

GAHC010171912016



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

Case No. : WP(C)/3934/2016

M/S EDEN COLD STORAGE PVT. LTD.
HAVING ITS REGISTERED OFFICE AT N.H. NO. 37, OPP. KAMRUP WEIGH
BRIDGE, KHANAPARA, GHY- 22, KAMRUP M, ASSAM, REP. BY ITS
MANAGER, SRI BIVASH BHOWMICK, R/O- REHABARI, P.O. and P.S.-
PALTAN BAZAR, DIST.- KAMRUP, ASSAM.

VERSUS

ASSAM POWER DISTRIBUTION COMANY LTD. and 3 ORS.
BIJULEE BHAWAN, PALTAN BAZAR, GHY- 1, REP. BY ITS CHAIRMAN,
APDCL, BIJULEE BHAWAN, PALTAN BAZAR, GHY- 1, ASSAM.

2:THE MANAGING DIRECTOR
APDCL
BIJULEE BHAWAN
PALTAN BAZAR
GHY- 1
ASSAM.

3:THE AREA MANAGER
INDUSTRIAL REVENUE COLLECTION
AREA- I
APDCL
BIJULEE BHAWAN
PALTAN BAZAR
GHY- 1.

4:THE SDO
GARBHANGA SUB DIVISION
APDCL
GHY- 35

Advocate for the Petitioner : MR.B PATHAK

Advocate for the Respondent : SC, APDCL

**BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI**

ORDER

Date : 24-06-2024

- 1.** Heard Mr. G.N. Sahewalla, learned Senior Counsel assisted by Mr. S.K. Kezriwal, learned counsel for the petitioner. Also heard Mr. K.P. Pathak, learned Standing Counsel, APDCL for the State respondent.
- 2.** By preferring this petition under Article 226 of the Constitution of India, the petitioner is challenging *inter alia* the impugned disconnection notice dated 11.03.2016, provisional electricity assessment bill dated 15.03.2016 and the impugned final order dated 16.06.2016 on the provisional assessment bill.
- 3.** The brief facts of the case is that the petitioner's company is in the business of Cold Storage since 2001, for which they have Industrial Electricity connection of 82.41 KW. The petitioner since have some extra space in his premises, applied for commercial electricity connection on 09.11.2015 and 16.12.2015 and thereafter from 15.02.2016 they entered into lease agreements with other parties to carry on commercial activities. Thereafter an inspection was carried out on 05.03.2016 by the respondents, whereafter a connected load report was prepared.
- 4.** Pursuant to such inspection, a notice for disconnection of the electricity to the premises of the petitioner was served on 11.03.2016. Subsequent to such notice on 15.03.2016 provisional assessment was carried out and the same was

furnished to the petitioner by letter dated 15.03.2016. The petitioner filed their objection against the provisional assessment bill by their representations dated 30.03.2016, 12.04.2016 and 25.04.2016. Thereafter by order dated 16.06.2016 and after hearing the parties, final order on provisional assessment bill was issued by letter dated 16.06.2016. The aforesaid final order on provisional assessment bill is under challenge before this Court.

5. Mr. G.N. Sahewalla, learned Senior Counsel submits that the impugned final bill dated 16.06.2016 is illegal as the same has been passed after the expiry of the 30 days period stipulated under sub-section (3) of Section 126 of the Electricity Act, 2003 (hereinafter referred as 'the Act'). He further submits that the manner in which the assessment has been made is also contrary to the provisions of sub-section(5) of Section 126 of this Act.

6. Mr. K.P. Pathak, learned Standing Counsel, APDCL on the other hand submits that this writ petition is not maintainable in view of the statutory appeal provided u/s 127 of the said Act against the final order passed under the provisions of Section 126 of the Act.

7. Heard the submissions made at the Bar and perused the materials available on record.

8. Before entering into the merits of the contention raised by the learned counsel for the petitioner, this Court is taking up the issue of maintainability of the writ petition first.

9. Section 127 of the Act is reproduced hereunder for ready reference:-

“**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.

10. It appears that the Act has provided an appellate authority before whom an appeal against an order made under Section 126 of the said Act can be filed. Availability of an alternative efficacious remedy though is not an absolute bar for entertaining writ petition under Article 226 of the Constitution of India, provided, the exceptions laid down by the Apex Court for exercising the discretionary equitable remedy under Article 226 is present. (Reference is made to the decision of the Apex Court in the case of ***Whirlpool Corporation v. Registrar of Trade Marks, Mumbai.***)

11. Reference is also made to the decision of the coordinate Bench of this Court in ***Shiv Alloys Steel v. Assam Power Distribution Company Ltd. and Ors.***, reported in ***(2021) 4 GLR 558***. Paragraphs 26 of the aforesaid judgment is reproduced here under for ready reference:-

“26. In the present case in hand, the petitioner challenged the final order passed under sub-section (3) of section 126 of the Act, 2003 along with the other consequential reliefs. The issues decided hereinabove shows that the final order passed under sub-section (3) of section 126 of the Act, 2003 also include the one against the "unauthorized use of electricity" where there is an allegation of theft of electricity under section 135 of the Act, 2003. Sub-section (1) of section 126 of the Act, 2003 authorises the assessing officer initially to raise the provisional assessment to the best of his judgment, the electricity charges payable by the consumer after the inspection. Sub-section (3) of section 126 of the Act, 2003 allows the affected consumer to be heard and thereafter, the assessing officer is required to pass a final order of assessment. In the present writ petition as hereinabove taken note, the petitioner disputed the provisional assessment and the final assessment order on the ground that there were no cogent reason/grounds to impute the petitioner for "unauthorized use of electricity" with the dishonest intention. Accordingly, the issues raised in this writ petition are factual in nature coupled with technicality of the metering system in the premises of the petitioner. Section 127 of the Act, 2003 allows any person aggrieved by the final order made under section 126 of the Act, 2003 to prefer an appeal before the appellate authority prescribed under the said section. From the submission of the learned counsel for the petitioner and on perusal of the averments made in the writ petition, I do not find any averment showing that there was jurisdictional error while passing the final order against the provisional assessment made by the assessing officer. If there is any apparent jurisdictional error there is no point in sending the petitioner to the appellate forum inasmuch as that would be a mere wastage of time. In view of the said discussion, in my considered opinion in the present factual matrix which requires technical expertise for a decision in the issues raised in this writ petition, the petitioner is required to file an appeal under section 127 of the Act, 2003 against the final order dated 7.7.2021 passed by the assessing officer.”

12. The aforesaid decision of the coordinate Bench was further upheld by the Division Bench of this Court in WA 286 of 2021.

13. In the case in hand, the matter involves factual disputed question which requires the technical expertise to decide. Hence, in view of the statutory appellate remedy, being available to the writ petitioner, this Court is of the opinion that this writ petition is not maintainable.

14. Mr. K.P. Pathak, learned Standing Counsel, APDCL has also furnished a

copy of the notification dated 07.06.2024 which indicates that appellate authority u/s 127 of the Act is functioning.

15. Accordingly, this Court is of the opinion that the alternative remedy by way of appeal being available to the writ petition u/s 127 of the Electricity Act, this petition can be disposed of with liberty to the petitioner to approach the appellate authority for redressal of his grievance in terms of Section 127 of the Act and as and when such appeal is filed, the appellate authority shall dispose of the same in accordance with law, and until the appeal is disposed of by the appellate authority, the stay order granted by this court by order dated 28.06.2016 shall continue till then. Ordered accordingly. However, at the time of filing the appeal, the stipulated time of 30 days as provided under sub-section (1) of Section 127 for filing an appeal shall not be insisted, provided the petitioner files the appeal within 30 days time from today. Further, in view of the fact that the petitioner has already deposited 30 percent of the assessed amount and considering the fact that at the time when the writ petition was filed there was no appellate authority functioning, this Court as an exception provides that the provision of sub-section (2) shall also be not insisted at the time of filing the appeal. (Reference is made to the decision of the coordinate Bench of this Court in the case of APDCL v. M/s M.M. Concast in IA(Civil) 3030/2019 in this regard).

16. In view of the aforesaid observations and directions, the writ petition stands disposed of.

17. Needless to clarify that the concessions given are only in relation to the parties involved in the context of the peculiar facts and circumstances of this case, and the same shall not be considered binding precedent in respect of any other legal proceedings, between different parties.

18. A copy of the notification dated 07.06.2024 furnished by Mr. K.P. Pathak, learned Standing Counsel, APDCL is kept on record and marked as 'X'.

19. No costs.

JUDGE

Comparing Assistant