GAHC010019682016

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

WP(C) 3977/2016

Satyanarayan Tea Co. (P) Ltd.
(Owner of : Satyanarayan Tea Estate),
A Company duly incorporated under the Companies Act, 1956 having its registered office at the Legacy, 25 A, Shakespeare Sarani, 2nd Floor, Kolkata-17, owing
Satyanarayan Tea Estate at P.O. Naharkatia-786610 in the district of Dibrugarh, Assam.

.....**Petitioner.**

Versus

1. **Assam Power Distribution Company Limited,**
   A Government of Assam undertaking duly incorporated under the Companies Act, 1956 having its office at Bijulee Bhawan, Paltan Bazar, Guwahati-781001, duly represented by its Chairman-cum-Managing Director.

2. **The Area Manager/Assessing Officer,**
   Dibrugarh Industrial Revenue Collection Area,
   APDCL, Dibrugarh-786001, Assam.

…**Respondents.**

BEFORE

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

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

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

Date of hearing : 22.10.2024

Date of Judgment : 29.10.2024

JUDGMENT AND ORDER (CAV)

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

2. The petitioner has put to challenge the final assessment order dated 23.06.2016 and the final electricity assessment bill dated 23.06.2016, by which it was found that the total connected load of 1507 KW was detected against the authorized load of 831.0 KW in respect of the petitioner's Tea Factory. Hence it was saddled with the bill amounting to Rs.43,88,400/-. The petitioner's case is that the petitioner is engaged in the business of plantation, manufacture and sale of tea. The authorized connected electricity load in the petitioner's tea estate is 831 KW, which is equivalent to 978 KVA. The transformer capacity of the tea estate is 1000 KVA. Further, though the petitioner's connected load was 831 KW, the petitioner's contract related demand for consumption of electricity was limited to 783 KVA.

3. The petitioner's case is that the petitioner purchased various equipments in the month of April, 2016 but did not utilise the same, as the petitioner had applied for release of additional electricity load. However, instead of the APDCL according necessary approval for release of the additional load, APDCL officials

visited the petitioner's tea estate for routine checking, wherein they noticed installation of various purchased machineries/equipments.

4. Mr. S.K. Kejriwal, learned counsel for the petitioner submits that the APDCL officials, on seeing the equipments/machineries, straightway came to the conclusion that the petitioner had exceeded its authorized connected load, without verifying as to whether the said machineries were connected with the APDCL distribution mains. He submits that the officials thereafter prepared a Checking Report, showing the total connected load of the petitioner's installation at 1507 KW, instead of the actual connected load of 831 KW, thereby alleging that the petitioner had exceeded the connected load by 676 KW. The petitioner's counsel submits that the Inspection Report is absolutely silent as to whether the load detected was the meter connected load.

5. The petitioner's counsel submits that in terms of Electricity Bill dated 09.06.2016 which is for the billing period from 01.05.2016 to 31.05.2016, the meter reading details showed that the Recorded Demand (RD) KVA was 0.52 which was less than the Maximum Demand (MD) KVA and Billing Demand (BD) KVA, which was 783 KVA. He accordingly submits that when the electricity bill shows that there has been no use of electricity beyond the contracted demand of 783 KVA, there was no occasion for the APDCL to have come to a finding that the petitioner was in unauthorized use of electricity beyond the petitioner's connected load. He submits that the extension of load simpliciter, without there being any actual use of electricity, beyond the contract related demand or connected load, does not amount to unauthorized use of electricity, within the meaning of Section 126 of the Electricity Act, 2003.

6. Mr. S.K. Kejriwal submits that in terms of Clause (e) of HT Category VII – Oil and Coal of Schedule of Tariff issued by the APDCL w.e.f. 10.07.2017, if the Recorded Demand is higher than the Contracted Demand in a month, then fixed charge based on Contracted Demand can be levied, at three times the normal rate, for the portion of demand exceeding the Contracted Demand. He submits that in the present case, the Recorded Demand and the Contracted Demand is the same which is 783 KVA. As such, the electricity consumption did not exceed the connected load. He also submits that as there was no consumption of electricity in excess of the sanction/connected load, there was no unauthorized use of electricity in terms of Section 126 of the Electricity Act, 2003, as has been held by the Supreme Court in the case of ***Executive Engineer & Another vs. Sri Seetaram Rice Mill,*** reported in ***(2012) 2 SCC 108.***

7. The learned counsel for the petitioner has also relied upon the order dated 08.10.2018 passed by the Assam Electricity Regulatory Commission in Petition No.13/2018, wherein it has held that in the case of a consumer equipped with Maximum Demand meter, the licencee shall compare the Maximum Demand reading with Contract Demand and if the load exceeds the Contracted Demand, then the penalty at three times the normal tariff shall be levied as per provision of Schedule of Tariff. It further held that Clause 7.4.2 of AERC (Electricity Supply Code) Regulations 2017 would be applicable when unauthorized use of electricity is detected by the assessing officer. Excess connected load cannot be termed as unauthorized use, if the Maximum Demand record shows otherwise. Thus the provisions of 7.4.2 under the AERC (Electricity Supply Code) Regulations 2017 would be applicable only when there was no record of Maximum Demand measured through a MDI meter.

8. The petitioner's counsel further submits that the office of the Electricity Ombudsman, Assam Electricity Regulatory Commission, in it's judgment dated 25.09.2024 passed in Appeal Petition No. 2/2024, had held that as per Section 126 of the Electricity Act, 2003, it was the actual unauthorised use by the consumer which resulted in some benefit to the consumer, which was liable for a penal bill. But, when there is nothing in the inspection to establish that the petitioner was found indulging in any actual unauthorised use of electricity resulting in any sort of benefit, no wrong had been committed on the part of the APDCL, in not issuing any assessment bill on account of alleged mal-practice. The commission further held that as per Clause 5.8.4.1 of the 2007 Amendment, penal bill could be sustained only if the meter excessed authorised load during inspection, but mere extension of load without any actual use cannot be penalised. He accordingly submits that the said decision is also applicable to the facts of this case.

9. Mr. S. K. Kejriwal, learned counsel for the petitioner further submits that there is no bar for this Court to decide the present case, as there is no inflexible Rule that just because an alternative remedy is available, the same has to be availed of. In this regard, he has relied upon the judgment of the Supreme Court in the case of ***Smt. Har Devi Ashani vs. State of Rajasthan and others,*** reported in ***(2011) 14 SCC 160.***

10. Mr. K.P. Pathak, learned Standing Counsel for the APDCL has made his submissions with Mr. Santanu Bose, DGM, Commercial & Revenue, APDCL, giving clarifications with regard to some aspects of the case, one of the which is to the effect that the tariff payable by a consumer of electricity would involve multification of the RD (KVA) along with the multiplying factor. He submits that

the multiplying factor for determining the tariff payable by the petitioner is based upon the petitioner's connected load being 831 KW. However, as the petitioner did not inform the authorities about the additional equipments/machineries bought by the petitioner, which were connected to the licencee distribution mains, for making an amendment/correction of the connected load of the tea estate, the correct multiplying factor for determining the tariff on the basis of the connected load was not applied. He submits that when the connected load is higher, the multiplying factor (MF) becomes higher.

11. The counsel for the APDCL further submits that the multiplying factor for determining the tariff payable on the electricity consumed by a consumer, would depend upon the capacity of all energy consuming devices connected with the licencee distribution mains in the consumer's installation and which could be simultaneously used. He submits that just because the petitioner did not use all his machineries simultaneously, which would have shown that the petitioner's consumption of electricity was beyond the connected load, did not mean that the multiplying factor could not be made on the basis of the connected load, which is reflected in Regulation 1.3(v) of the Assam Electricity Regulatory Commission (Electricity Supply Code and Related Matters) Regulations 2004 (First Amendment) 2007 [hereinafter referred to as the "2007 Amendment"]

12. The counsel for the APDCL has further taken this Court through Regulation 5.3 and Regulation 5.A.3.2(b) of the 2007 Amendment, which is to the effect that when there is a need to change the connected load, the same has to be stated by the consumer in writing to the licencee and the exceeding of the connected load authorized by the supplier, is generally to be treated as

malpractice. He submits that as the petitioner had connected it's newly purchased machinery to the mains of the APDCL, without informing the APDCL and as the tariff paid by the petitioner was not determined by the appropriate multiplier factor, the petitioner has to be considered to be unauthorizedly using electricity.

13. The learned counsel for the APDCL further submits that as there is an alternative remedy available by way of Section 127 of the Electricity Act, 2003, the petitioner should avail the alternative remedy available.

14. Mr. S.K. Kejriwal, the learned counsel for the petitioner has submitted a clarificatory note, which is to the effect that the APDCL officer who had appeared in the Court had made a wrong statement, to the effect that the recorded demand is used to ascertain the exact energy (units consumed in kwh) by the consumer, by multiplying the same with the multiplier factor. The petitioner's case is that the recorded demand as reflected in the electricity bill when multiplied with the multiplier factor would reveal the actual load/connected load supplied by the APDCL.

15. The note of the petitioner also states that the APDCL officer, who appeared in the case made another wrong statement before this Court, that with the increase of the connected load, the multiplier factor would also increase. The note states as to how the APDCL officer was wrong. The note has provided the manner as to how the multiplier factor is to be ascertained, i.e. "To calculate the CT ratio, one will need to know the maximum current of the system and the rating of the energy meter. The formula for CT (Current

Transformer) ratio is CT ratio = Primary current / Secondary current. The primary current is the maximum current that the CT will see and the secondary current is usually 5A for energy meters.

Potential Transformer ratio is the ratio of the primary rated voltage of the PT divided by the secondary rated voltage of the PT. A 480:120V rated PT will have a PT ratio of 4.

To calculate the Multiplying (Multiplier) Factor of a 33 KV energy meter, one needs to know the transformation ratio of the current transformers (CTs) potential transformers (PTs) used in the metering circuit. (The same may change or vary if the supply is via 11 KV energy meter."

16. The note also states that the above extracts has been downloaded from Google and that this Court could cross verify the same from the literature that may be provided by the APDCL

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

18. As can be seen from the submissions made by the counsels for the parties, the petitioner's tea factory was having an authorized load of 831.0 KW, while the contract related demand for consumption of electricity was limited to 783 KVA. On a routine check of the petitioner's tea factory, it was found that the petitioner had new machineries/equipments which had been connected to the APDCL distribution main line, thereby taking the total connected load to 1507 KW, due to the excess connected load of 676 KW. The respondent APDCL had

issued the final assessment order and final electricity assessment bill dated 23.03.2016 amounting to Rs.43,88,400/- payable by the petitioner, as the excess load due to the new machineries/equipments were not communicated by the petitioner to the APDCL, thereby resulting in unauthorized use of electricity.

19. The following tables show the new machineries/equipments installation made at the new extension and at the old factory, which was apparently not conveyed to the APDCL by the petitioner :

Installation checked at new extension

Item	Load per Item	No.	Total Load (Watts)
1	2	3	4
Lower Trough (3 x 20) HP	60 HP	1	60
Upper Trough (3 x 200) HP	60 HP	1	60
CTC (4 Unit) (Illegible)		4	450
C.M.F. (2 Unit)	24.75 HP	2	49.5
Dryer (2 Unit)	65.5 HP	2	131.0
Sorting	21 HP	1	21.0

Sorting – SDB	13 HP	1	13.0
Spot Humidifier	9 HP	1	9.0
Illegible	10.5 HP	1	10.5
			804.0 HP
	804 x 0.746 KW =1		599.784 KW
			600 KW

Installation checked at old factory

Item	Load per Item	No.	Total Load (Watts)
1	2	3	4
Trough (5 x 8 + 2 x 2) (3 x 16 + 2 x 1)	44 HP 50 HP	1 1	44 50
Trough (3 x 24) HP	72 HP	1	72
Trough (3 x 25) HP	75 HP	1	75
CTC (20 x 2 + 15 x 3 + 2 x 2) HP	89 HP	4	356
CTC (20 x 4 + 25 x 1 + 2 x 2) HP	109 HP	2	218
Conveyor (2 x 6 + 3 x 1 + 1 x 2) HP	17 HP	1	17
C.F.M (3x3 + 1 x 1 + 2 x 2 +10) HP	24 HP	2	48
Spot Humidifier (0.75 x 8)	6 HP	1	6

Dryer (30x1+10x1+7.5x1+5x1+ 3x2+2x1+1x1) HP	61.5 HP	2	123
Dryer (40x1+10x1+7.5x3+5x3+ 3x1) HP	90.5 HP	1	90.5
Sorting (2x14 + 1x9) HP	37 HP	1	37
Dryer (15x2 + 3x2 + 2x4+ 1x1) HP	45 HP	1	45
Sorting (3x2+2x3 + 1x2) HP	14 HP	1	14
Workshop (5.2x2+3.1x3+1x1 + 0.5x1) HP	21.2 HP	1	21.2
			1216.7 HP
	1216.7 x 0.746 KW =		907.658 KW
	=		908 KW

20. As can be seen from the submissions made by the counsels for the parties and subsequent note submitted by the petitioner's counsel which is marked hereto as Annexure-XX, the issue to be decided is very technical besides factual issues needing to be looked into.

21. In view of the above, this Court is of the view that as there is an efficacious alternative statutory remedy available to decide the present matter in terms of Section 127 of the Indian Electricity Act, 2003, the petitioner should approach the alternative forum for disposal of the issues raised in this case. It is also noticed that this Court in WP(C) 6307/2014 (M/s Sanyeji Ispat Ltd. Vs. Assam Power Distribution Company Ltd. & 3 Others) has, vide order dated

09.01.2015, directed that the challenge made to the disconnection notice dated 08.12.2014, the final assessment bill dated 19.11.2014 should be decided in terms of Section 127 of the Indian Electricity Act, 2003 with the petitioner requiring to pay 50% of the assessed amount in instalments under Section 127(2), as the same had been agreed to by the parties.

22. Section 127 of the Indian Electricity Act, 2003 is reproduced hereinbelow as follows :

> "*Section 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."*

23. In the case of ***M/s Shiv Alloys Steel vs. Assam Power Distribution Company Ltd. & Others***, reported in ***(2021) 4 GLR 558***, this Court had dismissed the writ petition challenging the final order passed under sub-Section (3) of Section 126 of the Indian Electricity Act, 2003 regarding unauthorized use of the electricity in view of the fact that there was a statutory provision under Section 127 of the said Act. This Court in the above case held that the Appellate Forum under Section 127 of the Act was equipped to decide both the factual issues and technical issues. Accordingly, the writ petition was held to be not maintainable. The decision of the learned Single Judge in ***M/s Shiv Alloys Steel (supra)*** was put to challenge in WA 286/2021. The same was dismissed by the Division Bench of this Court, vide order dated 16.11.2021 by holding that as the remedy available to the writ petitioner/appellant was by way of an appeal under Section 127 of the Indian Electricity Act, 2003, where petitioner/appellant would have the liberty to place all his points.

24. In paragraph-3 of the judgment in the case of ***Assistant Collector of Central Excise***, ***Chandan Nagar, West Bengal vs Dunlop India LTD***., reported in ***(1985) 1 SCC 260,*** the Supreme Court held as follows :

> "*3. In Titaghur Paper Mills Co. Ltd v. State of Orissa A. P. Sen, E S. Venkataramiah and R. B. Misra, JJ. held that where the statute itself provided the petitioners with an efficacious alternative remedy by way of an appeal to the Prescribed Authority, a second appeal to the Tribunal and thereafter to have the case stated to the High Court, it was not for the High Court to exercise its extraordinary jurisdiction under Art 226 of the Constitution ignoring as it were, the complete statutory machinery. That it has become necessary, even now, for us to repeat this admonition is indeed a matter of tragic concern to us. Article 226 is not meant to short circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill suited to meet the demands of extraordinary*

situations, as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to by-pass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged."

25. In the case of ***Varimadugu Obi Reddy vs. B. Sreenivasulu***., reported in ***(2023) 2 SCC 168,*** the Supreme Court stated that it deprecated the practice of entertaining writ petitions by the High Courts under Article 226 of the Constitution, without exhausting the alternative remedy available under the law, when the circuitous route appeared to have been adopted by the petitioner to avoid the condition of pre-deposit, contemplated under the second proviso to Section 18 of the SARFAESI Act 2002.

26. Paragraph 35 of the above judgment is reproduced hereinbelow, as follows :

"*35**.** This Court in the judgment in United Bank of India v. Satyawati Tondon, was concerned with the argument of alternative remedy provided under the SARFAESI Act, 2002 and dealing with the argument of alternative remedy, this Court had observed that where an effective remedy is available to an aggrieved person, the High Court ordinarily must insist that before availing the remedy under Article 226 of the Constitution, the alternative remedy available under the relevant statute must be exhausted. Paras 43, 44 and 45 of the said judgment are relevant for the purpose and are extracted below :*

(SCC p. 123)

"*43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.*

44. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution.

45. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance."

27. This Court is aware that the case has been pending for a long time in this Court. However, the averments made by the counsels for the parties clearly show that factual and technical questions have to be decided. In view of the fact that the present case does not involve violation of Article 14 of the

Constitution and as there is a statutory provision for appeal under Section 127 of the Indian Electricity Act, the petitioner would have to avail of the statutory remedy available, in terms of the judgments of the Supreme Court and this Court.

28. The writ petition is accordingly dismissed, with liberty being given to the petitioner to approach the concerned Appellate Forum in terms of Section 127 of the Indian Electricity Act, 2003.

JUDGE

Comparing Assistant