(2021) 09 GAU CK 0050

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 6229 Of 2017

Indian Oil Corporation Ltd APPELLANT

Vs

Assam Power Distribution Co. Ltd. And 3 Ors. RESPONDENT

Date of Decision : 15-09-2021

Acts Referred:

Electricity Act, 2003 — Section 42, 56, 56(1), 56(2)
Limitation Act, 1963 — Section 17

Citation : (2021) 09 GAU CK 0050

Hon'ble Judges : Prasanta Kumar Deka, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

Heard Mr. N Baruah, the learned counsel for the petitioner Indian Oil Corporation Limited (IOC). Also heard Mr. BD Das, learned Senior counsel assisted by Ms. R Deka, learned counsel for the Assam Power Distribution Company Limited (APDCL).

The petitioner is one of the divisions of the Indian Oil Corporation Limited and the Missamari Depot is one of the depots of Indian Oil-AOD. An electricity connection was provided by the respondent APDCL to the Missamari Depot under the category of HT Industry and the energy bills were regularly paid to the APDCL even till the date of filing of the writ petition. But the revised bill dated 16.12.2016 amounting to Rs. 25,08,649/- (impugned) for the period with effect from April, 2009 to July, 2015 was served upon the Missamari Depot due to subsequent correction of the category of the petitioner consumer from HT commercial to HT-Oil as pointed out by the Accountant General (Audit), Assam. The said revised bill was raised for a period of 6 years on the observation of the AG (Audit) without providing any notice or show cause and also in violation of Section 56 (2) of the Electricity Act, 2003. The petitioner filed due representation on 22.09.2017 before the respondent authority but the same was not considered and on 04.10.2017 the electricity connection of Missamari Depot was disconnected by the respondent APDCL without providing any notice or opportunity of hearing. Challenging the disconnection of the electricity and the impugned revised bill dated 16.12.2016 as illegal, arbitrary and in violation of provision of law, this writ petition is filed.

The respondent Nos. 1,2,3 and 4 through its Chief General Manager (Com & EE) APDCL filed an affidavit-in-opposition. It is admitted in the said affidavit-in-opposition that a revised bill for period from April, 2009 to July, 2015 was served on the petitioner to compensate the loss incurred due to billing in wrong category-II, "HT commercial" instead of billing in correct "HT category-VII, Oil and Coal". The wrong categorization of billing of IOCL Missamari depot was detected by the AG (Audit), Guwahati referring the correct category as "HT category-VII-Oil and Coal" from the schedule of tariff.

The Senior Depot Manager of IOCL, Missamari Depot vide a letter dated 24.12.2016 requested the Assistant General Manager, IRCA, APDCL (CAR) Tezpur for providing 6 (six) months time for consideration of the revised bill dated 16.12.2016 and the petitioner was allowed 6 (six) months time for payment of the supplementary bill vide letter dated 31.01.2017 by the Chief General Manager (Com), APDCL.

The power supply to the Missamari Depot was disconnected on 04.10.2017 by the respondent APDCL. Vide order dated 10.10.2017 upon motion of this writ petition while issuing notice to the respondent APDCL it was directed to the petitioner to deposit an interim amount of Rs. 5,00,000/- by means of Bank Draft to the respondent No. 2 and in the meantime, the electricity connection to the said depot was directed to be restored forthwith and shall continue until furthers order subject to deposit of Rs. 5,00,000/- within 72 hours from 10.10.2017. In terms of the said order and having deposited Rs. 5,00,000/- the power supply was restored by the respondent APDCL.

Mr. Baruah challenges the impugned revised bill amounting to Rs. 25,08,649/- raised on 16.12.2016. The said bill was raised as there was audit objection in respect of the category under which the petitioner was assessed. In fact as per the said objection of the audit, the petitioner was required to be assessed under HT-OIL/GAS Category instead of HT Industries II. On the basis of the said objection the subsequent impugned revised bill was issued. As per Mr. Baruah, the respondent APDCL could not have raised the bill as (i) there is a bar under Section 56 (2) of the Electricity Act, 2003 which bars disconnection and in support of the said submission Mr. Baruah relies in Assistant Engineer (DI), Ajmer Vidyut Vitran Nigam Limited and Another Vs. Rahamatullah Khan alias Rahamjulla reported in (2020) 4 SCC 650; (ii) the bill was raised admittedly beyond the stipulated period of two years under Section 56(2) of the Electricity Act, 2003 and also under Section 17 of the Limitation Act, 1963 on the ground that the respondent APDCL had the knowledge of such wrong categorization on 01.08.2013 and admittedly this bill was raised on 16.12.2016 beyond the period of 3 (three) years limitation. It is further submitted by Mr. Baruah that the issue raised in the representation dated 08.05.2017 by the present petitioner before the Assam Electricity Regulatory Commission ought to have given the decision in respect of the finalization of the category of the petitioner. However, the same was not done inasmuch as the said commission instead of deciding the issue raised, forwarded it to the Consumer Grievances Redressal Forum under Section 42 of the Electricity Act, 2003.

The said submission of Mr. Baruah is countered by Mr. Das on the ground that as per the ratio Ajmer Vidyut Vitran (supra) under Section 56(2) of the Electricity Act, 2003 the respondent APDCL is entitled to raise a supplementary demand within the period of 2 (two) years from the date of raising of the bill. It is further submitted by Mr. Das that the date of raising the bill will give the point of limitation and not from the date of knowledge. It is also submitted by Mr. Das that the learned counsel for the petitioner is going beyond the prayer made in this writ petition inasmuch as it is the prayer for setting aside and quashing of the revised bill and not the subsequent plea raised by Mr. Baruah. It is further submitted that the petitioner is estopped in raising the objection against categorization as the HT-OIL/Gas inasmuch as the petitioner is paying the current bill for electricity consumption after there was changes in categorization of the petitioner and at this point of time they cannot challenge the category under which it is assessed as the petitioner had accepted such categorization.

I have considered the submissions of the learned counsel. For the convenience Section 56 of the Electricity Act, 2003 is reproduced hereinbelow:

"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 the 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 protests,-

(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. "

From the submissions of both the learned counsel I am of the considered opinion that the issue before this court is whether the action of the respondent APDCL disconnecting the power supply to the petitioner and raising of the supplementary bill dated 16.12.2016 were within the purview of Section 56 of the Electricity Act, 2003. In support of the contention that the said exercise of jurisdiction by the respondent APDCL was not correct, Mr. Baruah relied

Assistant Engineer (DI), Ajmer Vidyut Vitran Nigam Limited and Another Vs Rahamatullah Khan alias Rahamjulla (supra). Referring to the Section 56 sub-section 2 of the Electricity Act, 2003 the jurisdiction given to APDCL can be examined as per the ratio of the said decision of the Hon'ble Apex Court and the relevant portion is extracted hereinbelow:

"7.5 The period of limitation of two years would commence from the date on which the electricity charges became 'first due' under Sub-section (2) of Section 56. This provision restricts the right of the licensee company to disconnect electricity supply due to non-payment of dues by the consumer, unless such sum has been shown continuously to be recoverable as arrears of electricity supplied, in the bills raised for the past period. If the licensee company were to be allowed to disconnect electricity supply after the expiry of the limitation period of two years after the sum became 'first due', it would defeat the object of Section 56(2).

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 non-payment 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."

Here this is a case wherein admittedly the supplementary bill was raised in respect of the arrears for April, 2009 to July, 2015 on 16.12.2016 and thereafter the petitioner was allowed 6 (six) months time for payment of the said supplementary bill vide letter dated 31.01.2017 by the Chief General Manager (Com), APDCL. Admittedly the arrears goes back to the period of April, 2009 to July, 2015 and the point of limitation of two years period shall run from the "due date" commencing from the date on which the electricity charges became "first due under" Sub-section 2 of Section 56 of the Electricity Act, 2003.

On the other hand Sub-section 1 under Section 56 of the Electricity Act, 2003 confers statutory right to the APDCL to disconnect the supply of electricity if the consumer neglects to pay the electricity dues and the said right of disconnection is subject to the period of limitation of 2 years provided by Sub-section 2 of Section 56 of the Act. In the present case in hand, the bill was raised on 16.12.2016 and admittedly the amount was for the period from April, 2009 to July, 2015 and the said arrear amount came to the notice to the respondent APDCL only on the basis of the letter issued by the AG (Audit).

It is submitted by Mr. Baruah that the APDCL had knowledge of such wrong categorization on 01.08.2013 and admittedly the supplementary bill was raised on 16.12.2016 beyond the period of three years limitation as prescribed under Section 17 of the Limitation Act, 1963. But keeping in view the non obstante clause in opening line under Sub-section (2) of Section 56 of Electricity Act, 2003 limitation prescribed under Section 17 of the Limitation Act, 1963 will not come into play. However, the period of two years would run from the first due date of the arrears and after completion of two years period from the date of first due the APDCL has no authority to disconnect the power supply.

Accordingly, in my considered opinion the supplementary bill dated 16.12.2016 was raised admittedly in respect of arrears for the period April, 2009 to July, 2015. The said arrears was due to wrong categorization of the petitioner which led to the said arrears amount of Rs. 25,08,649/-. The APDCL discovered the said mistake of billing only on 01.08.2013 on being pointed out by the AG (Audit) Guwahati. If the said amount which started from April, 2009 is considered then the limitation period of two years under Section 56(2) on the date of raising the bill i.e. on 16.12.2016 had already expired. The period of limitation of two years under Section 56(2) of the Electricity Act, 2003 would commence when the electricity charges became "first due" as per the ratio of Assistant Engineer (DI), Ajmer Vidyut Vitran Nigam Limited and Another Vs Rahamatullah Khan alias Rahamjulla (supra). Now the said due amount started since April, 2009 and continued till July, 2015 as such the case would not fall under Sub-section (1) of Section 56 of the Electricity Act, 2003 on the basis of which the respondent APDCL is authorized to disconnect the power supply. Had it been within two years period from the date on which electricity charges became "first due" than the APDCL was authorized to initiate action under Sub-section (1) of Section 56 of Electricity Act, 2003. But as it was beyond the period of two years accordingly the act of disconnection by the respondent APDCL was in violation of Section 56 of the Act, 2003. However, Section 56 (2) of the Electricity Act, 2003 does not preclude APDCL from raising supplementary demand even after expiry of limitation period of two years. Accordingly, the claim made by the respondent APDCL through the supplementary bill dated 16.12.2016 is held to be proper and well within the ambit and scope under Section 56 Sub-section 2 of the Electricity Act, 2003. In view of the same, though the action of disconnection of the electricity supply to the petitioner does not have the sanction of law however the supplementary bill dated 16.12.2016 for Rs. 25,08,649/- has its sanction under Section 56 (2) of the Electricity Act, 2003 and as such the petitioner is liable to pay the said amount subject to the deduction of Rs. 5,00,000/- which the petitioner already deposited in term of the order dated 10.10.2017. The issue is decided partly in favour of the petitioner.

Accordingly, this writ petition stands disposed of.

Interim order if any stands vacated.

