



GAHC010060792017



2025:GAU-AS:9299

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

Case No. : WP(C)/8154/2017

M/S. SANYEEJI ISPAT LTD. and ANR.
HAVING ITS REGD. OFFICE AND PRINCIPAL PLACE OF BUSINESS AT 9,
BRINDABAN MARKET, S.J. ROAD, ATHGAON, GUWAHATI-1, ASSAM AND
REP. BY ITS DIRECTOR.

2: DHIRAJ KUMAR JAISWAL

S/O. SHRI J.P. JAISWAL
DIRECTOR OF PETITIONER NO. 1
R/O. HOUSE NO. 29A
"SAI SARNAM"
BILPAR
CHBNIPOOL
REHABARI-GUWAHATI 781008
DIST. KAMRUP M
ASSAM. DIRECTOR OF PETITIONER NO. 1.

VERSUS

ASSAM POWER DISTRIBUTION CO. LTD and 6 ORS.
REP. BY ITS CHAIRMAN AND MANAGING DIRECTOR, BIJULI BHAWAN,
PALTAN BAZAR, GHY.

2:THE CHIEF GENERAL MANAGER COMMERCIAL

ASSAM POWER DISTRIBUTION COMPANY LTD.
BIJULI BHAWAN
PALTAN BAZAR
GUWAHATI.

3:THE CHIEF GENERAL MANAGER D

ASSAM POWER DISTRIBUTION COMPANY LTD.
BIJULI BHAWAN



PALTAN BAZAR
GUWAHATI.

4:THE GENERAL MANAGER TI

ASSAM POWER DISTRIBUTION COMPANY LTD.
BIJULI BHAWAN
PALTAN BAZAR
GUWAHATI.

5:THE DEPUTY MANAGER TI

ASSAM POWER DISTRIBUTION COMPANY LTD. LAR
BIJULI BHAWAN
PALTAN BAZAR
GUWAHATI.

6:THE AREA MANAGER
IRCA-II

ASSAM POWER DISTRIBUTION COMPANY LTD.
JALUKBARI
GUWAHATI- 781012.

7:THE CHIEF EXECUTIVE OFFICER
GE-II

ASSAM POWER DISTRIBUTION COMPANY LTD.
GARIGAON
JALUKBARI

For the petitioners : Mr. S. P. Roy, Advocate

For the respondents : Mr. S. P. Sarma, SC, APDCL

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 18.07.2025

Date of Judgment : 18.07.2025



JUDGMENT AND ORDER (ORAL)

Heard Mr. S. P. Roy, the learned counsel appearing on behalf of the petitioners and Mr. S. P. Sarma, the learned counsel appearing on behalf of the respondents.

2. The writ petitioners herein are aggrieved by the issuance of a bill bearing No.119 dated 25.07.2017 for Rs.1,22,45,649/- and the order dated 30.11.2017 on the ground that the concerned Respondent Authorities could not have exercised their authority beyond the directions passed by the learned Appellate Authority in the order dated 05.01.2016 in Appeal No.36/2015.

3. To appreciate the grievances of the petitioners, it would be relevant to take note of the brief facts which led to the filing of the present proceedings.

4. The record reveals that pursuant to an inspection being carried out, a Provisional Assessment Bill was prepared in terms with Section 126 of the Electricity Act, 2003 (hereinafter referred to as "the Act of 2003"). As per the said Provisional Assessment Bill, an amount of Rs.1,59,39,930/- was the amount assessed that the petitioners were liable to pay to the Respondent Authorities. It is very pertinent to mention that in the said Provisional Assessment Bill as well as the remarks so put in the said Provisional Assessment Bill, it was mentioned that there was



tampering of the meter. The petitioners being aggrieved preferred an Appeal against the said Provisional Assessment Bill. While the said Appeal was pending, the Final Assessment Bill was made thereby finalizing the assessment made in the Provisional Assessment Bill and a demand was made of an amount of Rs.1,59,39,930/-.

5. At this stage, it is very pertinent to mention that a perusal of the said assessment so made for the period from 01.03.2013 to 30.06.2014 and on the basis of which the amount of Rs.1,59,39,930.18 was arrived at would show that the period in question was taken from 01.03.2013 to 30.06.2014. Further to that, the calculation so made was based upon the average consumption taken on the basis of the consumer's average maximum consumption during the period from 01.01.2012 to 30.03.2012, i.e. prior to the meter cover open (tampering) recorded in the meter. It is further seen that the amount of Rs.1,59,39,930.18p was arrived at by subtracting the amount what the petitioners paid during the said period from 01.03.2013 to 30.06.2014 from the amount so arrived at by taking into account the average maximum consumption of 4835 units per day and multiplying the same with the factor 2.

6. The record further reveals that the petitioners being aggrieved by the Final Assessment Bill preferred an Appeal



before the learned Appellate Authority in terms with Section 127 of the Act of 2003. In the said proceedings, the petitioner filed an application for waiving the 50% deposit. The said application was not taken into consideration for which the petitioners filed a writ petition before this Court which was registered and numbered as WP(C) No.6807/2014. The record further reveals that vide an order dated 09.01.2015, the writ petition being WP(C) No.6807/2014 was disposed of thereby directing the petitioner to deposit an amount of Rs.20 lakhs by way of a Bank Draft within three days from the date of the said order and there was a further direction upon the respondent authorities to restore the electricity supply. In addition to that, the petitioner was given a period of six months to deposit the 50% of the demand so made in the Final Assessment Bill dated 19.11.2014. The learned Appellate Authority was directed to take up the said Appeal and decide the same within a period of three months subject to the deposit of the 50% of the amount.

7. The Appeal which was registered as Appeal No.36/2015 was disposed by an order dated 05.01.2016. In the findings so arrived at by the learned Appellate Authority, it was opined that there was malpractice committed by the petitioner. However, it was observed that the amount of penalty bill was not correct as there was no malpractice till 10.04.2014, and accordingly, the



AGM IRCA was asked to correct the bill in the manner provided therein. The relevant portion of the order passed by the learned Appellate Authority as it has seminal relevance to the instant dispute is reproduced herein under:-

*“After hearing from both the parties and going through all the documents and photo graphs submitted by T&C Division Amingaon, Appellate Authority found that malpractice was committed by the appellant. But the amount of penalty bill is not correct at all. There was no malpractice till 10.4.2014. AGM IRCA is asked to correct the bill in the following manner. The assessed period should be from 10.4.2014 to 4.7.2014 only (84 days). And the average per day consumption should be calculated from 1.7.2014 to 30.11.2014 (As submitted by AGM IRCA) and using the formula $2 * \text{Average consumption per day} * 84 \text{ days} * \text{prevailing rate during the assess period}$. If the new penalty amount is less then the already paid amount it should be adjusted against future bill of the party.”*

8. From the above quoted portion of the learned Appellate Authority's order dated 05.01.2016, it would show that there was a specific direction as to how the amount was required to be computed. The method to be adopted by the Assessing Authority was to calculate the average per day consumption from 01.07.2014 to 30.11.2014 and the assessed period should be from 10.04.2014 to 04.07.2014 (84) days. It is further mentioned that the formula to be used is $2 \times \text{average consumption per day}$



X 84 days X prevailing rate during the assessed period.

9. On the basis of the said direction so passed on 05.01.2016 by the learned Appellate Authority, the Assessing Officer made the Final Assessment and arrived at a figure of Rs.21,67,221/- and further observed that as the petitioners having already deposited the amount of Rs.79,69,965/-, the future bills of the petitioner would be adjusted against the amount of Rs.58,02,744/- which was found to have been paid in excess by the petitioner.

10. The records further reveal that almost after 1½ years from the date of preparation of the Final Assessment Amount in terms with the directions passed by the learned Appellate Authority dated 05.01.2016, a notice dated 25.07.2017 was issued by the Area Manager, IRCA-II, APDCL (LAR) stating inter-alia that in view of the audit objection, the earlier bill of the petitioner was revised and the petitioner was directed to pay the additional amount within due date. It is pertinent to observe that prior to revising the final Assessment Bill, no notice whatsoever was issued to the petitioner thereby permitting the petitioner to show cause. From a further perusal of Notice dated 25.07.2017, it would transpire that the Respondents admitted that there was a mistake in computing of the amount as per the applicable provision of the Electricity Supply Code and Related Matters



Regulations, 2004 (for short, "the Regulations of 2004'). It was mentioned that the computation ought to have been made on the basis of Clause 5.A.4.4 of the Regulations of 2004. It further transpires that the Respondent Authorities assessed the petitioner's liability at Rs.1,44,13,170.44 for the period from 10.04.2014 to 04.07.2014, i.e. 86 days and as the petitioner had already paid the amount of Rs.21,67,221/-, the petitioner was directed to pay a further amount of Rs.1,22,45,949/-.

11. The petitioner thereupon being aggrieved submitted an application on 28.07.2017 to the Area Manager, IRCA-II, APDCL (LAR) for withdrawing the said Notice dated 25.07.2017. The same was however rejected vide the order dated 09.08.2017 by the Area Manager, IRCA-II, APDCL (LAR), i.e. the respondent No.6 for which the petitioner filed a writ petition which was registered and numbered as WP(C) No.4983/2017.

12. The record reveals that the said writ petition was disposed of vide an order dated 21.08.2017 thereby directing the petitioners to file a fresh representation within a period of three days before the respondent No.6 agitating the issues raised in the petition and further directed the said respondent No.6 to dispose of the said representation by giving a proper opportunity of hearing to the petitioners. It was further observed that taking into account that the Respondent Authorities have been slapped



with a heavy demand after a period of two years, the Respondent Authorities were directed to consider as to whether any further relaxation can be made in favour of the petitioners. The relevant portion of the order passed by this Court dated 21.08.2017 being pertinent to the instant dispute is reproduced herein under:-

“Be that as it may, since the impugned bill was raised without giving an opportunity of being heard in the matter to the petitioners nor has it been informed to the petitioners as to the basis of the calculation, I am of the opinion that the petitioners should be asked to approach the concerned authority ventilating their grievance in the matter.

In view of the above, this writ petition stands disposed of by directing the petitioners to file a fresh representation before the respondent No. 5 within a period of 03 days from today, agitating the issues raised in the writ petition. If such a representation is filed within a period of 03 days, the same would be disposed of after giving proper opportunity of hearing to the petitioners.

The respondent No. 5 would also be at liberty to consider as to what interim protection can be granted to the petitioner in the facts and circumstance of the ca se, taking note of the fact that a heavy amount has been slapped on the petitioner company after lapse of nearly 02 years, if any such relief is sought by the petitioners. Until such time, the exercise as directed by this Court is completed, the disconnection notice dated 11-08-2017 shall not be given effect to.



Writ petition stands disposed of."

13. The petitioners, therefore, submitted a representation before the respondent No.6 on 24.08.2017 and the said representation was rejected vide an order dated 30.11.2017 by the respondent No.6, and it is under such circumstances, the present writ petition has been filed.

14. The record reveals that vide the order dated 21.12.2017, this Court while issuing notice directed the Respondent Authorities not to take any coercive action against the petitioners subject to the petitioners depositing an amount of Rs.50 lakhs.

15. It has been submitted by Mr. S. P. Roy, the learned counsel appearing on behalf of the petitioners that the petitioners in compliance to the order dated 21.12.2017 have deposited the further amount of Rs.50 lakhs.

16. The record reveals that the respondents had filed the affidavit-in-opposition. The basic crux of the stand so taken by the respondents in the affidavit is to the effect that the Assessing Officer while making calculation of the amount in respect to the Final Assessment Bill dated 21.03.2016 had applied the wrong provision in as much as Clause 4.2.2.4 of the Regulations of 2004 is applicable in respect to regular billing, whereas the proper provision which should have been applied is Clause 5.A.4.4 of the



Regulations of 2004 in as much as there was a finding of facts arrived at by the learned Appellate Authority to the effect that there was tampering of the meter and apparent malpractice committed by the petitioners. It was therefore submitted that as a wrong provision was applied, the same was corrected vide the impugned Reassessment Bill dated 25.07.2017, and accordingly, the amount of Rs.1,22,45,949/- was arrived at after taking into consideration that the petitioners had deposited an amount of Rs.21,67,221/.

17. The record further reveals that an affidavit-in-reply has been filed by the petitioners wherein apart from reiterating the statements made in the writ petition, questioned the authority of the deponent who filed the affidavit-in-opposition on behalf of the respondents.

18. Mr. S. P. Roy, the learned counsel appearing on behalf of the petitioners submitted that from the materials on record, it appears that the respondents herein, more particularly, the respondent No.6 who is the Assessing Officer is bound by the order passed by the learned Appellate Authority dated 05.01.2016 and a reassessment cannot be carried out beyond what had been directed by the learned Appellate Authority.

19. Mr. S. P. Sarma, the learned counsel appearing on behalf of



the respondents submitted that taking into account the findings of facts as arrived at while inspection as well as the order dated 05.01.2016, it is clear that the petitioners were involved in tampering with the meter and would be a malpractice within the ambit of Clause 5.A.3.1 and Clause 5.A.3.2 of the Regulations of 2004. The learned counsel for the respondents submitted that as there is a tampering of the meter, it would come within the ambit of theft of electricity as defined in Section 135 of the Act of 2003, and therefore, the assessment was required to be made in terms with Clause 5.A.4.4 of the Regulations of 2004 wherein the formula has been stipulated as to the manner in which the calculation is required to be made.

20. This Court appreciates the said submission made by the learned counsel for the respondents, but the Respondent Authorities, and more particularly, the respondent No.6 has completely forgotten to take note of that the learned Appellate Authority is a creation of the Act of 2003 and the orders so passed by the learned Appellate Authority is binding upon the Assessing Authority. The learned Appellate Authority had categorically mentioned the manner in which the calculation was required to be made. It further reveals from a perusal of Annexure Nos.15 & 16 of the writ petition which are the final bills prepared on 21.03.2016 that the Assessing Authority, i.e. the



respondent No.6 had carried out the Final Assessment in terms with the directions passed by the learned Appellate Authority dated 05.01.2016. Under such circumstances, without there being any rectification to the order dated 05.01.2016 passed by the learned Appellate Authority, the respondent No.6 even on the basis of an audit objection could not have carried out a fresh assessment which is contrary to the direction passed by the learned Appellate Authority as it would amount to overreaching the order passed by the learned Appellate Authority. However, it appears from the materials on record that the respondent No.6 on the basis of the audit objection had issued the revised Assessment Bill on 25.07.2017 and further rejected the representation vide the order dated 30.11.2017.

21. Under such circumstances, this Court therefore is of opinion that the impugned revised Assessment Bill dated 25.07.2017 as well as the order dated 30.11.2017 is not in accordance with law and requires to be interfered with.

22. Accordingly, the instant writ petition therefore stands disposed of with the following observations and directions:-

- (i) The revised Assessment Bill dated 25.07.2017 issued by the respondent No.6 directing the petitioners to deposit an amount of Rs.1,22,45,949/- is interfered with and set



aside.

(ii) The impugned order dated 30.11.2017 being contrary to the order passed by the learned Appellate Authority dated 05.01.2016 is interfered with and set aside and quashed.

(iii) Any amount deposited by the petitioners pursuant to the order(s) passed by this Court in the present proceedings has to be adjusted against the future bills of the petitioners.

(iv) This Court, however, observes that in the circumstance, the Respondent Authorities seeks any review/rectification of the order dated 05.01.2016 before the learned Appellate Authority and the learned Appellate Authority review/rectifies the order dated 05.01.2016, it shall not be a bar on the part of the Respondent Authorities to make fresh assessment in respect to the period concerned.

(v) This Court further takes note of that in view of the pendency of the instant proceedings and bonafide belief of the respondents that they could apply Clause 5.A.4.4 of the Regulations of 2004 inspite of the order dated 05.01.2016, this Court permits the Respondents to file an application if so advised, within a period of 30 days from today seeking review/rectification of the order dated 05.01.2016.

(vi) It is observed that if such application is filed, the



learned Appellate Authority shall decide the same uninfluenced by the observations made in the present judgment.

JUDGE

Comparing Assistant