



GAHC010125442015



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

Case No. : WP(C)/7727/2015

M/S. KESHARI POLYMER

A PARTNERSHIP FIRM DULY REGISTERED UNDER THE INDIAN PARTNERSHIP ACT, 1932 HAVING IT SPRINCIPAL PLACE OF BUSINESS AND INDUSTRY AT EPIP, AIDC COMPLEX, AMINGAON-781031, GUWAHATI, DIST. KAMRUP, ASSAM.

VERSUS

ASSAM POWER DISTRIBUTION CO. LTD. and 3 ORS.

A GOVT. OF ASSAM UNDERTAKING DULY INCORPORATED UNDER THE COMPANIES ACT, 1956 HAVING ITS OFFICE AT BIJULEE BHAWAN, PALTAN BAZAR, GUWAHATI- 781001, DULY REP. BY ITS CHAIRMAN-CUM-MANAGING DIRECTOR.

2:THE APPELLATE AUTHORITY

ASSAM POWER DISTRIBUTION COMPANY LIMITED
BIJULEE BHAWAN
PALTAN BAZAR
GUWAHATI-1.

3:THE AREA MANAGER /ASSESSING OFFICER

IRCA
GEC-II
APDCL

JALUKBARI
GUWAHATI-14.

4:THE ASST. GENERAL MANAGER

T and C DIVISION
APDCL
AMINGAON
GUWAHATI-31

Advocate for the Petitioner : MRSS KEJRIWAL, MR.S K KEJRIWAL

Advocate for the Respondent : MR. P N GOSWAMI, SC, APDCL



Linked Case : WP(C)/2656/2018

MEGHALAYA OXYGEN (P) LTD.
A COMPANY DULY INCORPORATED UNDER THE COMPANIES ACT
1956 HAVING ITS REGISTERED OFFICE AT KOCHER HOUSE
S.J. ROAD
ATHGAON
GUWAHATI- 781001
ASSAM AND PRINCIPLE PLACE OF BUSINESS AND PLANT/ INDUSTRY AT
STATEFED COMPLEX
ATHGAON GUWAHATI-31
DULY REPRESENTED BY ONE OF ITS DIRECTORS NAMELY
SRI PRAVIN JAIN
SON OF SRI GULAB CHANDRA JAIN
RESIDENT OF KOCHER HOUSE
S.J. ROAD ATHGAON GUWAHATI-1
ASSAM.

VERSUS

ASSAM POWER DISTRIBUTION CO. LTD. AND 3 ORS.
A GOVERNMENT OF ASSAM UNDERTAKING DULY INCORPORATED UNDER
THE COMPANIES ACT
1956 HAVING ITS OFFICE AT BIJULEE BHAWAN
PALTAN BAZAR
GUWAHATI DULY REPRESENTED BY ITS CHAIRMAN-CUM-MANAGING
DIRECTOR.

2:THE APPELLATE AUTHORITY
APDCL BIJULEE BHAWAN
PALTAN BAZAR GUWAHATI- 781001
ASSAM.

3:THE AREA MANAGER/ ASSESSING OFFICER
IRCA-II MALIGAON-12 (PRESENTLY
JALUKBARI) APDCL GUWAHATI.

4:THE ASST. GENERAL MANAGER
T AND C DIVISION (GEC-II)
AMINGAON
GUWAHATI- 781031

Advocate for : MR. S K KEJRIWAL



Advocate for : SC
APDCL appearing for ASSAM POWER DISTRIBUTION CO. LTD. AND 3 ORS.

Linked Case : WP(C)/7759/2015

PURBANCHAL ENTERPRISE P LTD.
A COMPANY DULY INCORPORATED UNDER THE COMPANIES ACT
1956 HAVING ITS PRINCIPAL PLACE OF BUSINESS AND INDUSTRY AT EPIP
AIDC COMPLEX
AMINGAON-781031
GUWAHATI
DIST. KAMRUP
ASSAM.

VERSUS

A. P. D. CO. LTD. and 3 ORS.
A GOVT. OF ASSAM UNDERTAKING DULY INCORPORATED UNDER THE
COMPANIES ACT
1956 HAVING ITS OFFICE AT BIJULEE BHAWAN
PALTAN BAZAR
GUWAHATI- 781001
DULY REP. BY ITS CHAIRMAN-CUM-MANAGING DIRECTOR.

2:THE APPELLATE AUTHORITY
ASSAM POWER DISTRIBUTION COMPANY LIMITED
BIJULEE BHAWAN
PALTAN BAZAR
GUWAHATI-1.

3:THE AREA MANAGER/ASSESSING OFFICER

IRCA
GEC-II
APDCL
JALUKBARI
GUWAHATI-14.

4:THE ASSTT. GENERAL MANAGER

T and C DIVISION
APDCL
AMINGAON
GUWAHATI-31.

Advocate for : MR.S K KEJRIWAL
Advocate for : MR. P N GOSWAMI appearing for A. P. D. CO. LTD. and 3 ORS.



Linked Case : WP(C)/7244/2017

MEGHALAYA OXYGEN P LTD.
A COMPANY DULY INCORPORATED UNDER THE COMPANIES ACT
1956 HAVING ITS REGISTERED OFFICE AT "KOCHER HOUSE"
S.J. ROAD
ATHGAON GUWAHATI-781001
ASSAM AND PRINCIPLE PLACE OF BUSINESS AND PLANT/ INDUSTRY AT
STATEFED COMPLEX
AMINGAON
GUWAHATI-31
DULY REPRESENTED BY ONE OF ITS DIRECTORS NAMELY
SRI PRAVIN JAIN
SON OF SRI GULAB CHANDRA JAIN
R/O KOCHER HOUSE
S.J. ROAD
ATHGAON
GUWAHATI-1
ASSAM

VERSUS

ASSAM POWER DISTRIBUTION COMPANY LTD. and 3 ORS.
A GOVT. OF ASSAM UNDERTAKING DULY REP. BY ITS CHAIRMAN-CUM-
MANAGING DIRECTOR

2:THE APPELLATE AUTHORITY

APDCL
BIJULEE BHAWAN
PALTAN BAZAR
GUWAHATI-781001
ASSAM

3:THE AREA MANAGER/ASSESSING OFFICER

IRCA-II
MALIGAON-12 PRESENTLY
JALUKBARI
APDCL
GUWAHATI

4:THE ASSTT. GENERAL MANAGER

T and C DIVISION GEC-II
AMINGAON
GUWAHATI-781031



Advocate for : MR.S K KEJRIWAL
Advocate for : SC
APDCL appearing for ASSAM POWER DISTRIBUTION COMPANY LTD. and 3
ORS.

BEFORE

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioner : Mr. S. K. Kejriwal, Advocate.
For the Respondents : Mr. B. Choudhury, SC, APDCL.
Date of Hearing : 31.07.2024
Date of Judgement : 31.07.2024

JUDGMENT & ORDER (ORAL)

1. I have heard Mr. S. K. Kejriwal, learned counsel for the petitioner. I also heard Mr. B. Choudhury, learned Standing Counsel, APDCL representing all the respondents.
2. As proposed by the learned counsel for the parties, this batch of writ petitions are taken up together for final disposal.
3. The petitioners had individual bulk HD consumer electricity connections at their industry/factory.
4. Under an inspection carried out by a team of APDCL, it was found that the electricity meters were tampered and accordingly, assessment processes were initiated alleging tampering of meters/ unauthorised use of power by the consumers.



5. The dispute went up to the Appellate Authority constituted under the Electricity Act, 2003 and the Appellate Authority under its different orders, impugned in the writ petitions, though noted that it is a clear case of tampering with the electricity meter /theft of electricity by tampering meters and therefore, Clause 5.A.4.4 of supply Code will be applicable for assessment, however, facing difficulty in applying such provision and procedure as per Clause 5.A.4.4, the learned Appellate Authority directed that assessment be made in terms of Clause 4.2.2.4 of the Electricity Supply Code.
6. Mr. Kejriwal, learned counsel for the petitioner, submitted that when it is a case of theft of electricity, the assessment is to be made, in terms of Clause 5.A.4.4 read with Sl. No. 9 of Clause 6.2.1.1 and Clause 3(D) of Annexure-A to the Supply Code.
7. Mr. Kejriwal, learned counsel for the petitioner submits that merely for the reason that assessment, if made in terms of Clause 5.A.4.4 shall result in an adverse situation for the APDCL, the Appellate Authority was not within its jurisdiction to apply Clause 4.2.2.4 in these present batch petitions. Accordingly, he submits that appellate orders under challenge in the present proceeding are liable to be interfered with.
8. Per contra, Mr. B. Choudhury, learned Standing Counsel for the APDCL submits that the issue has been set to rest by a coordinate bench in **M/S S.M. Cement Industries –VS- Assam Power Distribution Co. Ltd. and 4 Ors** read with the order dated 30.11.2023 passed in Review Petition No. 15/2023 and therefore, the present writ petitions are required to be relegated to the Assessing Authority, for a fresh assessment in terms of Clause 5.A.4.4.
9. Mr. Kejriwal, while acceding to such an argument submits that along with Clause 5.A.4.4, while making an assessment Sl. No. 9 of Clause 6.2.1.1 and



Clause 3(D) of Annexure-A to the Supply Code are also required to take note of.

10. This court has given anxious consideration to the submissions advanced by the learned counsel for the parties. Perused the judgement rendered in S.M. Cements (Supra).
11. Chapter V.A.O. of Electricity Supply Code and Related Matters Regulations 2004 (Supply Code for short) deals with interference in its supply mains & apparatus.

Clause 5.A.3.2, deals with the action which can generally be treated as malpractice.

Sub Clause-i of the aforesaid Clause, prescribes that interfering and tampering with the meters and metering systems as detailed under Section 135(1) and Section 138 of the Electricity Act, 2003 shall be treated as malpractice.

Theft of electricity as detailed under Section 135(1) of the Electricity Act, 2003 is also brought under the purview of malpractice under Sub Clause-g of the aforesaid Clause-5.A.3.2.

Clause 5.A.4. deals with the method of assessment of the electricity charge, payable in case of theft pending adjudication by the appropriate Court.

Clause 5.A.4.4., deals with un-metered use of electricity (theft of electricity) and prescribes that when a consumer indulges in the theft of electricity, the office authorised on his behalf by the Government of Assam, may without prejudice to its other rights, will assess the quantum of electricity loss based on assessed consumption of detected category as per table 6.2.1.1 and the connected load for 12 months preceding the date of detection.

12. This Court is in total agreement with the decision rendered in **M/S S.M. Cement Industries and also in Review Petition No.15/2003** (supra) and



therefore, the impugned appellate orders are liable to be set aside in terms of the said judgment as the present cases are similar in facts and law. Accordingly, the following orders are set aside.

SL No.	Writ Petition No.	Appeal number and Order date
1.	WP(C) No. 7727/2015	Appeal No. 32/2015 Dated 01.12.2015
2	WP(C) No. 7759/2025	Appeal No. 34/2015 Dated 01.12.2015
3.	WP(C) No. 7244/2017	Appeal No. 04/2016 Dated 30.10.2017
4	WP(C) No. 2656/2018	Appeal No. 26/2016 Dated 17.04.2018

13. Now coming to the other limb of the argument of Mr. Kejriwal, learned counsel for the petitioner, it is seen that Clause 6.2.1.1. deals with the computation of load security. Load security is prescribed in a table under such provision for HD-II Large Industries. i.e. connection over 100 KVA to 2500 KVA.
14. Certain formulas are being provided in Annexure-A of the Regulations, 2004 as regards the implementation of the provision of Supply Code. There is also a provision under Clause D of Annexure-A for the assessment of the consumption



of load for 12 months recorded in the meter and the loss thereof. Therefore, in the aforesaid backdrop, and prescription made under the Regulations, 2004, it is the bounden duty of the respondent authority to apply the prescription made in the said Regulations, 2004, when applicable.

15. In the considered opinion of this Court, in the exercise of its power of judicial review, this Court shall not deal with the niceties of the calculation and formulas, and also can not make factual determinations, which are required to apply the formulas of assessment. For these purpose, special authorities like the Assessing Authority and Appellate Authority are already in place. Therefore, while disposing of these matters by setting aside the aforesaid appellate orders, it is provided that the petitioner shall file a fresh representation before the Appellate Authority, claiming not only right under Clause 5.A.4.4., But the petitioner may insist upon the applicability of Clause 3(D) of Annexure-A to the Supply Code. Thereafter, based on such representation, the assessment be made afresh. Such assessment be made within 2 (two) months from the date of receipt of the certified copy of this order to be furnished by the petitioner.
16. It is needless to say that the petitioner shall be at liberty to place reliance upon the judgments of the appellate authorities as well as the judgment of the Hon'ble Apex Court including the judgment of the Coordinate Bench dated 30.11.2023 passed in Review Petition No. 15/2023, in this regard.
17. Accordingly, the Writ petitions stand disposed of.

JUDGE

Comparing Assistant