Authority, with which the Final Assessment Order stood merged. It is contended by him that as the jurisdiction of the Appellate Authority to determine questions of fact is co-extensive with the primary authority, the findings of fact arrived at by the two fact finding authorities are not to be disturbed ordinarily, unless there is perversity in the findings of facts. Referring to the contents of the Appellate Order, Mr. Pathak has contended that the Appellate Authority had considered the versions urged by both the sides. In addition, the Appellate Authority had also looked at the physical photographs. He has submitted that the Appellate Authority had recorded a finding after proper appreciation that subsequent low consumption after 22.03.2012 till re-sealing, corroborated the fact that the metering system was tampered. He has contended that contrary to the projection made by the petitioner to the effect that the custodian of the metering system is the licensee, it is the consumer, who is responsible for the safe custody of the meter, cut-outs, MCB, CB, etc. if such installations are inside the consumer's premises, in terms of Clause 4.2.1.2.5 of the Regulations, 2004. To buttress his submissions, Mr. Pathak has placed reliance in [i] a decision passed in W.P.[C] no. 6237/2013 [**Punit Kumar Bagaria vs. the Assam Power Distribution Company Limited and other**], decided on 14.02.2019; [ii] **Surya Dev Rai vs. Ram Chander Rai and others**, reported in [2003] 6 SCC 675; and [iii] **Sawan Singh and another vs. State of Punjab and others**, reported in [1976] 2 SCC 868.

6. I have given due consideration of the submissions made by the learned counsel for the parties and have also gone through the materials placed on record by the parties through their pleadings. I have also gone through the Appellate Order dated 10.12.2012 passed by the Appellate Authority in Appeal no. 12/2012.

7. The matters of investigation and enforcement have been dealt with in Part-XII of the Electricity Act, 2003. Section 126 of the Electricity Act, 2003 has provided for assessment and Section 127 has provided for appeal to the Appellate Authority to an order made under

Section 126. The provisions of Section 126 and Section 127 of the Electricity Act, 2003 are quoted hereinbelow, for ready reference, :-

Section 126 – Assessment

[1] If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorized use of electricity, he shall provisionally assess to the best of his judgement 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 unauthorized 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].

Explanation- For the purposes of this section -

[a] “assessing officer” means an officer of a State Government or Board or licensee, as the case may be, designated as such by the State Government;

[b] “unauthorised use of electricity” means the usage of electricity –

[i] by any artificial means; or

[ii] by a means not authorised by the concerned person or authority or licensee; or

[iii] through a tampered meter; or

[iv] for the purpose other than for which the usage of electricity was authorised; or

[v] for the premises or areas other than those for which the supply of electricity was authorized.”]

Section 127 - Appeal to Appellate Authority

[1] Any person aggrieved by the final order made under section 126 may, within thirty days of the said order, prefer an appeal in such form, verified in such manner and be accompanied by such fee as may be specified by the State Commission, to an appellate authority as may be prescribed.

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

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

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

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

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

8. From the provisions of Section 126 of the Electricity Act, 2003, it is *inter alia* noticed that if on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the Assessing Officer comes to the conclusion that such person is indulging in unauthorized use of electricity, he will first provisionally access to the best of his judgment the electricity charges payable by such person or by any other person benefited by such use. A copy of the order of provisional assessment is required to be served upon the person in occupation or possession or in charge of the place or premises in the manner prescribed. A reasonable opportunity of hearing is to be afforded to such person if such person files any objection to the provisional order of assessment. It is only after affording a reasonable opportunity of hearing to such person, the Assessing Authority is to pass final order of assessment within the stipulated time period from the date of service of the order of provisional assessment. If the person who has been served with the provisional assessment order chooses not to file any objection and accepts such provisional assessment and deposit the same with the licensee there is no requirement to proceed further with the matter. If the Assessing Officer reaches to the conclusion that unauthorized use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorized use of electricity has taken place and if, however, the period during which such unauthorized 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. The assessment made under Section 126 shall be made at a rate equal to twice the tariff rates applicable for the relevant category of services specified in sub-section [5]. Clause [b] of the Explanation provided in Section 126 has provided the manner of unauthorized use of electricity and as per said Clause [b], "unauthorised use of electricity" means the usage of electricity – [i] by any artificial means; or [ii] by a means not authorised by the concerned person or authority or licensee; or [iii] through a tampered meter; or [iv] for the purpose other than for which the usage of electricity was authorised; or [v] for the premises or areas other than those for which the supply of electricity was authorized.

9. From the above, it has already emerged that in respect of electricity metering installed in the premises of the petitioner firm, two inspections were carried out from the end of the

licensee, that is, on 22.03.2012 and on 16.06.2012 respectively. Though in the provisional order of assessment, the Assessing Authority had taken a period of 12 [twelve] months for the purpose of calculating the amount for the alleged unauthorized use of electricity, the same made limited to a period of 3 [three] months by the Assessing Officer on receipt of the objection from the petitioner as the consumer that in the Inspection Report prepared after the inspection on 22.03.2012, no abnormality was detected in the electricity metering system installed in the premises of the petitioner. The respondent APDCL authorities while raising the assessment orders – provisional or final - had referred to Clause 5.A.3 and Clause 5.A.4 of the Assam Electricity Regulatory Commission [Electricity Supply Code and Related Matters] Regulations, 2004, as amended, framed in exercise of the powers conferred by Section 50 read with Section 181 of the Electricity Act, 2003. Chapter V.A.O : Interference with Supply Mains & Apparatus contains Clause 5.A.3 : Malpractice and Clause 5.A.4 : Method of assessment of the electricity charge payable in case of theft pending adjudication by the appropriate court. It has been provided in Clause 5.A.1 that a Consumer shall not interfere with the supply mains or apparatus including the metering arrangement which may have been installed in his premises. The sealing of the metering arrangement will be done by an authorised officer/employee of the supplier in presence of the consumer or his representative. When an authorised officer or employee wants to break the said seal or otherwise interfere with the metering arrangement, he shall invite the presence of the consumer or his representative to witness it. Clause 4.2.1.2.5 of the Regulations, 2004 has mentioned that the consumer shall be responsible for safe custody of meters, cut-outs/ MCB/ CB, etc., except in cases where such meters, cut-outs/ MCB/ CB, etc. are installed outside the premises of the consumers. The Inspection Report dated 16.06.2012 contains an endorsement from the authorised representatives of the petitioner to the effect that he was present during inspection and checking and verified all new seals put by the respondent ASEB personnel. The Inspection Report has further reflected that it was a routine visit made to the premise of the petitioner and CMRI analysis was done for checking the electricity metering system installed in the premise of the petitioner firm. The Inspection Report has further recorded that the installation of cable meant for 15 [Rph] and 38, 35 [Bph] were stripped off over a length of 5 mm to 6 mm before entering the meter terminals inside the cabinet box. The stripped off portions were found to be covered with pieces of PVC tapes which were removed and sealed

in presence of the consumer i.e. the authorised representative of the petitioner. It was further reported that re-sealing was done without rectification metering systems.

10. In the written objection filed by the petitioner to the Provisional Assessment Bill dated 19.06.2012, tempering with the metering system was denied with the contention that it would be impossible to tamper with the metering system without breaking off seals whereas the Inspection Report dated 16.06.2012 had found that the metering cabinet was without any broken seal, etc. Allegation was made to the effect that whatever was found inside the cabinet was an act of the APDCL personnel at the time of installation or subsequent inspection. In the Minutes prepared by the Assessing Officer after hearing both the sides on 20.06.2012, the Assessing Officer had recorded the fact that the seals and metering cabinet were found to be intact during the inspection carried out on 16.06.2012. The Assessing Officer had also recorded that there was a stripping off insulation of CT wires of R & B phase [S1, S2 point] inside the metering cabinet. The Assessing Officer while raising the Final Order of Assessment, had taken note of the Inspection Report dated 22.03.2012 and the CMRI data analysis wherein no abnormalities were detected in the metering system to reduce the period of assessment to 3 [three] months. Hearing before the Appellate Authority took place on 25.07.2012 and 21.11.2012. The petitioner side was represented by its authorized representative who is a partner of the petitioner firm. The Inspecting Officer who conducted the Inspection on 16.06.2012 along with the other officials, were also heard by the Appellate Authority. The Appellate Authority had recorded that the inspection that was carried out on 16.06.2012, was in the presence of the authorised representative of the petitioner firm. The Appellate Authority had recorded that the Inspection Report had reported that while opening the inner door of meter cabinet during inspection, the inspecting officials found three cables meant for connection of R Phase CT to the H.T. Meter no. ASE 59401 i.e. 1 S-1 & S-2 and B Phase CT to said meter i.e. 3 S-1 were covered with black colour PVC tapes & one of the said CT connection cable was found in naked condition as the black colour PVC wrapped in the said naked portion was found lying in the meter cabinet. It took note of the fact that after removing the PVC tapes from the said three cables, it revealed that a portion of the aforesaid three cables were also stripped off uniformly over a length of 5 mm to 6 mm inside the meter cabinet box before entering the meter terminal. After the inspection on 16.06.2012, re-

sealing was done in presence of the authorised representative of the petitioner firm keeping the said cables in as is where is basis condition.

11. The Appellate Authority in its Order, has recorded that several photographs were taken for recording the incident. The snapshots of the stripped off cables found inside the meter cabinet were also presented during the course of hearings, which took place before the Appellate Authority and those were also witnessed by all present during the course of hearing. Though it has been contended in the writ petition as well as during the course of hearing before the Appellate Authority that the petitioner is not a custodian of the metering cabinet and as such, the alleged mistake could not have been attributed to the petitioner, the said allegation is found to be not supported with any cogent evidence in view of the provisions contained in Clause 4.2.1.2.5. As per Clause 4.2.1.2.5 of the AERC [Electricity Supply Code and Related Matters] Regulations, 2004, it is the consumer who is responsible for the safe custody of meters/cut-outs/MCB/CB etc., meaning thereby, the petitioner is responsible for safe custody of the metering installation in question herein as the said electricity metering system is installed inside the premises of the petitioner firm. Had the electricity metering installation been installed outside the premises of the petitioner firm, then it would have been the responsibility of the licensee i.e. the APDCL to be responsible for safe custody of such installation.

12. Emphasis is laid by the petitioner as regards the CMRI analysis data but such contention has been sought to be repelled by the respondent APDCL side with the submission that additional report on further analysis of CMRI data which revealed that the meter was a 3-phase, 3-wire meter, the CT short circuiting cases were not reflected and to reach a finding on malpractice, other circumstantial evidence need to be considered. The Appellate Authority considered the statement made by the officials of the APDCL side that the PVC wrappings in the stripped off portion of the cables were found in such loose condition that those wrappings could be shifted as per the requirement of the consumer for short circuiting the CTs by using artificial meters through the optical port opening of which was not sealed. The statement that the stripped off portion of the cables were near the entry point of the incoming supply cable [i.e. in the lower part of the metering cabinet], so it could not be noticed during the monthly

visit to the premises of the consumer for collecting meter readings and had recorded a finding that *prima facie* evidence had revealed that it was not an act which could be performed by the APDCL personnel during their visits/inspections for the metering system installed inside the premises of the petitioner firm easily. The Appellate Authority got convinced of the fact that it was the consumer who removed the hinges of the inner metering cabinet doors keeping the seals intact and stripped off the said metering cables uniformly and then wrapped the naked portion with PVC tapes loosely, re-fixed the hinges and re-painted to camouflage. He has referred to data analysis also to observe that such an act on the part of the consumer had restricted the actual consumption of the meter and caused loss to the respondent APDCL and had gone on to observe that being custodian of the metering cabinet box and the equipments, it is not open for the consumer to claim negligence as regards such action of interference with the metering system. With such observations, the Appellate Authority has observed that the responsibility cast on the consumer as regards malpractice has not been discharged by the consumer. With such observations, the Appellate Authority had concluded that the Final Assessment Bill of Rs. 12,66,844/- needs no interference and the appeal has, thereby, been rejected.

13. The petitioner in **Rajshree Tea [supra]**, instituted the writ petition immediately after the final assessment was done by the Assessing Authority under the provisions of Section 126 of the Electricity Act, 2003. The decision was rendered on the basis of the fact that the final assessment order did not disclose in what manner objection of the affected person was considered, as at the time of passing the final assessment order under Section 126 of the Electricity Act, 2003, reasonable opportunity of hearing had to be afforded to an aggrieved person. As nothing had been recorded as regards the manner in which the objection of the affected person was considered in the final assessment order, the final assessment order was interfered with on the premise that from the final assessment order it did not emerge that reasonable opportunity of hearing was afforded to the affected person and the matter was remanded back to the Assessing Authority to re-consider the objection raised by the aggrieved person. In the case in hand, after the Provisional Assessment Order, the consumer was given the opportunity to file written objection and a hearing was afforded to the authorized representative of the consumer. It was after hearing the authorized representative

of the consumer, the Final Assessment Order was passed modifying the Provisional Assessment Order, as indicated above. Aggrieved by the Final Assessment Order of the Assessing Officer, the petitioner had preferred the statutory appeal before the Appellate Authority. From the contents of the Appellate Order dated 10.12.2012, it can be noticed that during the course of hearing, all the stakeholders including the petitioner, were given opportunities of presenting their versions. Thus, it is not a case that no opportunity of hearing was afforded to the petitioner as a consumer, before the Assessing Authority or before the Appellate Authority. The aspect of providing opportunity of hearing is different from the aspect of adequate opportunity of hearing. Thus, the decision in **Rajshree Tea** [supra] is not applicable to the case in hand.

14. The decision in **Mukesh Mehra** [supra] is as regards dishonest abstraction of electricity and is, therefore, not found of any support to the case of the petitioner.

15. It is settled that an appeal, more particularly, a statutory appeal is a continuation of the original proceeding and the power of the appellate authority as regards appreciation of facts is co-extensive with that of the original authority. In so far as determination of question of facts are concerned, the appellate authority is the final arbiter of facts. It is also settled principle of law that certiorari jurisdiction can be exercised only for correcting errors of jurisdiction committed by inferior courts or tribunals. A writ of certiorari can be issued only in the exercise of supervisory jurisdiction which is different from appellate jurisdiction. The court exercising supervisory jurisdiction under Article 226 of the Constitution of India is not entitled to act as an appellate court and as such, there is clear limitation in that the findings of fact reached by the inferior court or tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. It is only an error of law which is apparent on the face of the record which can be corrected by a writ of certiorari and not an error of fact, however grave it may appear to be. Reiterating the same principle, the Hon'ble Supreme Court of India in **Surya Dev Rai** [supra] has *inter alia* observed to the effect that certiorari under Article 226 of the Constitution is issued for correcting gross errors of jurisdiction. A writ of certiorari is not available to correct mere errors of fact or of law unless the following requirements are satisfied :- [i] the error is manifest and apparent on the face of the

proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and [ii] a grave injustice or gross failure of justice has occasioned thereby. Where two inferences are reasonably possible and the subordinate court has chosen to take one view, the error cannot be called gross or patent. It has been observed that the High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in re-appreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

16. The limits of certiorari jurisdiction was kept in mind while deciding the case of **Punit Kumar Bagaria** [supra] which has a writ petition, preferred after an order of the Appellate Authority, pertaining to alleged tampering of the meter. It is submitted by Mr. Pathak, learned Standing Counsel, APDCL that the decision in **Punit Kumar Bagaria** [supra] has been upheld by the Division Bench in Writ Appeal no. 71/2019 [**Punit Kumar Bagaria vs. The Assam State Power Distribution Company Limited and 3 others**] by a judgment and order dated 11.03.2019. Thus, it is clear that the test of perversity of a finding recorded by an authority like the Appellate Authority under Section 127 of the Electricity Act, 2003 or by an Assessing Officer under Section 126 of the Electricity Act, 2003 will be that the finding is not supported by any legal evidence at all. It has to be borne in mind that the question about the adequacy of evidence or its sufficiency or satisfactory character can only be raised in a court of facts and may fall to be considered by an appellate court which is entitled to consider the fact, but such questions of fact are not to be gone into by this Court in certiorari jurisdiction under Article 226 of the Constitution of India. It is essential to bear in mind the difference between a finding which is not supported by any legal evidence and a finding which may appear to be not supported by sufficient or adequate or satisfactory evidence.

17. Having gone through the contents of the Inspection Report dated 16.06.2012 which was prepared in presence of the authorized representative of the petitioner, that is, the consumer with his endorsement to the fact that the inspection was carried out in his presence and the contents of the Appellate Order dated 10.12.2012 where the findings of fact were recorded on the basis of materials placed before it during the hearings which took place before it, this Court is of the unhesitant view that the case in hand, by no stretch, can be said

to have fallen in the first category of perverse finding. Since it falls in the second category in that the findings were recorded on the basis of the evidence, the jurisdiction of certiorari under Article 226 is not to be exercised in such a case. Thus, this Court does not find any good and sufficient ground to depart from the view that has been taken by the Appellate Authority in its Appellate Order dated 10.12.2012. Consequently, the writ petition is found devoid of merits and the same is liable to be dismissed. It is accordingly dismissed. The interim order dated 21.12.2012 stands recalled. There shall, however, be no order as to cost.

JUDGE

Comparing Assistant