

BEFORE THE ELECTRICITY OMBUDSMAN, ASSAM STATE
Assam Electricity Regulatory Commission, A.S.E.B. Campus,
Dwarandhar, G. S. Road, Sixth Mile, Guwahati - 781 022

PETITION NO. : 3/2015
FILE NO. : EOM.25/2015

Appellant : M/s. Plast India Enterprises (P) Ltd.,
EPIP AIDC Complex,
Amingaon,
Guwahati - 781031

Represented by : 1) Shri Pawan Kumar Soni,
Director, Plast India Enterprises (P) Ltd.,

Advocate for the Appellant:
Shri S.K. Agarwal,

Respondents : Assam Power Distribution Company Ltd.,
Bijulee Bhawan, Paltan Bazar,
Guwahati – 781001

Represented by : 1) The Area Manager,
Assam Power Distribution Company Ltd.,
IRCA-II, Maligaon
Guwahati - 781012

Advocate for the Respondent:
Shri P. Bhowmik

Under section 42(6) of the Electricity Act, 2003 read with clauses 2(1)(c)(1) and 5(1) of the Guidelines for Redressal of Consumer Grievances. Appeal petition dated 27.10.2015 submitted by Appellant and received on 28.10.2015.

Date : 04.04.2016

::: PROCEEDINGS :::

The Appellant submitted petition before the CGRF, Guwahati zone for redressal of his grievances relating to refund of pro-rata consumption charges in view of judgement of the Hon'ble Gauhati High Court. CGRF in its order dated 12.10.2015 rejected the prayer of the petitioner on the ground that the petitioner M/s. Plast India Enterprise (P) Ltd. paid the pro-rata bill voluntarily.

Being not satisfied with the order of the CGRF dated 12.10.2015, the present appeal is submitted before this forum on 27.10.2015 and hence the present appeal.

Appellant and Respondent APDCL are asked to appear before this forum on 19.12.2015 to settle through conciliation under clause 6(3) of the Guidelines.

Both the parties appear before this forum on 19.12.2015. But the complaint is not settled by agreement due to difference of opinion.

The proceeding is started afresh under clause 8(1) of the Guidelines and hearing has been taken on 05.03.2016 in presence of the Appellant and the Respondent.

The Appellant applied and received load of 337 KW for its industrial unit from APDCL after submission of required papers. Appellant decided to reduce its production activity and accordingly applied on 03.12.2010 to surrender 180 KW and to permit drawal of 157 KW from the existing 400 KVA transformer.

The Respondent informed that Appellant had cleared all outstanding bill upto October, 2010 except the pro-rata consumption bill amounting to Rs. 1,62,434.32 was due from the Appellant.

The Appellant states that Hon'le Gauhati High Court vide order dated 16.09.2009 in WP(C) No. 3172/2009 filed by the Appellant against the said demand had stayed the demand.

Later on writ appeal was preferred by the Respondent (WA No.: 187/2009).

The Respondent vide letter dated 23.02.2011 allowed reduction of load to 157 KW without insisting on realisation of said alleged arrear dues.

The Appellant further decided to surrender the remaining load also as running the unit become unviable. The Respondent however turned down on the ground of pendency of case.

The Appellant once again approached the Respondent to allow transfer of the load in favour of its sister concern. Respondent informed the Appellant that unless and until outstanding amount with surcharge thereon is cleared the prayer of transfer cannot be entertained.

Industrial activity of enterprise was nil but the Appellant was made to pay huge payment towards electricity charges. In order to avoid recurring expenditure and under compulsion paid the bill (06.08.2014) amount of Rs. 4,53,261 on 11.08.2014. From the bill it is evident the said amount was the subject matter of Court case being WP No. 3173/2004 meaning any payment made against the bill was subject to final outcome of pending case (WA No.: 187 of 2009).

Writ appeal No. 187 of 2009 filed by the Respondent-APDCL against the judgement passed in WP(C) No. 3173 of 2004 was taken up for final hearing on 10.03.2015 along with other analogous Writ Appeals by the Hon'ble Division Bench and the Hon'ble Division vide its Judgement held that as the Respondent – APDCL had no privity of contract with the Appellant so as to bind the Appellant for payment of the amount covered by the bill, the Respondent could not make the Appellant liable for payment of the bill meaning the

amount covered by the aforesaid bill was neither recoverable nor enforceable against the Appellant.

Prior to APDCL filing the Writ Appeal viz, WA 187 of 2009, a writ petition viz, Writ Petition (C) No. 3173 of 2004 was preferred by the Appellant before the Hon'ble High Court and the bill raised by APDCL demanding the amount was set aside by the Hon'ble Gauhati Court on 16.02.2009. As such, in terms of the said judgement, the Appellant was not liable to pay anything to APDCL.

But in order to get transfer/surrender of load in favour of M/s. Keshari Udyog, the Appellant was compelled to pay the amount on the ground of pendency of case before the Division Bench although legally APDCL was not authorized to recover the amount which was subject matter of pending case unless there was some positive order. As such, Area manager's contention that the amount was paid voluntarily is baseless and holds no water.

As per provision contained under Section 72 of the Indian Contract Act, if any payment is made by mistake or under coercion, the person to whom payment is made or who realised the amount illegally is bound to refund the same otherwise the action of the authority in not refunding the amount amounts to violation of Section 23 of the Indian Contract Act.

After the judgement, it is the prerogative of the APDCL whether to proceed against AIDC or not but there is no law which authorizes the APDCL to adjust Appellant's money against the dues of AIDC in as much as, the Hon'ble Division Bench, has, in unequivocal terms, held that there is no privity of contract between APDCL and the Appellant regarding recovery of the amount covered by the bill.

The Respondent APDCL says M/s. Plast India Enterprise wanted to surrender its existing load therefore it was incumbent on its part to pay all existing dues and get revenue clearance certificate from the competent authority.

Hon'ble Division bench of the Gauhati High Court in Writ Appeal no. 187/09 held that the Respondent herein would be liable to collect its dues from the Respondent No. 2 in the said appeal i.e. Assam Industrial development Corporation Limited (AIDC Ltd.) and since here in the instant case the Appellant has paid its dues for pro-rata consumption for surrender of load, it is therefore incumbent on their part to realize it from AIDC Ltd. and not from the Respondent as because the said power has already been consumed by the Appellant and, as such, the APDCL cannot be saddled with the liability to refund the same.

It is stated that communication dated 23.02.2011 referred to in the appeal/petition for surrender of load from 337 K.V.A to 157 K.V.A after observation of APDCL rules and regulations only. As such, it can be said that the said load reduction cannot be done without insisting on realization of arrear dues.

The Appellant herein i.e. M/S Plash India Enterprises (P) Ltd. had surrendered its existing load after payment of all outstanding dues and had applied for a fresh connection in the name of M/S Keshari Udyog and accordingly, a fresh connection has been given to the said M/S Keshari Udyog after payment of required load security and on obtaining revenue clearance certificate from the previous consumer – M/S Plash India Enterprises (P) Ltd.

Thereby the Respondent has not committed any illegality, irrationality and/ or procedural impropriety so as to give rise for a cause of action for institutuin of any consumer complaint.

Respondent has not committed any illegality on insisting upon the Appellant to pay its arrear dues in respect of pro-rata consumption for consumption of power in the common areas at EPIP, Amingaon as because the Respondent had legitimately supplied power to common areas, the benefits of which has been availed by the Appellant and since the Appellant has paid its dues for pro-rata consumption and as per Judgment and Order of the Hon'ble High Court the said amount is payable by the AIDC Ltd., the owner/ lesser of EPIP. The Appellant is at liberty to realize the same from AIDC Ltd as the Respondent cannot be made to reimburse payments which it has received for power consumed by the Appellant.

The Hon'ble Gauhati High Court in Writ Appeal No. 187/09 had held that the Assam Power Distribution Company Ltd. is at liberty to realize its dues from Assam Industrial Dev. Corporation Limited and since the Appellant has paid the amount and got clearance certificate, the Appellant is at liberty to realize the same from AIDC Ltd.

The Respondent never informed that any payment made by the Appellant would be subject to final outcome of any pending litigation. Therefore upon dismissal of the writ appeal no. 187/2009, the question of refund of payment to the Appellant with interest does not arise at all. Perusal of bill dated 06.08.2014 does not in any way reflect that payment of the said bill by the Appellant would be subject to final outcome of any pending litigation.

The Hon'ble Division Bench of Gauhati High Court on 10.03.2015 in writ appeal No. 187/09 held that the Respondent was at liberty to realize its outstanding dues from AIDC and since the Appellant had paid its share of outstanding dues during pendency of the said writ appeal so it would be appropriate to direct the Appellant to realize the said payment made by it from AIDC Ltd. and not from the Respondent as the Appellant had consumed the power supplied by the Respondent.

It is further stated that the Respondent had not realized anything exceeding the prescribed tariff, but it only realized the electricity charges on the basis of pro-rata consumption of the common areas of EPIP. As such, the provisions of Section 62(6) of the Electricity Act, 2003 is not applicable in the instant case.

As per judgement and order dated 10.03.2015 passed by the Hon'ble Division Bench of Gauhati High Court in Writ Appeal No. 187/09 the Appellant had already made payment of its dues in respect of pro-rata consumption and it has been held by the Hon'ble Gauhati High Court, the same would be realized from the Respondent No. 2 therein i.e. AIDC Ltd. and it would be relevant to state that provisions of section 72 of the Indian Contract Act, 1872 is not applicable in the instant case as the transaction between the parties is squarely covered by Section 70 of the Indian Contract Act, 1872 as because the Respondent had not supply power to the common areas of EPIP gratuitously.

Observation & Findings: It appears from the above discussion and perusal of relevant documents that the present case is the realization of electricity charges for the common area of the EPIP where a number industrial units have their establishment after completion of

agreement between the AIDC, the owner of EPIP and the APDCL (earlier ASEB) and between the industrial unit and AIDC.

The agreement dated 11th August, 2000 between AIDC and the Appellant says at para 2(c) as below:

“That the Lessee will bear, pay and discharge all service charges, special maintenance charge, road maintenance charge, street lighting charge, arboriculture charge and other ancillary service, required for upkeepment of the industrial areas which may during the said term be assessed, charged, levied or imposed by the Lessor.”

It appears AIDC shall realize the electricity charge for the common area from the Appellant.

The order of the Hon’ble Gauhati High Court dated 10.03.2015 in the WA No. 187/2009 states as below:

“In these appeals there is no individual agreement between the Respondent 1 and Appellant so as to bind the Respondent with the privity of contract. However, there is an agreement between the Appellant and Respondent 2, who entered into an agreement with the Respondent 1. Notwithstanding such agreement between the Respondent 1 and 2 the Appellant cannot directly make the Respondent 1 liable for payment of the bill. It is, therefore advisable that the Appellant raise bills against the Respondent no. 2 and collect the dues. The question of reimbursement between the Respondent 1 and 2 is altogether a different matter and not germane for consideration in these appeals. In that view of the matter the appeals are disposed of. The bills raised against the Respondent no. 1 are set aside.”

Award: The above discussion and available records lead to the conclusion that the realization of bill dated 06.08.2014 is not based on rules and procedures. Therefore, the award shall be as below:

- 1) Rs. 4,53,261.00 along with interest as per bank rate of the concerned year with effect from the date of clearance of cheque No. 190776 dated 11.08.2014 shall be refunded by the Respondent APDCL.
- 2) Respondent APDCL shall be at liberty to adjust the entire or part amount as stated (1) above against the future bills to be paid by M/s. Keshari Udyog EPIP, AIDC complex Amingaon, Guwahati which is a sister concern of the Appellant.

In view of above, the appeal petition dated 27.10.2015 is disposed of.

Completion of this proceedings required few days more as the Ombudsman was on leave due to treatment of eye disorder.

There shall be no cost.

Date: 04.04.2016
Guwahati

Sd/-
(R.L. Duarah, IAS (Retd.))
Electricity Ombudsman

Memo No. EOM. 25/2015/12

Dated Guwahati the 4th April, 2016

Copy to:

1. **The Area Manager, IRCA-II, APDCL, Jalukbari, Guwahati – 781014.**
2. **Shri Pawan Kumar Soni, Director, Plast India Enterprises (P) Ltd., C/o. Shri S.K. Kejriwal, Arnav Court, A.K. Azad Road, Rehabari, Guwahati – 781008.**

Secretary,
O/o the Electricity Ombudsman