

GAHC010110182021



2026:GAU-AS:6543

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

WP(C) No.3524/2021

M/s Rahman Properties Limited, At Dynasty Hotel, S.S. Road, Lakhtokia, Guwahati, Kamrup (M), Assam, PIN-781001, represented by one of its Director Mrs. Afroza Rahman

..... Petitioner

-Versus-

1. M/s Assam Power Distribution Company limited, Bijulee Bhawan, Paltan Bazar, District-Kamrup (M), Guwahati- 781001, represented by its Managing Director.

2. Area Manager, Industrial Revenue Collection and APDCL (LAR), Paltan Bazar, Guwahati-781001

..... Respondents

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH

For the Petitioner(s) : Mr. A. K. Shrivastava, Advocate

For the Respondent(s) : Mr. K.P. Pathak, Standing Counsel, APDCL

• Date on which Judgment was reserved : N/A

• Date of Pronouncement of Judgment : **12.05.2026**

- Whether the pronouncement is of the Operative Part of the Judgment : No
- Whether the full Judgment has been Pronounced : Yes

JUDGMENT AND ORDER (ORAL)

Heard Mr. AK Shrivastava, the learned counsel appearing on behalf of the petitioner. Also heard Mr. KP Pathak, learned Standing Counsel, APDCL appearing for the respondent authorities.

[2] The present writ petition has been filed by the petitioner challenging the bill issued by the APDCL dated 02.07.2021 for an amount of Rs.18,66,000/- and further the action of disconnection resorted by the respondent authorities, which as per the petitioner was in gross violation to Section 56 of the Electricity Act, 2003 (hereinafter referred to as the "Act of 2003").

[3] The brief facts, which led to the filing of the present writ petition are:-

That the petitioner is in the business of hospitality, owning a hotel, under the name and style of "Hotel Dynasty" situated in Guwahati. The petitioner has a connection provided by the APDCL authorities and the Consumer No. of the petitioner is 006000000373.

[4] It is the case of the petitioner that the petitioner since establishing its hotel in the year 1984 had been regularly paying the bills raised. However, out of the blue, an amount of Rs.18,66,000/- was demanded on account of some purported surcharge for the period from June 1991 to July 2005 on the basis of a purported AG Audit Report for the period 2007-2008.

[5] It is the case of the petitioner that there was no amount payable during the period from June 1991 to July 2005 for any such purported late payment nor a demand was made by the respondents during the period impugned or any time after 2007-2008.

[6] The petitioner has also enclosed to the writ petition, the bills for the last 2 (two) years, wherein there has been no reference to any late payments surcharge due from the petitioner's company. However, on 22.07.2021, the petitioner received a Communication to make certain payments within 15 (fifteen) days from the receipt of the said letter or face disconnection. It is under such circumstances, the petitioner approached this Court by filing the present writ petition on 23.07.2021.

[7] The learned co-ordinate Bench of this Court, vide an order dated 04.08.2021 issued notice, returnable by 3 (three) weeks and also directed the respondents/APDCL to dispose of the representation submitted by the petitioner dated 17.07.2021 under the Surcharge Waiver Scheme within a period of 3 (three) weeks. Further to that, the learned Co-ordinate Bench directed that no coercive measures, more specifically disconnection of power supply to the premises of the petitioner's company shall be carried out in respect to the electricity bill dated 02.07.2021.

[8] The record reveals that in pursuance to the writ petition being filed and notice issued, the respondent authorities had filed an affidavit-in-opposition on 21.03.2025. The respondents contend that the petitioner has an alternative and efficacious remedy available thereby to approach the Consumer Grievance Redressal Forums. In addition to that, it was mentioned on merits that a bill for an amount of Rs.6,22,000/- towards energy charges was raised by the APDCL

upon the petitioner on May, 1991 for the period 11.04.1989 and 11.10.1990. The said bill was raised pursuant to Meter Testing and an Inspection Division Report in July 1990. The petitioner thereupon made payment of an amount of Rs.6,78,000/- which included Rs.56,000/- towards surcharge in installments after an inordinate delay, during August, 2005 and May, 2006.

[9] It was further contended in the said affidavit-in-opposition that as per the Tariff Orders issued by the Assam Electricity Regulatory Commission read with Clause 6.3.15 of the AERC Electricity Supply Code, supplementary demands can be raised upon the consumers towards surcharge at 1.5% for the delay in making payment towards the bills. The APDCL raised the bill in the month of May 1991 and the payment was made sometime during the period from August 2005 and May 2006. There should have been a surcharge raised upon the petitioner. However, owing to mistake and a *bonafide* error, the APDCL failed to raise the surcharge bill upon the petitioner, which came into light after an audit being conducted in the year 2021. Immediately thereafter, the APDCL raised a bill dated 02.07.2021 upon the petitioner for an amount of Rs.18,66,000/-.

[10] To the said affidavit-in-opposition, an affidavit-in-reply was filed by the petitioner on 22.01.2026. In the said affidavit-in-reply, the petitioner raised the issue as regards the competence of the APDCL to raise the bill of surcharge in terms of Section 56(2) of the Act of 2003.

[11] This Court has also heard the learned counsel appearing on behalf of the parties, whose submissions were in line with the respective pleadings and as such for the sake of brevity, this Court is not repeating the said submissions.

[12] The issue involved in the present proceeding are 2 (two) folds.

First: Whether the respondent authorities can resort to Section 56(2) of the Act of 2003 to disconnect the electricity to the establishment of the petitioner on the basis of the bill dated 02.07.2021?

Second: Whether this Court is required to interfere with the bill dated 02.07.2021?

[13] At this stage, this Court finds it very pertinent as regards the 1st issue so formulated hereinabove to take note of the judgment of the Supreme Court in the case of ***Assistant Engineer (DI). Ajmer Vidyut Vitran Nigam Limited & Anr. vs. Rahamatullah Khamn alias Rahamjulla***, reported in **(2020) 4 SCC 650**, wherein the Supreme Court specifically dealt with the issue as to whether resort can be taken to disconnection, in view of the provisions of Section 56(2) of the Act of 2003.

Paragraphs 6, 6.3, 6.4, 6.5, 6.6, 6.7, 6.8 and 6.9 being relevant are reproduced herein under:-

“6. The Electricity Act, 2003 is a consumer-friendly statute. The Statement of Objects and Reasons to the Act notes that over a period of time, the performance of State Electricity Boards had deteriorated on account of various factors, and the need was felt to frame a self-contained comprehensive legislation, which led to the enactment of the Electricity Act, 2003.

6.3 The present Civil Appeal pertains to the interpretation of Section 56 of the Act which reads as follows:

*“Section 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 other 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 protest, -

(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.”

6.4 *Section 56 provides for disconnection of supply in the case of default in payment of electricity charges. Sub-section (1) of Section 56 provides that 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 generating company, the licensee after giving 15 days’ written notice, may disconnect the supply of electricity, until such charges or other sums due, including the expenses incurred, are paid. However, the disconnection cannot continue after the amounts are paid.*

6.5 *The obligation of a consumer to pay electricity charges arises after the bill is issued by the licensee company. The bill sets out the time within which the charges are to be paid. If the consumer fails to pay the charges within the stipulated period, they get carried forward to the next bill as arrears.*

6.6 *The proviso to Section 56(1) carves out an exception by providing that the disconnection will not be effected if the consumer either deposits the amount “under protest”, or deposits the average charges paid during the preceding six months.*

6.7 *Sub-section (2) of Section 56 by a non obstante clause provides that notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, shall be recoverable under Section 56, after the expiry of two years from the date when the sum became “first due”, unless such sum was shown continuously recoverable as arrears of charges for the electricity supplied, nor would the licensee company disconnect the electricity supply of the consumer.*

6.8 *The effect of a non obstante clause was explained by this Court in Chandavarkar Sita Ratna Rao v. Ashalata S. Guram. It was held that:*

“67. A clause beginning with the expression ‘notwithstanding anything contained in this Act or in some particular provision in the Act or in some particular Act or in any law for the time being in force, or in any contract’ is more often than not appended to a section in the beginning with a view to give the enacting part of the section in case of conflict an overriding effect over the provision of the Act or the contract mentioned in the non-obstante clause. It is equivalent to saying that in spite of the provision of the Act or any other Act mentioned in the non-obstante clause or any contract or document mentioned the enactment following it will have its full operation or that the provisions embraced in the non-obstante clause would not be an impediment for an operation of the enactment.”

6.9 *The liability to pay arises on the consumption of electricity. The obligation to pay would arise when the bill is issued by the licensee company, quantifying the charges to be paid. Electricity charges would become “first due” only after the bill is issued to the consumer, even though the liability to pay may arise on the consumption of electricity.”*

[14] From the law laid down by the Supreme Court in the above quoted paragraphs, it would be transpire that Sub Section (2) of Section 56 provides that notwithstanding anything contained in any other law for the time being in force, neither any sum due from any consumer, shall be recoverable under Section 56, after the expiry of two years from the date on which the sum became “first due”, unless such sum was shown continuously recoverable as arrears of charges for the electricity supplied nor would the licensee company disconnect the electricity supply of the consumers.

[15] In the present proceedings, it would be seen and more particularly from a perusal of Annexures 3 to 14 to the writ petition, which are the monthly bills raised by the respondents that the last two years preceding the filing of the writ petition that there was no reference to the said amount of Rs.18,66,000/- as the surcharge payable. Under such circumstances, in terms with the law laid down by the Supreme Court in the above quoted judgment, it is therefore the opinion of this Court that by virtue of Section 56 (2) of the Act of 2003, the respondent authorities on the basis of the bill dated 02.07.2021 cannot disconnect the electricity connection to the establishment of the petitioner. The above therefore, answers the first issue so formulated above.

[16] The 2nd issue pertains to as to whether, this Court is required to interfere with the bill dated 02.07.2021. The answer to the same can also be found at paragraphs 7, 7.1, 7.2, 7.3, 7.4, 7.5, 8, 9, 9.1 and 9.2 of the judgment in the case of **Ajmer Vidyut Vitran Nigam Limited** (*supra*) and the said paragraphs being relevant are reproduced herein under:-

“7. The next issue is as to whether the period of limitation of two years provided by Section 56(2) of the Act, would be applicable to an additional or supplementary demand.

7.1 *Prior to the coming into force of the Electricity Act, 2003, the Indian Electricity Act, 1910 governed the law pertaining to the use and supply of electricity in India. Section 24 of the Indian Electricity Act, 1910 read as follows :-*

“24. Discontinuance of supply to consumer neglecting to pay charge- (1) Where any person neglects to pay any charge for energy or any sum, other than a charge for energy, due from him to a licensee in respect of the supply of energy to him, the licensee may, after giving not less than seven clear days’ notice in writing to such person and without prejudice to his right to recover such charge or other sum by suit, cut off the supply and for that purpose cut or disconnect any electric supply-line or other works being

the property of the licensee, through which energy may be supplied, and may discontinue the supply until such charges or other sum, together with ally expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer.

(2) Where any difference or dispute which by or under this Act is required to be determined by an Electrical Inspector, has been referred to the Inspector before notice as aforesaid has been given by the licensee, the licensee shall not exercise the powers conferred by this section until the Inspector has given his decision:

Provided that the prohibition contained in this subsection shall not apply in any case in which the licensee has made a request in writing to the consumer for a deposit with the Electrical Inspector of the amount of the licensee's charges or other sums in dispute or for the deposit of the licensee's further charges for energy as they accrue, and the consumer has failed to comply with such request."

7.2 *The Standing Committee of Energy in its Report dated 19.12.2002 submitted to the 13th Lok Sabha, opined that Section 56 of the 2003 Act is based on Section 24 of the 1910 Act. The Standing Committee further opined that a restriction has been added for recovery of arrears pertaining to the period prior to two years from consumers, unless the arrears have been continuously shown in the bills. Justifying the addition of this restriction, the Ministry of Power submitted that:*

"It has been considered necessary to provide for such a restriction to protect the consumers from arbitrary billings."

7.3 *In Swastic Industries v. Maharashtra State Electricity Board,⁴ this Court while interpreting Section 24 of the Indian Electricity Act, 1910 held that :-*

"5. It would, thus, be clear that the right to recover the charges is one part of it and right to discontinue supply of electrical energy to the consumer who neglects to pay charges is another part of it."

7.4 *Sub-section (1) of Section 56 confers a statutory right to the licensee company to disconnect the supply of electricity, if the consumer neglects to pay the electricity dues. This statutory right is subject to the period of limitation of two years provided by sub-section (2) of Section 56 of the Act.*

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.

9. Applying the aforesaid ratio to the facts of the present case, the licensee company raised an additional demand on 18.03.2014 for the period July, 2009 to September, 2011. The licensee company discovered the mistake of billing under the wrong Tariff Code on 18.03.2014. The limitation period of two years under Section 56(2) had by then already expired.

9.1 Section 56(2) did not preclude the licensee company from raising an additional or supplementary demand after the expiry of the limitation period under Section 56(2) in the case of a mistake or bona fide error. It did not however, empower the licensee company to take recourse to the coercive measure of disconnection of electricity supply, for recovery of the additional demand.

9.2 As per Section 17(1)(c) of the Limitation Act, 1963, in case of a mistake, the limitation period begins to run from the date when the mistake is discovered for the first time. In *Mahabir Kishore and Ors. v. State of Madhya Pradesh*, this Court held that:-

"22. Section 17(1)(c) of the Limitation Act, 1963, provides that in the case of a suit for relief on the ground of mistake, the period of limitation does not begin to run until the plaintiff had discovered the mistake or could with reasonable diligence, have discovered it. In a case where payment has been made under a mistake of law as contrasted with a mistake of fact, generally the mistake become known to the party only when a court makes a declaration as to the invalidity of the law. Though a party could, with reasonable diligence, discover a mistake of fact even before a court makes a pronouncement, it is seldom that a person can, even with reasonable diligence, discover a mistake of law before a judgment adjudging the

validity of the law.”

[17] From the principles laid down by the Supreme Court, as quoted above, it would be seen that the period of limitation of two years would commence from the date on which the electricity charge became “first due” under sub-section (2) of Section 56. This provision restricts the right of the licensee company to disconnect the electricity supply due to non-payment of the dues by the consumer, unless such sum has been shown continuously to be recoverable as arrears of the electricity supplied, in the bills raised for the past period. It was also observed by the Supreme Court that Section 56(2) do 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 had expired. It also does not restrict the other modes of recovery which may be initiated by the licensee company for recovery of a supplementary demand. The Supreme Court also took into consideration in the said judgment Section 17(1)(c) of the Limitation Act, 1963, which relates to when the limitation period begins to run from the date when the mistake is discovered for the first time. At this stage, this Court finds it very pertinent that as on date there has been no steps taken by the APDCL authorities to recover the said amount in a manner which is provided under law. The petitioner obviously would have the liberty to raise objections, if any such measures are being taken for recovery by pointing out that the limitation period had long expired, including the defences taken as grounds in the instant writ petition. It is also the opinion of this Court that whether there was a mistake which would enable an extended period of limitation are questions of pure facts which this Court cannot adjudicate in the present proceedings.

[18] Under such circumstances, it is the opinion of this Court that it would not be in the interest of justice to set aside the bill dated 02.07.2021.

[19] Be that as it may, this Court observes that merely because of the fact that this Court had not set aside the Bill dated 02.07.2021, the same shall not permit the APDCL to disconnect the electricity to the petitioner on the basis of the Bill dated 02.07.2021.

[20] Accordingly, the instant writ petition therefore, stands disposed of with the following observations and directions:

(a) The respondent authorities cannot disconnect the electricity to the establishment of the petitioner on the basis of the bill dated 02.07.2021, which is Annexure-2 to the present writ petition.

(b) This Court has not set aside the bill dated 02.07.2021, inasmuch as, the respondent authorities have the authority to make the supplementary demand. However, it is made clear that on the basis of the said supplementary demand raised by the bill dated 02.07.2021 there cannot be a disconnection of the electricity.

(c) Liberty is granted to the respondents to take steps for recovery of the said amount, subject to being permissible as per law. In the circumstance, steps are being taken for recovery as per the mode permissible under law, the petitioner would be at liberty to take all such grounds, which have been raised in the present writ petition, including any other defense permissible under law.

[21] There shall be no order for cost.

[22] Before parting with the records, this Court for the sake of clarity observes that the liberty so granted to the respondent authorities to initiate proceedings for recovery shall not be construed in any manner that this Court has enlarged the period of limitation.

JUDGE

Comparing Assistant