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

Case No. : WP(C)/5213/2017

M/s Shiv Alloys Steel,

Represented by it's partner Sri Dipak Das,
Son of Late Bogaram Das, West Boragaon,
Guwahati-781033.

.....Petitioner.

Versus

- 1. Assam Power Distribution Company Limited,**
Represented by its Chairman-cum-Managing Director.
Bijuli Bhawan, Paltan Bazar, Guwahati-781008.
- 2. The Chief General Manager (Commercial),**
Assam Power Distribution Company Limited,
Bijuli Bhawan, Paltan Bazar, Guwahati-781008.
- 3. The Chief General Manager (D),**
Assam Power Distribution Company Limited,
Bijuli Bhawan, Paltan Bazar, Guwahati-781008.
- 4. The General Manager (TI),**
Assam Power Distribution Company Limited,
Bijuli Bhawan, Paltan Bazar, Guwahati-781008.

- 5. The Deputy Manager (TI),**
Assam Power Distribution Company Limited, (LAR)
Bijuli Bhawan, Paltan Bazar, Guwahati-781008.
- 6. The Area Manager, IRCA-II**
Assam Power Distribution Company Limited, (LAR)
Jalukbari-781012.
- 7. The Chief Executive Officer, GE-II**
Assam Power Distribution Company Limited,
Garigaon, Jalukbari-781012.

...Respondents.

BEFORE
HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

For the petitioner : Mr. G. Goswami, Advocate

For the respondents : Mr. B. Choudhury, SC, APDCL

Date of hearing : 28.10.2024

Date of Judgment : 08.11.2024

JUDGMENT AND ORDER (CAV)

- 1.** Heard Mr. G. Goswami, learned counsel for the petitioner. Also heard Mr. B. Choudhury, learned Standing Counsel for the APDCL.
- 2.** This writ petition has been filed by the petitioner challenging the order

dated 25.07.2017, by which the revised assessment bill for the electricity charges for the period 12.11.2013 to 20.07.2014 has been made.

3. The petitioner's case is that the payment for unauthorized use of electricity had been decided by the Appellate Forum in terms of Section 127 of The Electricity Act, 2003 (hereinafter referred to as the "Act"), vide order dated 25.03.2015 passed in Appeal No.09/2015 and the assessment bill dated 28.03.2015 had been made in pursuance to the said order dated 25.03.2015. The petitioner's further case is that the said bill dated 28.03.2015 could not have been revised by the impugned bill dated 25.07.2017, in terms of Section 56(2) of the Act and especially when the assessment amount, made in terms of the assessment bill dated 28.03.2015, had been paid by the petitioner.

4. The APDCL had initially made a provisional assessment and final assessment bill under Section 126 of the Act, for unauthorized use of electricity due to tampering with the electricity meter. The appeal filed by the petitioner under Section 127 of the Act was decided by the Appellate Forum, vide order dated 25.03.2015 in Appeal No.09/2015, by directing the Industrial Revenue Collection Area (IRCA) to prepare a new bill without surcharge, which was to be lower than the final assessment bill earlier made, to be paid by the petitioner. The operative portion of the order dated 25.03.2015 is as follows :

“Appellate Authority after going through all the arguments and documentary evidence became sure that malpractice in the meter was committed but as the T&C Division inspected the metering system on 12.11.2013 and found ok, so the penalty is imposed from the date of 2nd inspection i.e. 27.08.2014 and not from the date of cover opening i.e

05.03.2013. So IRCA should prepare the new bill and no surcharge should be levied and if the penalty bill amount is less than already paid bill, it should be adjusted in future bills.

The case is disposed off copies of order should be served to all the parties."

5. Pursuant to the direction passed by the Appellate Forum in Appeal No.09.2015, the APDCL issued a fresh bill dated 28.03.2015, which was lesser than the final assessment bill made earlier. As per the new bill dated 28.03.2015, the petitioner was to pay an additional amount of Rs.14,73,957/-. The same was paid by the petitioner.

6. The grievance of the petitioner is that after payment of the bill dated 28.03.2015 amounting to Rs.14,73,957/-, the APDCL revised the amount payable by the petitioner, by adding a further amount of Rs.2,87,982/-, vide revised assessment bill dated 25.07.2017.

7. The petitioner's counsel submits that in terms of Section 56(2) of the Act, the amount of Rs.2,87,982/- which was not reflected in the earlier bill dated 28.03.2015, could not be sought to be recovered from the petitioner, as the same was not recoverable after a period of 2 years from the date when such sum first became due, unless the said amount had been shown to be continuously recoverable as arrear of charges for electricity supplied. He further submits that as the assessment bill dated 28.03.2015 had been made in terms of the direction passed by the Appellate Forum in the order dated 25.03.2015 passed in Appeal No.09/2015, the revised bill dated 25.07.2017 could not have been issued, as the same was not made in terms of the order dated 25.03.2015

passed in Appeal No.09/2015.

8. Mr. B. Choudhury, learned counsel for the APDCL, on the other hand submits that the assessment bill dated 28.03.2015 was revised, vide the re-assessment bill dated 25.07.2017, in view of the fact that an audit team from the office of the Accountant General during their inspection from 13.06.2016 to 30.06.2016 raised objection on the assessment bill dated 28.03.2015 amounting to Rs.18,89,059/- (Rupees eighteen lakh eighty nine thousand and fifty nine only). Further, an audit report was submitted by Accountant General by a forwarding letter dated 20.04.2017 with an observation that the method adopted for calculating the assessment bill dated 28.03.2015 by applying Clause 4.2.2.4 of the Assam Electricity Regulatory Commission (AERC) Electricity Supply Code and Regulations (First Amendment), 2007, hereinafter referred to as the "AERC Electricity Supply Code", was irregular/incorrect, as the said calculation could only be applied when the same was in respect of an incorrect or stopped meter, where no malafide intention of the consumer could have been attributed. On the other, in a case of tampering of a meter, which tantamounted to theft of electricity, the wilful act on the part of the consumer required that the calculation of the electricity bill should have been made by applying the provisions of Clause 5.A.4.4. of the AERC Electricity Supply Code, which provides for assessment of consumption in case of theft of electricity. As the issue involved pertains to the unauthorized use of electricity by tampering with the meter, the case also came within the definition of theft as defined under Section 135 of the Act. In support of his submission, the counsel for the APDCL has relied upon the judgment of this Court in the case of ***M/s Shiv Alloys Steel vs. Assam Power Distribution Company Ltd. & Others***, reported in

(2021) 4 GLR 558. He also submits that when a mistake has been committed by the licensee while making the electricity bill, the mistake committed can be corrected by the APDCL.

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

10. Clause 4.2.2.4 and 5.A.4.4 of the AERC Electricity Supply Code is reproduced hereinbelow, as follows :

“4.2.2.4 Procedure for assessment of consumption in case of incorrect or stopped meter

In the event of any meter being found prima-facie incorrect (which includes a stopped, slow, or fast meter) and where actual errors of reading cannot be ascertained, the assessed quantity of energy consumed shall be determined by taking the average consumption for the previous 3 months, proceeding the date on which the defect was detected or the next three months after correction whichever is higher and bill be prepared and presented accordingly.

For seasonal consumers, in event of any meter being found incorrect (which includes stopped, slow or fast meter) the quantity of energy consumed shall be determined by taking the average consumption of the immediate identical 3 months period consumption. For consumers whose contract demand/ connected load varies in the concerned period, consumption should be assessed proportionate to the contract demand/ connected load.

It is the responsibility of the meter reader to note down the details of every stopped/defective meter and to report promptly to the concerned officer of the licensee, who shall be responsible to take immediate steps

to replace or repair the stopped / defective meter. In case where a check meter is in use, the consumption recorded in this may also be used for provisional billing, when the meter is removed for testing or otherwise, subject to adjustments against reading of the tested main meter to be installed subsequently, reconciling the reading of the check meter with reading of the test meter for an identical period.

5.A.4.4 Unmetered use of Electricity (Theft of Electricity) :-

When a consumer indulges in the theft of electricity, the officer authorised in this behalf by the Government of Assam may without prejudice to its other right, will assess the quantum of electricity loss on the basis of assessed consumption of detected category as per Table under 6.2.1.1 and connected load for a period of six months prior to the date of detection and will be billed at the rate of 1.5 times of the existing tariff."

11. Section 56 of the Act is reproduced hereinbelow as follows :

“56. Disconnection of supply in default of payment.”-(1) Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days' notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:

Provided that the supply of electricity shall not be cut off if such person deposits, under protest,-

(a) an amount equal to the sum claimed from him, or

(b) the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months,

whichever is less, pending disposal of any dispute between him and the licensee.

(2) Notwithstanding anything contained in any other law for the time being in force, 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 unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity."

12. In the case of ***Assam Power Distribution Co. Limited. Vs. Hiranya Bharali, WP(C) 2056/2016***, this Court in its order dated 20.05.2024, on considering the judgment of the Hon'ble Supreme Court in the case of ***Assistant Engineer(D1), Ajmer Vidyut Vitran Nigam Ltd and Anr Vs. Rahamatullah Khan alias Rahamjulla***, reported in ***(2020) 4 SCC 650*** has held that Section 56(2) of the Act does not preclude the licensee company from raising any additional or supplementary demand after the expiry of the limitation period. 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, This Court in WP(C) 2056/2016 further held that there is no bar under Section 56(2) of the Act from raising an additional or supplementary demand

after expiry of the limitation period stipulated in the case of a mistake or *bona fide* error and the restriction is only for taking recourse to the coercive measure of disconnection of electric supply.

13. The Supreme Court in the case of ***Prem Cottex Vs. Uttar Haryana Bijli Vitran Nigam Ltd and Ors.,*** reported in ***(2021) 20 SCC 200*** had on considering the earlier judgment of the Supreme Court in the case of ***Rahamatullah Khan (supra)*** held in Para 10 to 14 as follows:-

“10. In *Rahamatullah Khan*, 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.

11. 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. vs. State of Madhya Pradesh*, ***(1989) 4 SCC 1***.

12. 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).

13. 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 Sub-section (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.

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.

14. 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 sub-section (2) of section 56 of the Act".

14. In the case of *West Bengal State Electricity Distribution Company*

Ltd. and Others Vs. Orion Metal Pvt. Ltd. and Another, reported in **2019 SCC Online SC 1077**, the Supreme Court held that the term “unauthorized use of energy” is of wide connotation. There may be cases of unauthorized use of energy, not amounting to theft, which are cases viz. exceeding the sanctioned load or using the electricity in the premises where its use is not authorized etc. But at the same time, when there is an allegation of unauthorized use of energy of tampering the meter, such cases of unauthorized use of energy include ‘theft’ as defined under Section 135 of the Act.

15. In the present case, the only challenge made by the petitioner to the revised bill is that the same has been made 2 years after the assessment bill dated 28.03.2015 had been made, which is beyond the limitation period of 2 years. It is not the case of the petitioner that the assessment made by the APDCL in the revised bill dated 25.07.2017 is wrong. This Court is of the view that the basis for challenging the revised bill of 25.07.2017 is not sustainable, keeping in view the decision of this Court in WP(C) 2056/2016, where it has been held that Section 56(2) of the Act does not preclude the licensee company from raising any additional or supplementary demand after the expiry of the limitation period, in the case of a mistake or bona fide error and that the restriction is only to ensure that there is no disconnection of electricity supply after the limitation period, is over. This is clear from Para 8 and 9.1 of the judgment of the Supreme Court in the case of ***Rahamatullah Khan(supra)***, which is 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

nonpayment 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.”

9.1. 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. In the case of ***Videsh Sanchar Nigam Limited vs. Ajit Kumar Kar and others***, reported in **(2008) 11 SCC 591**, the Supreme Court has held that a *bona fide* mistake does not confer any right on any party and it can be corrected. As such, this Court is of the view that there is no infirmity with the correction of a *bona fide* mistake, keeping in view the fact that this Court in the case of ***M/s Shiv Alloys Steel (supra)*** has held that when there is an allegation of unauthorized use of energy of tampering the meter, such cases of unauthorized use of energy include theft, as defined under Section 135 of the Act. As Clause 5.A.4.4 of the AERC Electricity Supply Code provides the manner in which assessment is to be made for theft of electricity, this Court finds that there is no infirmity with the impugned assessment bill dated 25.07.2017, as the earlier bill dated 28.03.2015 could not have been made in terms of clause 4.2.2.4.

17. Accordingly, on considering judgments passed by the Supreme Court and this Court with regard to Section 56(2) of the Act, this Court is of the view that the mistake committed by the licensee, while making the assessment bill dated 28.03.2015, can be corrected even after 2 years in terms of the revised bill

dated 25.07.2017, as the mistake was discovered between 13.06.2016 and 30.06.2016 and the Accountant General had submitted an audit report to that effect vide forwarding letter dated 20.04.2017..

18. The writ petition is accordingly dismissed.

JUDGE

Comparing Assistant