**(2024) 01 GAU CK 0036**

**In the Gauhati High Court**

**Case No :** Writ Petition (Civil) No. 3546 Of 2017

M/S. Hotel Barak Residency And 2 Ors. APPELLANT

Vs

State Of Assam And 4 Ors. RESPONDENT

**Date of Decision :** 30-01-2024

**Acts Referred:**
Electricity Act, 2003 — Section 126(1), 126(3), 127

**Citation :** (2024) 01 GAU CK 0036

**Hon'ble Judges :** Devashis Baruah, J

**Bench :** Single Bench

**Advocate :** H I Choudhury

**Final Decision :** Disposed Of

## Judgement

1. The instant writ petition has been filed by the petitioners challenging the notice dated 02.06.2017 alongwith the final assessment bill, issued by the respondent No. 5, amounting to 10,96,178.00 (Ten Lakhs Ninety Six Thousand One Hundred Seventy Eight only) and for other consequential directions.

2. The records reveals that the petitioner No. 1 herein is a partnership firm and running a hotel in the name and style of "Barak Residency", situated at Hatigaon Road, Dispur, Guwahati- 781006. On 11.05.2016, at 3.00 pm, the respondent No. 5 disconnected the electricity connection to the petitioner's Hotel. On the same date, the respondent No. 5 also sent a communication stating inter alia that the evidence revealed that the petitioner No. 1 was directly or indirectly involved in malpractice for which the petitioner's electric connection was disconnected on 11.05.2016. Further to that an initial assessment bill was served upon the petitioner amounting to Rs. 39, 10, 159.00. It may be relevant to mention herein that this assessment bill was issued in terms with Section 126(1) of the Indian Electricity Act, 2003 (for short 'the Act of 2003').

3. The petitioner, thereupon challenged the said communication dated 11.05.2016 as well as the disconnection notice by filing a writ petition which was

registered and numbered as WP(C) No. 2960 of 2016. This Court by order dated 17.05.2016, issued notice of motion and in the interim granted liberty to the petitioner to apply for a fresh meter for its hotel and make necessary payment for resumption of the power supply. It was also mentioned that if such application was filed by the petitioner and the dues for the new meter was deposited, the respondents would restore the power supply to the Hotel premises.

4. The record further reveals that a new meter was installed on the basis of the interim order passed by this Court. Subsequent thereto, the petitioner was issued notice under Section 126 (3) of the Act of 2003 intimating about the hearing in respect to the provisional assessment bill which was served upon the petitioner and asking the petitioner to file any objection, if so adviced. The petitioner instead of submitting any objection intimated the Assessing Officer that the matter was subjudice before the Court and as such the hearing of the matter be adjourned till the final decision of this Court. Thereupon, on 16.06.2016, in view of the fact that there was no objection filed, the provisional assessment bill was made final and the petitioner was directed to pay the amount of Rs. 39,10,159.00. It was also indicated by the communication dated 16.06.2016 that the petitioner may prepare an appeal in terms of Section 127 of the Act of 2003.

5. The petitioner thereupon filed a petition before this Court, which was registered and numbed as WP(C) No. 2765/2016. The said writ petition was disposed of by an order dated 23.06.2016 observing inter alia that the final assessment order was passed and the bill was issued without taking into consideration the objection of the petitioner. Under such circumstances, this Court directed the petitioner to file objection on or before 08.07.2016 and if it was filed in due time, the competent authority was directed to consider the objection and finalize the provisional assessment bill after affording an opportunity of hearing to the petitioners. It was further mentioned that the final assessment bill which was impugned in the said proceedings would be subject to the outcome of the said de novo proceedings, directed to be initiated.

6. Thereupon, the petitioner submitted a detailed objection before the Assessing Officer on 04.07.2016. The record further shows that on 02.06.2017, the Assessing Officer passed the final Assessment bill amounting to Rs. 10,96,178.00 and directed the petitioner to pay in terms with final assessment bill within the due date. The petitioner thereupon filed the instant writ petition challenging the communication dated 02.06.2017 as well as the final assessment bill. The instant writ petition was filed on 09.06.2017.

7. The record further reveals that on 21.06.2017, this Court directed the respondent/ APDCL authority not to disconnect or not to disturb the electricity connection of the petitioner. Thereupon vide order dated 12.07.2017, notice was issued and the interim order passed earlier was directed to be continue till the next date which was subsequently extended until further orders.

8. I have heard Mr. J.I. Barbhuiya, the learned counsel appearing on behalf of the petitioners as well as Mr. K.P. Pathak, learned Standing Counsel, appearing on behalf of the respondents/ APDCL and have duly taken note on their submissions.

9. The submissions which have been made by the learned counsel for the petitioners is not on the question of jurisdiction touching on the authority of respondent No. 5 to issue impugned communication dated 02.06.2017 as well as the final assessment bill. Submissions have been made to the effect that the cover of the meter in question might have been broken due to earthquake and for some other reasons and also to the effect that when the inspection was carried out on 03.02.2016, the breaking of the cover of the meter was not detected at the point of time. It was submitted that as the petitioner was not at fault in the breaking of the cover of the meter, the final assessment bill ought not to have been made in the manner in which the same has been done. The learned counsel appearing on behalf of the petitioners further drew the attention of this Court to the photographs pertaining to the said meter in question and further submitted that the petitioners had no hand in the breaking of cover of the meter.

10. The above submissions, in the opinion of this Court, are purely factual in nature. No legal points arises for consideration. At this stage, this Court finds it relevant to note that Section 127 of the Act of 2003, is a special Code by itself providing the various avenues/ remedies against the final assessment bill. It is also relevant to take note of that the appellate authority under Section 127 of the Act of 2003 consists of members who are experts in the field and these question of facts can very well be adjudicated/ decided by them.

11. In fact, this Court finds it relevant in the case of Jaipur Vidyut Vitran Nigam Ltd. and others Versus MB Power (Madhya Pradesh) Ltd. and others reported in 2024 SCC online SC 26 wherein in paragraph 136 the Supreme Court categorically observed that the Act of 2003 is an exhaustive code on all matters concerning electricity. It was further observed that the State Electricity Commission and the learned APTEL have ample powers to adjudicate in the matters with regard to electricity. The Supreme Court observed in the said judgment that the concerned High Court was not justified in entertaining the writ petition. Pargraphs 136 and 137 of the said judgment is reproduced hereinunder:

"136. We find that the High Court was not justified in entertaining the petition. The Constitution Bench of this Court in the case of PTC India Limited (supra) has held that the Electricity Act is an exhaustive code on all matters concerning electricity. Under the Electricity Act, all issues dealing with electricity have to be considered by the authorities constituted under the said Act. As held by the Constitution Bench of this Court, the State Electricity Commission and the learned APTEL have ample powers to adjudicate in the matters with regard to electricity. Not only that, these Tribuinals are tribunals consisting of experts having vast experience in the field of electricity. As such, we find that the High Court erred in directly entertaining the writ petition when the respondent No. 1, i.e. the writ petitioner before the High Court an an adequate alternate remedy of approaching the State Electricity Commission.

137. This Court in the case of Reliance Infrastructure Limited V. State of Maharastra has held that while exercising its power of judicial review, the Court can step in where a case of manifest unreasonableness or arbitrariness in made out."

12. This Court is not unmindful to the fact that the instant writ petition has been pending for the last 6 years. However, the dispute in question relates to adjudication of purely factual matters not touching on any legal issues, and that too when an equally efficacious remedy is available, for which it is the opinion of this Court that the present writ petition ought not to be entertained more so in view of the judgment of the Supreme Court referred to hereinabove. Under such circumstances, this Court is not inclined to entertain the writ petition.

13. Be that as it may, this Court however, finds it relevant to observe that the petitioners had immediately approached this this Court against the order dated 02.06.2017 as well the final assessment bill on 09.06.2017. The writ petition has been pending since then. A perusal of Section 127 of the Act of 2003 also stipulates the period of limitation i.e. 30 days.

14. Under such circumstances, it is the opinion of this Court that the petitioners may be well adviced to take recourse to Section 127 of the Act of 2003 against the order dated 02.06.2017 and the final assessment bill. The period during which the instant writ petition has been pending i.e. from 09.06.2017 till today be excluded while computing the period of limitation.

15. With the above directions and observations, the instant writ petition therefore stands disposed of.