

GAHC010233352018



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

Case No. : WP(C)/7395/2018

THE GENERAL MANAGER, ROSEKANDY TEA ESTATE
P.O. BARJALINGA, KACHAR, ASSAM-788117.

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, DEPTT. OF
POWER, DISPUR, GHY., ASSAM-781006.

2:CHAIRMAN

ASSAM POWER DISTRIBUTION CO. LTD.
BIJULI BHABAN
PALTAN BAZAR
GUWAHATI
ASSAM-781008.

3:CHIEF EXECUTIVE OFFICER

ASSAM POWER DISTRIBUTION CO. LTD.
CACHAR ELECTRICAL CIRCLE
SILCHAR
ASSAM-788115.

4:ASSTT. GENERAL MANAGER

TESTING AND COMMISSIONING DIVISION
ASSAM POWER DISTRIBUTION CO. LTD.
CACHAR
MEHERPUR
SILCHAR-788115.

5:ASSESSING OFFICER CUM ASSTT. GENERAL MANAGER

INDUSTRIAL REVENUE COLLECTION AREA
CACHAR
ASSAM POWER DISTRIBUTION CO. LTD.
BADARPUR
KARIMGANJ-788806.

6:THE SENIOR ELECTRICAL INSPECTOR

ASSAM POWER DISTRIBUTION CO. LTD.
CENTRAL ASSAM REGION
CACHAR ELECTRICAL CIRCLE
ASSAM
SILCHAR-788115

Advocate for the Petitioner : MR G UZIR

Advocate for the Respondent : SC, APDCL

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM

ORDER

Date : 26/09/2023

Heard Mr. M. Saikia, learned counsel for the writ petitioner. I have also heard Mr. B. Choudhury, learned Standing Counsel, APDCL, appearing for the official respondents.

By filing this writ petition, the final assessment order dated 26/09/2018 passed by the Assessing Officer, confirming the provisional order of assessment dated 16/08/2018, thus raising an electricity bill of Rs. 55,75,045/- has been put under challenge *inter-alia* on the ground that the impugned final order dated 26/09/2018 has been issued in a most arbitrary and illegal manner, without giving proper opportunity to the petitioner to present its case.

Taking note of the grievance expressed in this writ petition, a learned Single Judge of this Court, had passed order dated 12/10/2018 in this case, issuing notice upon the respondents. By way of an interim measure, it was also provided that subject to deposit of 25% of the assessed electricity dues as per the final assessment order, electricity supply to the premises of the writ petitioner shall not be disconnected. By virtue of the interim order dated 12/10/2008, the petitioner is continuing to enjoy electricity supply upon deposit of 25% of the amount raised in the final assessment bill.

It further appears from the record that the learned Standing Counsel, APDCL had questioned the maintainability of the writ petition at the threshold by urging that the order assailed in the writ petition is appealable under section 127(3) of the Electricity Act, 2003. The said stand of the APDCL authority had subsequently been brought on record by filing affidavit.

Today, when the matter is called up, Mr. Choudhury has strenuously argued on the question of maintainability of the writ petition with a request to the Court to direct the petitioner to avail the appellate remedy. The learned Standing Counsel has further submitted that the period of limitation of 30 (thirty) days for preferring the appeal, as prescribed under section 127(1) of the Act of 2003, may run from the date of this order, if the Court directs the petitioner to avail the appellate remedy and the respondents would not have any objection on that behalf.

Responding to the above, Mr. M. Saikia, learned counsel for the writ petitioner has submitted that an appellate remedy is indeed available to the petitioner and his client is also ready and willing to avail such remedy. However, in order to avoid any hardship and prejudice to the petitioner, 30 (thirty) days time w.e.f today, be granted to the petitioner for preferring the appeal. Mr. Saikia has further submitted that in similar situation, coordinate Benches of this Court had passed orders waiving the statutory deposit of 50% as prescribed by section 126(3) of the Act of 2003 by confining the amount to be deposited to 25% of the total bill. Therefore, Mr. Saikia has prayed for a similar order in this case as well. In support of his above arguments, the learned counsel for the writ petitioner has placed reliance on the order dated 14/04/2023 passed by this Court in **WP(C) No. 955/2019 (M/s. Blueberry Industry Vs. The Assam Power Distribution Company Ltd. and 8 others)**.

Mr. B. Choudhury, learned Standing Counsel, APDCL, on the other hand, has relied upon another decision of this Court rendered in the case of **Shiv Alloys Steel Vs. Assam Power Distribution Company Ltd. and others** reported in **(2021) 4 GLR 558** to submit that allowing the petitioner to pursue the appellate remedy by depositing only 25% of the amount would not only contravene the provision of the statute but would also create a bad precedence. Therefore, the same may not be permitted by this Court.

I have considered the submissions made at the Bar and have also gone through the materials available on record.

At the very outset, it deserves mention herein that the instant writ petition is evidently and admittedly directed against the final order of assessment dated 26/09/2018, which order is appealable under section 127(1) of the Act of 2003.

From a careful reading of the grounds for challenging the order of assessment, as has been

urged in the writ petition, it is apparent that there are factual disputes involved in the matter, which would require thorough scrutiny by a competent forum, i.e. the appellate authority and, therefore, I find force in the submission of Mr. Chudhury, learned Standing Counsel, APDCL, that the writ petitioner should be directed to avail the appellate remedy.

Coming to the question of application of period of limitation and as well as the statutory deposit 50% of the amount, as prescribed by section 127 (1) & (3) respectively, it has already been noted that the learned departmental counsel has submitted that his clients would have no objection if 30(thirty) days time is granted to the petitioner from the date of this order to prefer the appeal. As such, this aspect of the matter need not detain this Court.

Coming to the other issue in this proceeding, relevant at this stage, which is pertaining to the statutory deposit, this Court finds that by the interim order dated 12/10/2018, the rights and interest of the petitioner, to enjoy continuous electricity supply was protected upon deposit of 25% of the "assessed electricity dues". The respondents have not sought any modification of the order dated 12/10/2018, as a result of which, the said order has continued to hold field for past nearly 5 (five) years.

Under the circumstances, even if there is a statutory requirement under section 127(3) of the Act of 2003 to deposit 50%, having regard to the peculiar facts and circumstances of the case, I am not inclined to expose the petitioner to the prospect of depositing a higher amount (50%) merely because the matter is being referred back to the appellate authority. It is, therefore, clarified that no further deposit over and above the 25% deposit, already made by the writ petitioner, shall be insisted upon for the purpose of admission of the appeal to be preferred by the petitioner under section 127 of the Act of 2003. In other words, the APDCL authorities shall not insist upon deposit of any further amount over and above 25% of the assessed amount, already deposited by the petitioner for admission of the statutory appeal to be filed by it.

The above order is, however, only an interim relief, which order will obviously, be subject to the final order that may be passed by the appellate authority. The aforesaid relief is being granted to the petitioner in the peculiar facts and circumstances of the case and the same shall not be treated as a precedence for future purposes.

With the above observation, this writ petition stands disposed of by granting 30(thirty) days time to the petitioner, with effect from today, to prefer the appeal under section 127 of the Act of 2003. Subject to filing of appeal by the writ petitioner within 30 days, the interim order dated 12/10/2018 passed in this writ petition would continue to operate, until disposal of the statutory

appeal.

Parties to bear their own costs.

JUDGE

sukhamay

Comparing Assistant