

GAHC010180272015



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

Case No. : WP(C)/7594/2015

Gangotri Tea And Industries P Ltd.

Having its registered Office at Anil Plaza- II,
2nd Floor, Abc, G.S. Road, Dispur, Ghy- 5,
Owning A Bought Leaf/Tea Manufacturing Factory/Unit At P.O.- Tingkhong-
786612, Dist.- Dibrugarh, Assam.

Versus

1.Assam Power Distribution Company Limited And 3 Ors

Having Its Office At Bijulee Bhawan,
Paltan Bazar, Guwahati, duly rep. by its Chairman-Cum-Managing Director.

2.The Appellate Authority

Assam Power Distribution Company Ltd.
Bijulee BhawanPaltan BazarGhy- 1.

3.Assam Electricity Regulatory Commission

Having Its Office At Aseb Campus
Dwarandhar G.S. Road Six Mile Ghy- 22
Duly Rep. By Its Chairman.

4.The Area Manager

Dibrugarh Industrial Revenue Collection Area
Apdcl Dibrugarh

BEFORE

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

For the petitioner : Mr. S. K. Kejriwal, Advocate,

For the respondents : Mr. K. P. Pathak, SC-APDCL

Date of hearing and judgment: 14.03.2024

JUDGMENT AND ORDER

Heard Mr. S. K. Kejriwal, learned counsel for the petitioner. Also heard Mr. K. P. Pathak, learned counsel for the APDCL.

2. The petitioner is an industrial power consumer for its factory at Dibrugarh under the Tingkhong Electrical Sub-Division of the Assam Power Distribution Corporation Ltd. (APDCL). The petitioner challenges the mal-practice allegation, purportedly unearthed in the 2nd inspection dated 26.9.2014, by referring to the all clear report in the 1st inspection done on 30.4.2014 by the Inspecting team of the APDCL. The payable amount for such mal-practice was assessed at Rs.1,43,57,840/- and the consumer has paid 50% of this amount i.e. Rs.71,78,920/- on 30.9.2014.

3. When the penalty for the mal-practice was decided to be final on 30.9.2014 by the Area Manager, the consumer approached the Appellate Authority under Section 127 of the Electricity Act, 2003. But the Appellate Authority observed that the consumer indulged in mal-practice by using extra circuit in the meter and this was also confirmed by the manufacturer of the meter.

4. At the outset, the parties had taken this Court through the final order dated 30.09.2014 issued by the Area Manager, Dibrugarh (IRCA), APDCL and the order dated 14.10.2015 passed by the Appellate Authority for the Assam

Power Distribution Company Limited in Appeal No. 24/2015.

5. The learned counsels for the parties submit that in view of the cryptic manner in which the above two orders have been issued, without giving any reasons and findings for coming to the final decision, the same may be sent back to the Appellate Authority to take a decision afresh, with a specified time frame.

6. The learned counsels for the parties submit that the Appellate Authority should be directed to give proper reasons and findings while disposing of the appeal before the Appellate Authority.

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

8. The final order dated 30.09.2014 passed by the Area Manager, Dibrugarh (IRCA), APDCL and the order dated 14.10.2015 passed by the Appellate Authority in Appeal No. 24/2015 are reproduced hereinbelow as follows:-

“FINAL ORDER dated 30.09.2014

The hearing in respect of provisional assessment bill in favour of M/S Gongotri Tea and Industries held on 30.09.2014 made the assessing officer to come to conclusion that it is case of interference with energy meter. Hence the penalty imposed as provisional assessment bill already served as per Electricity Act/2003 in final.

ORDER dated 14.10.2015

The case was heard for 3 (Three) days due to various reasons. All the parties were present during the first hearing. AGM T&C Division explained the whole case brief is that AGM T&C Division Dibrugarh along with IRCA Dibrugarh and APDCL engineers from Tinkhong S/D inspected the metering system inside the premise of M/s Gongotri Tea & Industries having a connected load of 633 kw on 26.09.2014. During the inspection they found some abnormalities in the

meter and they opened the meter in front of the representative of M/s Gongotri Tea & Industries. Some foreign circuits and elements were found inside the meter Everything was video graphed Finding this malpractice a final assessment bill of Rs. 14357840.00 was served 30.09.2014. Afterwards a correct bill of Rs.15745172.00 as final assessment was served. But the party already has paid 50% of 14357840.00 .This was accepted by Appellate Authority .On the first day, lawyer of appellant did not received the reply copy of respondent II (T&C Division Dibrugarh) as appellant did not supply the appeal copy, thinking Appellate Authority. So the appellant was asked to serve appeal copy to the respondent II so that he can give reply in written. On 2nd day both the respondents asked Appellate Authority to allow more time as they have submitted all documents to their lawyer so that respondents can give reply and arguments to appellant's written arguments and submission. On that day appellant's lawyer forwarded his written arguments against the assessment order of AGM IRCA. On 3rd and final hearing day, lawyers engaged by respondents forwarded their arguments against the appellant lawyer's written reply and submission. After hearing from both the parties and also going through the all documents and (photographs submitted by the respondents, Appellate Authority found that Appellant (M/s Gongotri Tea & Industries Pvt Ltd) was indulged in malpractice by using extra circuits in the meter. This was also confirmed by the manufacturer of the meter.

However IRCA Dibrugarh must correct the penalty bill. As the T&C Division inspected the meter on 30.04.2014 and found everything ok, so the penalty imposed should be from 30.04.2014 to 26.09.2014 only and not for the whole 12 months. If the new penalty bill become less than the 50% already paid amount, it should be adjusted in future energy bills of the appellant.

The case is disposed off and copy of the order be served to all concerned."

9. A perusal of the above order shows that the Appellate Authority has come to a finding that the appellant has indulged in *mal-practice* by using extra circuit in the meter. However, the process of reasoning for coming to such a finding has not been mentioned in the impugned order. There is nothing stated as to how the extra circuit in the meter had helped in the tampering of the meter and as to whether the said extra circuit showed less consumption of electricity than what was consumed. For this Court to appreciate the submissions of the counsels for the parties and the order of the Appellate Authority, it was necessary for the Appellate Authority to decide the appeal, by giving proper reasons and findings for it to come to a decision. However, the same is woefully absent in the impugned orders mentioned above.

10. In the case of ***Kranti Associates (P) Ltd. Vs. Masood Ahmed Khan***, reported in ***(2010) 9 SCC 496***, the Hon'ble Supreme Court has held that a quasi judicial authority must record reasons in support of its conclusion. The Supreme Court further held that the face of an order passed by a quasi judicial authority or even an administrative authority affecting the rights of parties, must speak. It must not be like the 'inscrutable face of a Sphinx'. The Supreme Court in Para 47 of the said judgment has held as follows:-

“47. Summarizing the above discussion, this Court holds:

(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior Courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also

makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor).

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires,

"adequate and intelligent reasons must be given for judicial decisions".

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

11. Accordingly, as per the consent of the parties, this case is remanded back to the Appellate Authority, to take a fresh decision on Appeal No. 24/2015, on the basis of materials already there in the pleadings before the Appellate Authority. The said decision to be taken by the Appellate Authority should be by way of a speaking order and after giving an opportunity of hearing to the parties concerned. The entire exercise should be done at the earliest and preferably within a period of four months from the date of receipt of a certified copy of this order. Consequently, the impugned order dated 14.10.2015 passed by the Appellate Authority is set aside. The bills passed by the APDCL, consequent to the order dated 14.10.2015 passed by the Appellate Authority, shall be subject to the final decision to be taken by the Appellate Authority.

12. This writ petition is accordingly disposed of.

JUDGE

Comparing Assistant