



GAHC010241432017

Page No.# 1/11



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

Case No. : WP(C)/5892/2017

M/S. S.M.CEMENT INDUSTRIES
A PARTNERSHIP FIRM DULY REGD AND HAVING ITS PRINCIPAL PLACE OF
BUSINESS AND CEMENT GRINDING PLANT AT 11TH MILE, P.O AND P.S-
JORABAT, DIST- KAMRUP, ASSAM, DULY REP. BY ONE OF ITS PARTNERS
NAMESLY MANOJ SUREKA, S/O- LATE M L SUREKA, R/O- SONI RAM
BORAH ROAD, ULUBARI, GHY-7, ASSAM

VERSUS

ASSAM POWER DISTRIBUTION CO. LTD and 4 ORS.
A GOVT OF ASSAM UNDERTAKING DULY INCORPORATED UNDER THE
COMPANIES ACT, 1956 HAVING ITS OFFICE AT BIJULEE BHAWAN, PALTAN
BAZAR, GUWAHATI DULY REP. BY ITS CHAIRMAN CUM MD

2:THE APPELLATE AUTHORITY

APDCL
BIJULEE BHAWAN
PALTAN BAZAR
GUWAHATI- 781001
ASSAM

3:THE ASSAM ELECTRICITY REGULATORY COMMISSION

HAVING ITS OFFICE AT ASEB CAMPUS
DWARANDHAR
G S ROAD
SIX MILE
GUWAHATI- 781022 DULY REP. BY ITS CHAIRMAN

4:THE AREA MANAGER/ASSESSING OFFICER

IRCA-I
APDCL
PALTAN BAZAR



GHY-1

5:THE ASSISTANT GENERAL MANAGER
T and C DIVISION
ULUBARI
GHY- 0

Advocate for the Petitioner : MRSS KEJRIWAL

Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

JUDGMENT

Date : 01-11-2022

Heard Dr. A Saraf, learned senior counsel assisted by Mr. SK Kejriwal, learned counsel for the petitioner and Mr. KP Pathak, learned counsel for the respondents in the APDCL.

2. The petitioner is a consumer of electricity under the respondent APDCL and was allotted meter No. AS897243. On 24.07.2014, the officials of the respondent APDCL detected a foreign material to have been implanted in the consumer meter of the petitioner by breaking open the seal. The meter was sent for appropriate inspection and there exists a CNRI report showing the presence of a foreign material inside the meter and that the seal of the meter was broken. On the basis of such report, it is the conclusion of the respondents in the APDCL that it is a clear case of theft of electricity by tempering the meter where the petitioner itself is the sole beneficiary. Upon the meter being detected to have been tempered, the petitioner was allotted a different meter bearing No. 897450.

3. The relevant provisions under the Assam Electricity Regulatory

Commission (Electricity Supply Code and Related Matter) Regulation, 2004 (in short AERC 2004), as amended in 2007 that are applicable when there is a unmetered use of electricity or theft of electricity is provided in clause 5.A.4.4 of the AERC 2004. Clause 5.A.4.4. is extracted below:-

“5.A.4.4 Un metered use of Electricity (Theft of Electricity):-

When a consumer indulges in the theft of electricity, the officer authorised in this behalf by the Government of Assam may without prejudice to its other right, will assess the quantum of electricity loss on the basis of assessed consumption of detected category as per Table under 6.2.1.1 and connected load for a period of twelve months prior to the date of detection and will be billed at the rate of 2 times of the existing tariff.”

4. A reading of clause 5.A.4.4 makes it discernible that when a consumer indulges in theft of electricity, the officer authorized on behalf of the Government of Assam may without prejudice to its other rights, asses the quantum of electricity loss as per table provided in clause 6.2.1.1 and the connected load for a period of 12 months prior to the date of detection will be billed @ two times of the existing tariff. In other words, upon unmetered use of electricity or theft of electricity being detected, the respondents in the APDCL are required to make an assessment as per the table in clause 6.2.1.1. Clause 6.2.1.1 providing for computation of load security and the table thereof is extracted as below:-

“6.2.1.1 Computation of load Security

The security deposit amount required to be maintained with the Licensee will be computed as follows:

A sum equal to two months charges (energy charge + fixed/ demand charge) calculated in prevailing tariff at monthly average consumption of last financial year.

The new consumers shall pay on initial security deposit based on the table of estimated consumption category of consumers given below:

Sl. No	Category	Estimated consumption (Per kW/ Month)
1	Domestic	60
2	Commercial	120
3	General Purpose	100
4	Public Lighting	300
5	Public water works	120
6	Irrigation	120
7	Small Industry- Rural and Urban (connected load up to 25 kVA) Rural Urban	50 100
8	HT-I Medium Industries (connected load above 25 kVA to 100 kVA)	100
9	HT-II Large Industries (connected load above 100 kVA to 2500 kVA)	150
10	HT-II Extra Large Industries (connected load above 2500 kVA)	250

5. A reading of clause 6.2.1.1 goes to show that in respect of HT-II Large Industries (connected load above 100 KVA to 2500 KVA), the estimated consumption is 150 KWH.

6. When the respondent authorities made the computation in terms of the table provided in clause 6.2.1.1, the figure that was arrived happened to be less than what the tempered meter had provided for the corresponding period. In other words, by applying the provisions of clause 6.2.1.1 of the AERC 2004, the authorities in the APDCL had arrived at a factual situation that irrespective of the meter being tempered, the petitioner consumed less electricity than what the tempered meter had indicated.

7. Such situation was unacceptable to the respondents in the APDCL and accordingly, the APDCL adopted an alternative procedure as provided in Annexure-9 page 64 of the writ petition. As per the procedure adopted in Annexure-9 page 64 of the writ petition, it was recorded that the meter No. AS897243 of the petitioner was found with an open cabinet on 18.06.2013 at about 4.41 a.m. as per the report of the AGM, TNC Division. It was also recorded that the bills served on the petitioner for the meter consumption from 01.06.2013 to 30.06.2014 is 3256780 KWH. As per the records maintained by the respondents, the meter AS897243 was installed in the premises of the petitioner on 14.03.2013. According to the data available with the APDCL, from 14.03.2013 i.e. the date of installation of the meter up to 31.05.2013, for a period of 78 days, the consumption was 957540 KWH i.e. a daily average of 12276.15. By taking note of the aforesaid information in Annexure-9 page 64 of the writ petition, the authorities in the APDCL took daily consumption to be 12276.15 KWH and accordingly arrived at the conclusion that for the bill period of the tempered meter from 01.06.2013 to 24.07.2014 i.e. for 419 days, the

consumption would be 5143707 KWH.

8. By taking note of the figure, the authorities adopted the formula of deducting the metered consumption of 325678 KWH from 5143707 KWH, which was the estimated consumption as per the daily average of 12276.15 KWH and arrived at their conclusion that the loss of electricity due to the tempering was 1886927 KWH. By applying the formula as may be available, a total assessment bill of Rs. 2,03,13,737/- had been imposed on the petitioner which is also reflected in the final bill that at Annexure-12 page 67 of the writ petition.

9. Against the assessment order and the final bill, the petitioner also availed the statutory appeal before the Appellate authority for APDCL. The appeal of the petitioner was given a final consideration by the order dated 06.09.2017 by which the appellate authority had arrived at their conclusion that no error is found on the part of the respondents in the APDCL in relying upon some other provisions in order to remove the difficulty in implementation of the specific provisions in clause 5.A.4.4. Being aggrieved, this writ petition is instituted.

10. One of the grounds taken by the writ petitioner is that the loss of electricity because of the tempered meter can be assessed only as per clause 6.2.1.1 which shows that the tempered meter indicates more consumption of electricity than what can be assessed by adopting the computation formula of clause 6.2.1.1. Accordingly, it is the submission of Dr. A Saraf, learned senior counsel for the petitioner that although the meter may have appeared to have been tempered, but there is neither any loss of electricity caused to the respondents in the APDCL nor there is any theft of electricity by the petitioner as alleged by the respondents in the APDCL.

11. The submission of the petitioner that there could not have been any final

assessment bill against the petitioner on the basis of the computation made under clause 6.2.1.1 would have to be find acceptance from the factual aspect that any computation under clause 6.2.1.1 would go to show that the tempered meter indicated more consumption of electricity and therefore, the petitioner had paid an amount higher towards their bill payment than that of the computation made under clause 6.2.1.1.

12. But it is pointed out by Mr. KP Pathak, learned counsel for the respondents in the APDCL that the method of computation under clause 6.2.1.1 is adopted by following the provisions of clause 5.A.4.4 of the AERC 2004, wherein there is also a provision that the APDCL may without prejudice to its other rights will assess the quantum of electricity loss on the basis of clause 6.2.1.1. It is the submission of Mr. KP Pathak, learned counsel that the method of computation of the loss under clause 6.2.1.1 would be acceptable to the APDCL as far as it does not cause any prejudice to the APDCL. On the other hand, if the authorities in the APDCL do notice that a prejudice is caused to them by following the method of computation under clause 6.2.1.1, there is an enabling provision within clause 5.A.4.4 itself that they may resort to exercise any other right of making the computation.

13. It is pointed out that in the event the authorities in the APDCL are of the view that a prejudice would be caused upon a computation being made by following the procedure of clause 6.2.1.1, there is an enablement provided under AERC 2004 itself to the authorities under the APDCL to invoke clause 4.2.2.4 for making the alternative computation. It is the submission of Mr. KP Pathak, learned counsel for the respondents in the APDCL that by invoking the provisions of clause 4.2.2.4, the calculation made at Annexure-9 page 64 was made by the authorities.

14. The submission of the learned counsel for the respondents in the APDCL to the extent that clause 4.2.2.4 provides for an alternative method of making the computation in the event the method provided in clause 6.2.1.1 is prejudicial to the APDCL is found to be acceptable as per the provisions of clause 6.2.1.1 itself, wherein there is a clear provision that the authorities may resort to the computation under clause 6.2.1.1 without prejudice to its other rights of making a calculation. In other words, if a calculation made under clause 6.2.1.1 is found to be prejudicial to the authorities in the APDCL, the alternative method of making the calculation can also be resorted to by the authorities.

But at the same time if the authorities claim that by invoking clause 4.2.2.4, they adopted an alternative method of computing the loss, we are required to examine as to whether the procedure adopted in Annexure-9 page 64 is in conformity with the procedure provided in clause 4.2.2.4.

15. As already taken note of hereinabove, as per Annexure-9 page 64, the authorities followed the procedure of arriving at the average daily consumption for the period from 01.04.2013 to 31.05.2013 i.e. 78 days prior to the meter being viewed to have been defective and by taking note of the average daily consumption so arrived, the authorities applied the daily consumption to the entire bill period of the tempered meter from 01.06.2013 to 24.07.2014 i.e. for 419 days and arrived at their conclusion that going by the daily average consumption, the actual consumption for the aforesaid period ought to have been 5143707 KWH. But as the meter was showing a reading of 3256780 KWH, therefore by deducting 3256780 KWH from 5143707 KWH, the APDCL authorities arrived at the conclusion that the loss caused to the APDCL because of the tempered meter was 1886927 KWH. In other words, the procedure

adopted as per Annexure-9 would be that the average of 78 days prior to the meter being detected to be defective was taken to be the basis to arrive at the daily consumption of the petitioner.

16. When the aforesaid procedure adopted is examined vis a vis the provision of clause 4.2.2.4, it is taken note that in the event any meter is found prima-facie incorrect, which may a stop, slow or fast meter and where the actual error of reading cannot be ascertained, the assessed quantity of energy consumed shall be determined by taking the average consumption for the previous three months, preceding the date on which the defect was detected or the next three months after correction, whichever is higher and the bill be prepared and presented accordingly.

17. In other words, the requirement of clause 4.2.2.4 is that the authorities either take the average consumption for the three months period preceding the detection of the defective meter or the consumption of the succeeding three months after correction of the meter and between the two whichever is higher to be taken as the appropriate assessed amount.

18. In the instant case, admittedly, no material could have been available with the authorities to determine the average consumption for the preceding three months inasmuch as, the meter which was found later on to be tempered was installed on 14.03.2013 and the defect was stated to be detected from 01.06.2013 i.e. only 78 days were available with the authorities. But be that as it may, it is an admitted position of the respondents in the APDCL that the corrected meter bearing No. AS897450 was installed on and from 24.07.2014.

19. Definitely the respondents in the APDCL had the necessary information in their records as to the average consumption of the succeeding three months

after the correction of the meter and going by a correct interpretation and requirement of clause 4.2.2.4, the authorities in the APDCL ought to have also taken note of the aforesaid information to arrive at the average consumption of the succeeding three months.

20. We have also been taken through the meter testing and inspection report pertaining to the meter of the petitioner which is available at Annexure-4 page 57 of the writ petition, which indicates that the meters that were examined have the observation '*pass*'.

21. Going by the Annexure-9 page 64 of the writ petition, it is discernible that the information which were available with the respondents in the APDCL of the succeeding three months after correction of the meter was not taken into consideration or in other words ignored, whereas the incomplete information of the preceding three months being the information only with respect to 78 days was taken into consideration, and made the basis in arriving at the final bill of Rs. 2, 03, 13, 737/-.

22. Accordingly, as the correct procedure and process was not adopted by the respondents in the APDCL for arriving at the final bill of Rs. 2, 03, 13, 737/-, the assessment at Annexure-9 page 64 to the writ petition and the resultant final bill at Annexure 12 page 67 of the writ petition are set aside.

23. In view of the interfering with the assessment at Annexure-9 and the final bill at Annexure-12, the appellate order dated 06.09.2017 of the Appellate authority of the APDCL is also accordingly set aside.

24. The petitioner may make an application before the respondents in the APDCL for refund of the amount which has already been deposited pursuant to the interim order of this Court in this writ petition and upon such application



being made, the respondents in the APDCL shall pass a reasoned order on the same.

25. The interference made in this order is limited to the extent indicated above, i.e. the acceptability of the assessment of the amount payable in Annexure-9 page 64 of the writ petition and the final bill in annexure-12 page 67 of the writ petition and it should not be construed to be also an interference on the conclusion of the petitioner being involved in tempering of the meter. Consequences under the law may follow.

The writ petition is partly allowed.

JUDGE

Comparing Assistant