

GAHC010025792024



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

Case No. : WP(C)/643/2024

MANINDRA NATH GHOSH AND ANR.
S/O LATE MATI LAL GHOSH,
RESIDENT OF SASTRI ROAD, SALBARI, BONGAIGON TOWN, PO . PS AND
DIST BONGAIGAON, ASSAM 783380

2: SRI MALOY GHOSH
S/O SRI MANINDRA NATH GHOSH
RESIDENT OF SASTRI ROAD
SALBARI
BONGAIGON TOWN
PO . PS AND DIST BONGAIGAON
ASSAM 78338

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRRESENTED BY THE SECRETARY. GOVT. OF ASSAM, DEPARTMENT OF
POWER (ELECTRICITY) ASSM SECRETARIATE, DISPUR, GUWWAHATI

2:THE ASSAM POWER DISTRIBUTION COMPANY LIMITED
REPRESENTED BY ITS CHIEF GENERAL MANAGER
BIJULEE BHAWAN
PALTAN BAZAR
GUWAHATI 781001

3:THE ASSISTANT GENERAL MANAGER
ASSAM POWER DISTRIBUTION CO. LTD. BONGAIGAON DIVISION
APDCL. LOWER ASSAM REGION (LAR) DIST BONGAIGAON
ASSAM 783380

4:THE SUB DIVISIONAL ENGINEER
ASSAM POWER DISTRIBUTION CO. LTD. BONGAIGAON ESD I LOWER
ASSAM REGION (LAR) DIST BONGAIGAON
ASSAM 783380

5:THE AREA MANAGER
IRCA
BONGAIGAON
ASSAM POWER DISTRIBUTION CO. LTD. . LOWER ASSAM REGION (LAR)
DIST BONGAIGAON
ASSAM 78338

Advocate for the Petitioner : MR. B J MUKHERJEE

Advocate for the Respondent : SC, APDCL

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

09.02.2024

1. Heard Mr. B.J. Mukherjee, learned counsel for the petitioners. Also heard Mr. B. Choudhury, learned Standing Counsel, APDCL for the respondent nos.2, 3, 4 & 5.

2. The petitioner has put to challenge the letter dated 27.01.2024 issued by the respondent no.4, wherein the petitioner has been directed to pay the Final Assessment Bill with up-to-date surcharge amounting to Rs.41,64,990/- against Shri Maloy Ghosh, Industrial Estate, New Bongaigaon bearing Consumer No.037000000681, on the alleged ground of theft under Section 135 of the Electricity Act, 2003 (hereinafter referred to as "the 2003 Act").

3. The petitioners' counsel submits that the petitioner no.1 had signed an Indemnity Bond for the electricity being supplied to the Industrial Estate of the petitioner no.2. He submits that vide the impugned Final Assessment Bill, the

respondent authorities have threatened to disconnect the electricity connection given to the residence of the petitioner no.1, if the Final Assessment amount is not paid by the petitioners to the respondents. He also submits that the petitioners had not been provided an opportunity of being heard, in terms of Section 126 of the 2003 Act, prior to the Provisional Assessment Bill and Final Assessment Bill being made by the respondent authorities.

4. Mr. B. Choudhury, learned Standing Counsel for the APDCL, on the other hand, submits that the petitioner would have to avail the alternate statutory remedy, by filing an appeal under Section 127 of the 2003 Act, in terms of the order dated 16.11.2021 passed by the Division Bench of this Court in WA 286/2021 (M/s Shiv Alloys Steel vs. Assam Power Distribution Company Ltd. and 2 Others).

5. I have heard the learned counsels for the parties.

6. The issue that was to be decided in WA 286/2021 was with regard to a challenge made to the Final Assessment Bill on account of theft of electricity, as has been defined under Section 135 of the 2003 Act. The Division Bench held that the remedy available to the appellant was to file an appeal under Section 127 of the 2003 Act, where he would be able to have the liberty to place all his points, including whether due process under Section 126 of the 2003 Act had been adopted or not and whether the quantum of assessment was in order. In view of the decision of the Division Bench of this Court in WA 286/2021, this Court being bound by the above decision, the petitioners are given the liberty to

approach the Appellate Authority in terms of Section 127 of the 2003 Act, the same being an alternative statutory remedy available to the petitioners.

7. In view of the reasons stated above, the writ petition stands dismissed.

8. With regard to the threat made by the respondents authorities, to disconnect the electricity connection provided to the residence of the petitioner no.1, this Court is of the view that the electricity connection provided to the residence of the petitioner no.1 should not be disturbed due to the liability payable by the Industrial Estate belonging to the petitioner no.2. Further, the consumer numbers of both the petitioners being apparently different, there can be no connection between non-payment of the electricity bills in respect of the Industrial Estate of the petitioner no.2 and the electricity connection of the petitioner no.1. In the event, the period of limitation for filing an appeal before the Appellate Authority has expired, the petitioners may file an application for condonation of the same, which would be considered by the authorities as per their discretion.

JUDGE

Comparing Assistant