

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 14393/2015

(Arising out of impugned final judgment and order dated 30/01/2015 in WA No. 321/2014 passed by the High Court Of Gauhati)

ASSAM POWER DISTRIBUTION COMPANY LTD. & ORS.

Petitioner(s)

VERSUS

M/S S.M. CEMENT INDUSTRIES

Respondent(s)

(With appln.(s) for replacement of annexure-25 filed along with I.A. No.1 of 2015)
(For final disposal)

Date : 13/10/2015 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE M.Y. EQBAL
HON'BLE MR. JUSTICE C. NAGAPPAN

For Petitioner(s)

Mr. Pravir Choudhary, Adv.
Mr. Reepak Kansal, Adv.

For Respondent(s)

Mr. Vijay Hansaria, Sr. Adv.
Mr. Tushar John, Adv.
Mr. Abhinav Hansaria, Adv.
Mr. P. I. Jose, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is disposed of in terms of the signed order.

[INDU POKHRIYAL]
COURT MASTER

[SUKHBIR PAUL KAUR]
A.R.-CUM-P.S.

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.8624 OF 2015
(Arising out of S.L.P. (C) No.14393 of 2015)

ASSAM POWER DISTRIBUTION COMPANY LIMITED
AND OTHERS

Appellant(s)

Versus

M/S. S.M. CEMENT INDUSTRIES

Respondent(s)

O R D E R

1. We have heard learned counsel for the parties.
2. The respondent - M/s S.M. Cement Industries is a bulk High Tension consumer of electricity under the petitioner. On 24.7.2014, an inspection was carried out and the electricity meter was found tampered. On the basis of the report and mal-practices, a provisional assessment was made and a bill was raised for an amount of Rs.2,03,13,737/-.
3. The authorities after hearing the respondent, served a final bill for the same amount upon the respondent. Instead of availing the forum of appeal, as provided under Section 127 of the Electricity Act, 2010 (in short 'the Act'), the respondent herein challenged the bill before the High Court of Gauhati by filing a writ petition.
4. The learned Single Judge, after taking note of the fact that the respondent was heard by the Area

Manager after the provisional bill was raised, and thereafter a final bill was served upon it.

5. Having regard to the statutory remedy of appeal provided in the Act, learned Single Judge dismissed the writ petition giving liberty to the respondent to move the Appellate Authority.

6. Aggrieved by the said order, the respondent moved in appeal which was heard by a Division Bench of the Gauhati High Court. The Division Bench, taking a view that the illegality, validity and correctness of the assessment has not been considered by the learned Single Judge, remanded back the matter to the learned Single Judge to consider other aspects that may be raised by the respondent. Hence this special leave petition.

7. Leave granted.

8. We have heard learned counsel for the parties and perused the order passed by the learned Single Judge as also by the Division Bench of the High Court.

9. Indisputably, in case of theft of electricity, tampering the meter or other mal-practices done by the consumer which is reported by the inspecting team, a provisional bill is raised and after hearing the consumer by the competent authority, a final bill is raised. The said procedure has been complied with

and thereafter impugned bill of Rs.2,03,13,737/- has been served upon the respondent.

10. In our considered opinion, therefore, the remedy, if any, available to the respondent is to move the Appellate Authority where the grievance of the respondent shall be considered and after re-appreciation of evidence, the correctness of the assessment made by the authorities shall be decided. The Division Bench, therefore, is not correct in remanding the matter back to the learned Single Judge to decide the question raised by the respondent afresh. The order passed by the Division Bench of the High Court is, therefore, set aside.

11. The only question that remains to be considered is as to whether the respondent has to comply with the condition imposed by sub-section (2) of Section 127 of the said Act.

12. Learned counsel for the respondent submitted that out of the total demand of Rs.2,03,13,737/-, half of the amount is charged as a penalty and out of that the respondent has already deposited Rs.30,00,000/-.

13. In the peculiar facts and circumstances of the case, we direct that in the event the respondent prefers an appeal within thirty (30) days from today along with receipt of deposit of additional Rs.30,00,000/-, the Appellate Authority shall condone

the delay in filing the appeal and hear the same on merit without being prejudiced by the order passed by the High Court.

14. This appeal is, accordingly, disposed of.

.....J.
(M.Y. EQBAL)

.....J.
(C. NAGAPPAN)

New Delhi,
October 13, 2015