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Gauhati High Court

Case No: Writ Petition (C) No. 1147, 7154 Of 2015, 2318(AP) Of 2019

M/S. Aviraj Hatcheries		APPELLANT
	Vs	
Assam Power Distribution Company Limited		RESPONDENT

Date of Decision: May 29, 2024

Acts Referred:

- Constitution Of India, 1950 - Article 137, 142, 226
- Electricity (Rights of Consumers) Rules, 2020 - Rule 2(d), 5, 6, 6(1), 6(2), 6(9), 6(10)
- Electricity Act, 2003 - Section 56, 56(1), 56(2), 62(6), 176(1), 172(2)(z)

Hon'ble Judges: Kardak Ete, J

Bench: Single Bench

Advocate: S. K. Kejriwal, S. P. Sarma, G. N. Sahewalla, K. Sarma

Final Decision: Partly Allowed

Judgement

1. Heard Mr. G. N. Sahewalla, learned Sr. counsel assisted by Ms. K. Sarma, for the petitioners in WP(C)2318/2019, Mr. S. K. Kejriwal, learned counsel for the writ petitioner in WP(C)1147/2015 and Mr. U. S. Borgohain, learned counsel for the petitioner in WP(C)7154/2015. And also heard Mr. S. P. Sharma, learned Standing counsel APDCL for the respondents.

2. Since the 3(three) writ petitions involved similar issue on facts and law, the same are disposed of by this common judgment and order.

3. The challenges made in these writ petitions are to the letters and demand notices, demanding payment of electricity bills whereby, the petitioners have been directed to pay the revised bill amount, failing which, disconnection of electricity shall be made against the petitioners. The impugned bills have been raised for different periods on

account of difference in amount because of wrong application of Multiplier Factor & CT Ratio and on wrong calculation.

4. The challenge made in the writ petition WP(C)1147/2015 is to the letters dated 05.12.2014 and 13.02.2015 and the revised bills whereby the respondent authority has demanded Rs. 14,59,680/- for the period 23.07.2011 to 07.08.2014, as accordingly to respondents due to oversight, the Multiplier Factor was wrongly calculated at 1 instead of 10. The demand is made for a total period of 37 months.

4.1. The brief facts of the case in this petition is that the petitioner is engaged in the poultry business. An electricity connection was provided to the petitioner's unit on 23.07.2011. It is contended that the petitioner has been duly depositing all the final monthly bills raised by the respondents. On 22.09.2014, the petitioner received a letter dated 18.09.2014 from the respondent no. 3, whereby, exorbitant high energy bill dated 09.09.2014 for the period 07.08.2014 to 05.09.2014 was provided by informing that the petitioner's unit was billed on the basis of multiplier factor of 1 instead of 10 and the energy bill for the period of 07.08.2014 to 05.09.2014 has been prepared by considering the multiplier factor of 10. Thereafter, by the impugned letter dated 05.12.2014, the petitioner was informed that due to oversight, energy bill for the period 23.07.2011 to 07.08.2014 was prepared by considering the multiplier factor of 1 instead of 10. Thereby, forwarded the impugned statement of calculation demanding an amount of Rs. 14,59,680/-.

4.2. It is contended that the final monthly bills for the said period having been raised and realised and the liability of the petitioner having been crystalized, there remains no liability on the part of the petitioner and claims that there could not be any question of petitioner making any further payment in respect of concluded transaction pertaining to the said bill.

4.3. The petitioner filed an appeal on 16.12.2014 before the appellate authority on the ground that the impugned bills is barred by limitation as provided under Section 56 (2) of the Electricity Act, 2003 and Clause 4.3.3 of the Electricity Supply Code and Related Matter Regulations, 2004, since the said amount was never shown in any of the previous monthly bills as arrear of charges to be recovered from the petitioner and the petitioner could not be saddled with any liability for the period for which the final bills were already raised and realised making the transaction concluded. The said appeal has been dismissed which was informed vide letter dated 13.02.2015 and the supplementary bill was corrected and thereafter directed the petitioner to pay the amount of Rs. 14,59,680/-. Hence this present petition.

4.4. It is contended by Mr. S.K. Kejriwal, learned counsel for the petitioner, that Rule 6 of the Electricity (Rights of Consumers) Rules, 2020 is framed by the Central Government in exercise of the statutory powers conferred by Sub-Section (1) read with

clause (z) of Sub-Section (2) of Section 176 of the Electricity Act, 2003. Rule 6(1) of the said Rules deals with 'Billing and Payment' and provides that Tariff for each category of consumers shall be displayed on distribution licensee's website and consumers shall be notified of change in tariff including fuel surcharge and other charges, a full billing cycle ahead of time, through distribution licensee's website as well as through energy bills. Rule 6(2) provides that licensee shall prepare the bill for every billing cycle based on actual meter reading and as per Clause 4.2.2.1 of Electricity Supply Code, billing cycle or billing frequency means 'monthly bills'. In the case at hand, the Licensee never notified the petitioner prior to issuance of letter dated 18.09.2014 that it would be liable for payment of tariff at 10 times of the recorded meter reading. As such, the bill is not sustainable in law. As per Rule 6(9) of the aforesaid Rules, the Licensee can issue maximum two provisional or part bills in a financial year. The impugned bill sought to convey a message as if the bills issued during the period from 23.07.2011 to 07.08.2014 were issued on provisional or part basis and the same is sought to be revised by issuing the impugned bill, that too, covering the period of more than 3 financial years which is not permissible in terms of the aforesaid Rule. Further, Rule 6(10) of aforesaid Rules provides that no bill can be issued after expiry of 60 days and if any bill is issued not exceeding 60 days, the consumer is entitled to rebate of two to five percent. Therefore, the impugned bill seeking to recover the amount for the period of 37 months at a time is not sustainable in law. So far as Section 56 of the Electricity Act, 2003, is concerned, the heading of the said Section is 'Disconnection of Supply in default of payment'. The said provision deals entirely on different aspect. The aforesaid Rule of 2020 being not inconsistent with Section 56 or any other provision of Electricity Act, 2003, in any manner, will prevail and is applicable in the present case being subsequent law brought into force by the Central Government in exercise of its Statutory Power during the pendency of the writ Petition. Therefore, the learned counsel submits that in the light of aforesaid Rules, the impugned bill covering the period from 23.07.2011 to 07.08.2014 having been issued on 05.12.2014 is liable to be set aside and the amount of Rs.4,00,000/- deposited by the petitioner pursuant to interim order of this Hon'ble Court is liable to be refunded together with interest as provided under Section 62(6) of the Electricity Act, 2003.

4.5. It is the further submissions of the learned counsel for the petitioner that so far as the Judgments in the case of Assistant Engineer (D1), Ajmer Vidyut Vitran Nigam Limited -Vs- Rahamatullah Khan reported in (2020) 4 SCC-650 and M/s. Prem Cottex -Vs- Uttar Haryana Bijli Vitran Nigam Ltd. reported in (2021) 20 SCC 200, are concerned, the Judgment rendered in the case of Rahamatullah Khan (supra) would apply in the instant case, not only because the same is prior in point of time but also because the said earlier Judgment having been rendered by a co-ordinate bench of the Hon'ble Supreme Court, it was incumbent for the subsequent bench to either agree with the said earlier Judgment or in the event of divergent view, to refer the same to a larger

bench. The same having not been done, the earlier Judgment rendered in the case of Rahamatullah Khan (Supra) will apply.

4.6. Further, by placing reliance on paragraph 131 of the Larger Bench Judgment of the Hon'ble Supreme Court rendered in the case of K.C. Ninan, reported in 2023 SCC online SC 663, which also considered the aforesaid two Judgments at paragraphs 124 to 130, it has been contended by the learned counsel for the petitioner that in fact, by the said Larger Bench Judgment, the Judgment rendered in the case of Rahamatullah Khan (Supra) was upheld whereas the Judgment rendered in the case of M/s. Prem Cottex (Supra) in essence was overruled.

4.7. Mr. Kejriwal, learned counsel submits that there is another reason as to why the Judgment rendered in the case of M/s Prem Cottex (supra) will not apply in the instant case is that in the said case there was no dispute regarding the multiplier factor sought to be applied but in the instant case, the petitioner specifically pleaded that in view of Sl. No. 2 (Relating to Commercial Category) and Sl.No. 7 (Relating to Small Industry /LT Small (Urban) of the table appended with Clause 6.2.1.1 of the Supply Code, the petitioner's maximum yearly consumption can, at the most, be 21,729.60 units under 'Commercial Category' and 18,108 units under 'Small Industry' to which the petitioner is classified during the pendency of writ petition. Therefore, fixation of multiplier factor as high as 10 is not sustainable in law.

4.8. It is submitted y learned counsel that if this Hon'ble Court adopts a view that the petitioner is liable for payment of dues covering the period of 2 years (just prior to the date of issuance of impugned letter and bill) but for the remaining earlier period, it may be provided that the APDCL may take resort to such civil remedies as are available in law, if the period of limitation for the recovery of amount covered by earlier period has not expired.

4.9. It is further submitted that if at all, any view as aforesaid is taken by the Hon'ble Court, it would be necessary for the APDCL to issue revised bill covering the period of 2 (two) years. During the pendency of present writ petition, the petitioner was already categorised/classified under the Category ‘LT Small’ by APDCL. As such, in such eventuality, the APDCL may be directed to revise all the bills of the petitioner for past period including the bill for the period of 2 (two) years as per LT Small Category and the amount found refundable to the petitioner due to wrong categorisation under Commercial Category, may be adjusted against the bill that may be issued for the period of 2 (two) years as per LT Small and also to adjust the amount of Rs.4,00,000/- deposited pursuant to the interim order. He has placed reliance on a Judgment of this Hon'ble Court in the case of Jodhpur Tea & Industries Pvt. Ltd.-Vs- A.S.E.B. &Ors. , wherein a Tea Manufacturing Factory/Unit (not owning any garden/tea estate) was wrongly categorised under Category-8 i.e., 'Tea, Coffee and Rubber Gardens' instead of

'Industry' Category-6 and this Hon'ble Court directed to categorise the said petitioner under 'Industry' Category-6 and to give consequential reliefs.

4.10. In support of aforesaid submissions, Mr. S. K. Kejriwal, learned counsel for the petitioner in WP(C)1147/2015 has placed reliance on the following judgments:

1. B. C. Chaturvedi vs. Union of India&Ors., reported in (1995) 6 SCC 1078.

2. Binny Ltd. and anr. vs. V. Sadasivam & Ors., reported in (2005) 6 SCC657.

3. Jodhpur Tea & Industries Pvt.Ltd.vs. A.S.E.B &Ors. reported in (2005) 1 GLR 291. .

4. M/s Prem Cottex vs. Uttar Haryana Bijli Vitran Nigam Ltd. Reported in (2021) 20 SCC 200..

5. Ajmer Bidyut Vitran Nigam Ltd. Vs. Rahmatullah Khan reported in (2020) 4 SCC 650.

6. K. C. Ninan vs. Kerala State Electricity Board para 129, 134,2023 SCC online SC 663.

5. The challenge made in WP(C)7145 of 2015 is the impugned bill dated 15.10.2015 demanding a surcharge of Rs. 4,32,588/-(Rupees Four Lakhs Thirty Two Thousand Five Hundred Eighty Eight Only) against the petitioner and the disconnection notice dated 15.10.2015 issued by the Area Manager (IR) Collection Area, ASEB, Tinsukia.

5.1. The case in this petition is that the petitioner is running a stone crushing unit at 9th Mile, Jagun, Tinsukia. In the year 2010, the petitioner industry had obtained an electricity connection with a connected load capacity of 77 KW. Since then, the petitioner industry has been paying the electricity bills without any default. Further case of the petitioner is that at the time of obtaining the electricity connection in the year 2010, the Inspection Team of the respondent authorities had inspected the unit of the petitioner industry on 30.08.2010 and found that the connected load of the unit well within the sanctioned limit and the inspection team recorded the MF as 15 and the CT Ratio as 75/5.Thereafter, again on 10.01.2012, the Inspection Team of the respondent authorities had inspected the unit of the petitioner industry and this time also the Inspection Team of the respondent authorities found that the connected load of the petitioner industry was well within the sanctioned limit and the inspection team found and recorded the MF as 15 and the CT Ratio as 75/5. However, on 17.07.2015, again an inspection was carried out in the premises of the petitioner industry under the supervision of the Assistant General Manager, T & I Division, Tinsukia, the Respondent No. 3 herein in the instant writ petition, and during the inspection, the Inspection Team found and recorded the MF and CT Ratio as 30 and 150/5 respectively. Accordingly, the Inspection Team made an observation in their Inspection Report dated 17.07.2015 that MF is 15 instead of 30 (Thirty). Inadvertently, in the Inspection Report dated 30.08.2010 CT Ratio mentioned 75/5 and MF is 15, which should be 150/5 and MF to be read as 30

(Thirty). IRCA was requested to correct the same.

5.2. Pursuant to the inspection carried out on 17.07.2015, the respondent authorities, raised an arrear bill of Rs. 4,60,165/- (Rupees Four Lakhs Sixty Thousand OneHundred Sixty Five Only) vide bill dated 15.10.2015, whereby the aforesaid amount was shown payable by the petitioner industry due to less billing in view of the discrepancies recorded earlier in MF and CT Ratio as stated hereinabove. The further case of the petitioner is that the petitioner industry has been regularly paying the monthly electricity bill as has been raised by the respondent authorities since the time of taking the electricity connection by the petitioner industry in the year 2010. There has not been any single default on the part of the petitioner industry in making payment of the electricity bill of the respondent authorities. As the petitioner industry was served with an arrear bill of Rs. 4,60,165/- (Rupees Four Lakhs Sixty Thousand One Hundred Sixty Five Only) vide bill dated 15.10.2015, whereby the aforesaid amount was shown payable by the petitioner industry due to less billing earlier; the petitioner submitted a representation to the respondent authorities vide its letter dated 05.11.2015 with a prayer to consider the case of the petitioner for commutation of the aforesaid arrear bill amount. On receipt of the aforesaid representation from the petitioner industry, the respondent authorities failed to give any response on the representation of the petitioner. However, the respondent authorities served a revised arrear bill to the petitioner industry vide its bill dated 12.11.2015 for an amount of Rs. 4,32,588/- (Rupees Four Lakhs Thirty Two Thousand Five Hundred Eighty Eight only). Alongwith the said revised bill dated 12.11.2015, the petitioner industry was also served with a disconnection notice dated 12.11.2015 giving them 15 (Fifteen) days' time to pay the arrear bill, failing which the electricity connection to the petitioner industry would be disconnected. Being aggrieved, this writ instant petition challenging the legality and validity of the disconnection notice dated 12.11.2015 issued by the respondent authorities, as well as the arrear bill dated 12.11.2015, by which the petitioner has been asked to pay an amount of Rs. 4,32,588/- (Rupees Four Lakhs Thirty Two Thousand Five Hundred Eighty Eight only) within a period of 15 (Fifteen) days.

5.3. Mr. U. S. Borgohain, learned counsel for the petitioner, submits that at the time of obtaining the electricity connection, the Inspection Team of the respondent authorities had inspected the unit of the petitioner industry on 30.08.2010 and found the connected load of the industry well within the sanctioned limit. Further the Inspection Team found and recorded the MF as 15 and the CT Ratio as 75/5. Thereafter, again on 10.01.2012, another inspection was carried out in the unit of the petitioner industry by the Inspection Team of the respondent authorities. During this inspection also, the Inspection Team found the connected load well within the sanctioned load and recorded the MF as 15 and CT Ration as 75/5. Thereafter, on 17.07.2015, another inspection was carried out and though they found connected load of the industry was

within the sanctioned load; but they recorded the MF as 30 and the CT Ratio as 150/5. They further observed in their report that in the earlier Inspection Report dated 30.08.2010, inadvertently the MF is recorded as 15 and the CT Ratio was mentioned as 75/5, which should have read as 30 and 150/5 respectively. Therefore, the respondent authorities subsequently raised the arrear bill dated 15.10.2015 for an amount of Rs. 4,60,165/- (Rupees Four Lakhs Sixty Thousand One Hundred Sixty Five Only) due to less billing of electricity bill earlier. On receipt of the said arrear bill, the petitioner submitted a representation, being letter dated 5.11.2015 to the respondent authorities with a prayer for commutation of the arrear bill amount. However, the respondent authorities instead of acting upon the representation of the petitioner, issued a disconnection notice dated 12.11.2015 to the petitioner industry alongwith a bill dated 12.11.2015 showing an arrear amount of Rs. 4,32,588/- (Rupees Four Lakhs Thirty Two Thousand Five Hundred Eighty Eight only) giving the petitioner industry 15 (Fifteen) days' time to clear the outstanding due, failing which the electricity connection to the petitioner industry would be disconnected.

5.4. Mr. Borgohain, learned counsel, submits the petitioner industry has been regularly paying its monthly electricity bills since the time of its obtaining electricity connection in the year 2010. There has not any occasion in which the petitioner industry has defaulted payment of their electricity dues of the respondent authorities. Since the functioning of the petitioner's industrial unit is heavily depended upon uninterrupted electricity supply, as such the petitioner always used to pay the electricity dues to the respondent authorities well within the time. He submits that assuming but not admitting, that the Inspection Team of the respondent authorities while inspecting the industry of the petitioner on 30.08.2010 and 10.01.2012, made an error and wrongly recorded the MF as 15 and CT Ratio as 75/5, which is a matter of technical expertise not within the knowledge of a common man, can the petitioner be held liable and forced to pay for the mistake committed by the technical experts of the respondent authorities, without the petitioner having any knowledge and fault. It is further submitted that for the sake of argument, assuming but not admitting, that the Inspection Report dated 17.07.2015, submitted by the Inspection Team of the respondent authorities are correct; even then the respondent authorities cannot claim the arrear amount from the petitioner, in view of the restrictions imposed under Section 56(2) of the Electricity Act, 2003, in as much as, any sum due from a consumer cannot be recovered by the authorities after a period of 2 (Two) years from the date from which the amount first became due, unless the same is shown continuously as recoverable in the bills as arrear of charges for electricity supplied and the licensee cannot disconnect the supply of the electricity. But in the instant case, the respondent authorities are claiming the arrear amount from the petitioner industry from a period more than 5 years old and the arrear amount having not been continuously shown as arrears against supply of electricity from the date on which it first became due; the respondent authorities

cannot force the petitioner to pay for the same by issuing the disconnection notice dated 12.11.2015.

5.5. The learned counsel for the petitioner submits that prior to the issuance of the arrear bill dated 15.10.2015 and the disconnection notice dated 12.11.2015 along with the revised arrear bill dated 12.11.2015, there was no outstanding dues against the petitioner industry in arrears in respect of the supply of electricity. Section 56(1) of the Electricity Act, 2003, permits disconnection of electricity supply only in case of failure to pay any electricity charges or any sum due from the consumer. But in the instant case, the respondent authorities have issued the arrear bill dated 15.10.2015 as well as the disconnection notice dated 12.11.2015 alongwith the revised arrear bill dated 12.11.2015 with the sole intention to threaten and mount undue pressure upon the petitioner industry to force it to make payment of the arrear dues which has arisen due to the negligence of the respondent authorities. In the aforesaid facts and circumstances, the learned counsel prays that the impugned disconnection notice dated 12.11.2015 as well as the revised arrear bill dated 12.11.2015 issued by the respondent no. 4 be quashed and set aside.

6. Challenge made in the WP(C) 2318/2019, is the impugned letter dated 20.06.2018, electricity bill dated 21.06.2018; impugned letter dated 05.07.2018 and the impugned orders dated 06.09.2018 and 21.12.2018.

6.1. In this petition, the petitioners are co-owners of a property under name and style, M/s Bhagwati Properties, situated at J.P. Agarwalla Road, Bharalumukh, Guwahati. The petitioners are also consumer under APDCL and having connected load 77 KW under domestic category. On 21.06.2018, APDCL issued a revised bill amounting to Rs. 25,40,414/- for the period of 07.09.2007 to 31.12.2017 to the petitioner, along with a bill statement for recovery of the losses purportedly incurred by the Respondent authorities due to an error committed by the Respondent Authorities of insertion of the MF of 20 instead of 40. Being aggrieved the petitioners preferred a petition before the Consumer Grievance Redressal Forum (CGRF) on 05.07.2018. The said petition was rejected by the CGRF vide order dated 06.09.2018 wherein it was held that the petitioner will have to make payment as per the revised bill dated 21.06.2018. Accordingly, the petitioner preferred an appeal against the order dated 06.09.2018 before the ombudsman, vide order dated 21.12.2018 the appeal was rejected by the Ombudsman. Hence, this instant writ petition praying for setting aside of the letter dated 20.06.2018, Electricity bill dated 21.06.2018, order dated 06.09.2018 passed by the CGRF and order dated 21.12.2018 passed by the Ombudsman.

6.2. Mr. G. N. Sahewalla, learned Sr. counsel for the petitioners, submits that a perusal of the supplementary bill issued by the respondents would reveal that the period of the bill dated 21.06.2018 is from 07.09.2007 to 31.12.2017 i.e., for a period of 123 months

at one go. Furthermore, it is submitted that although the date of bill was mentioned as 21.06.2018, the due date was mentioned as 21.07.2017. It is submitted that though the supplementary bill of the petitioner shows that the said bill was prepared on 20.06.2017, however, a perusal of bill would show that the said bill has been issued to the Petitioners only on 20.06.2018 i.e., after a period of 1 year, and the reasons thereof has not been assigned by the respondents. It is submitted that the Petitioners would not have been in a position to pay the supplementary bill amounting to Rs. 25,40,414.23/- as the said bill was forwarded to the Petitioners only on 20.06.2018, showing that the due date of payment as 21.07.2017.

6.3. Mr. G. N. Sahewalla, learned Sr. counsel, submits that the Statement of Calculation provided by the respondents would reveal that the said supplementary bill has been raised for the period 19.03.2007 till 22.11.2017, during which the petitioners had duly paid the monthly electricity bill amounting to Rs. 25,40,414.23/- and since the respondents had admitted their mistake in issuing the monthly bills wherein the overall MF was billed at 20 instead of 40 a demand of further payment of Rs. 25,40,414.23/- was made vide the supplementary bill. Learned Sr. counsel submits that the aforesaid demand thus made for a total period of around 123 months besides being hopelessly barred by limitation, is also barred under the provisions of the Electricity Act and as such, is not sustainable in the eyes of law.

6.4. He submits that Rule 2(d) of the Electricity (Rights of Consumers) Rules, 2020, defines the billing cycle or billing period to mean the period for which regular electricity bills as specified by the Commission are issued for different categories of consumers by the distribution licensee. Clause 4.2.2.1 of the Assam Electricity Regulatory Commission (Electricity Supply Code and Related Matters) Regulations, 2004 as amended up to date, clearly provides that bill frequency for all categories of consumers should preferably be one month. Bills shall be served upon the consumers every month giving them 15 days' time to clear the same. If there is any deviation in the issuance of such monthly bills, the reason thereof is to be indicated in the monthly bill. It is mandatory for APDCL to intimate the consumer of the due date on which he would receive his energy bill for the monthly billing cycle and also the due date for payment of monthly bills. The same would normally be the due date for all billing cycles. He submits that in the present case, the monthly electricity bills having been issued for each of the monthly billing cycles period i.e., from 19.03.2007 till 22.11.2017 indicating the due date for payment of the same without indicating any deviation, the supplementary bill dated 21.06.2018 is not sustainable in law as the due date mentioned therein is 21.07.2017 i.e., the due date having already expired prior to issuance of the supplementary bill dated 21.06.2018. moreover, the said bill was raised for a amalgamated period of 123 months at one go and not on a monthly billing cycle.

6.5. He submits that Rule 6(2) of the aforesaid Electricity Rules mandates that the distribution licensee shall prepare the bill for every billing cycle based on actual meter readings. Rule 6(9) of aforesaid Rules prohibits the distribution licensee from generating more than two provisional bills for a consumer during one financial year and provides that if the provisional billing continues for more than two billing cycles except under extraordinary situation due to force majeure, the consumer may refuse to pay the dues until bill is raised by the distribution licensee as per actual meter reading. In the instant case, neither any provisional nor part bills were issued for any of the monthly billing cycles nor during any of the aforesaid financial years. He submits that it appears from the impugned Letter dated 20.06.2018 as if during the period from 07.09.2007 to 31.12.2017 the APDCL continuously issued provisional bills and the same are sought to be revised by the impugned bill. Such a course is absolutely prohibited as per aforesaid Rule. Therefore, the impugned bill covering the total period of 123 months i.e., for 10-11 financial years at a time is not sustainable in law.

6.6. It is submitted that Rule 6(10) of the aforesaid Electricity Rules provides that if any bill is served with a delay of such period as specified by the Commission, not exceeding sixty days, the consumer shall be given a rebate of two to five percent as specified by the Commission. Therefore, in terms of the aforesaid mandatory provision of law, there is no scope for the distribution licensee to issue any revised bill after a delay of 2 months but in the instant case, the revised bill is issued covering the period of 123 months. Therefore, he submits that the same is not sustainable in law and liable to be set aside.

6.7. Learned Sr. Counsel has submitted that monthly energy bills notifying the due date for all billing cycles covering the period of impugned supplementary bill period having been issued without indicating therein any reasons/deviations in not issuing the monthly energy bills by taking into consideration the MF of 20 instead of MF 40, there remains no scope to issue any supplementary bill for the same very periods where the liability of the petitioners has already been crystallized as the petitioners had duly deposited all the due amounts in terms of the bills raised for the period from 19.03.2007 till 22.11.2017 within the prescribed due date as mentioned in such monthly energy bills. In view od the above, the impugned demand as raised by the supplementary bill dated 21.06.2018, copy of which was duly forwarded vide 20.06.2018 is illegal. He submits that it is beyond the imagination of the Petitioners as to how a bill raised on 21.06.2018 could have been forwarded to the Petitioners on 20.06.2018 i.e., one day prior to issuance of the supplementary bill.

6.8. He submits that Section 56 (2) of the Electricity Act, 2003 starts with the non-obstante Clause and provides that no sum due from any consumer shall be recoverable after a period of two (2) years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrears of

charges for the electricity supplied. Admittedly, monthly bills for the period from 19.03.2007 till 22.11.2017 were issued in favour of the Petitioners showing the due date, and the same were duly paid/cleared within the due date as mentioned therein and in none of the said bills, any sum was shown as 'recoverable' and/or 'arrears of charges' and in this view of the matter also, the impugned demand so raised vide the supplementary bill dated 21.06.2018 amounting to Rs. 25,40,414.23 is not sustainable and the same is liable to be interfered with.

6.9. Having submitted above, learned Sr. Counsel has contended that in case the APDCL satisfy this Hon'ble Court that even after the introduction of aforesaid change in law vis-à-vis Rules 6(9) and 6(10) of Electricity Rules, the supplementary bill can be sustained, then also, as per the latest Judgment of the Hon'ble Apex Court, the Distribution Licensee cannot take resort to disconnection of electricity for non-payment of any bill covering a period more than 2 (two) years. However, the Licensee can only resort to other Civil remedies or the remedies provided in the Supply Code for the recovery of the amount beyond the period of two years. In the instant case, the impugned revised bill having been forwarded on 21.06.2018 covering the period from 07.09.2007 to 31.12.2017, at the most, the authority can recover arrear dues with effect from 31.12.2015 to 31.12.2017. Such exercise may be permitted to the APDCL only if it is held by this Hon'ble Court that in terms of Rules 6(9) and 6(10) of the Electricity (Rights of Consumers) Rules, 2020 any bill (including the revised bill) can be sustained in law beyond the period of 60 days and the APDCL can justify application of Multiplier Factor of 40 for raising the revised demand. For the period from 07.09.2007 to 31.12.2017, the APDCL may be permitted to take such steps as may be available under the law without resorting to the disconnection of power, that too, if any bill can be sustained beyond the period of 60 days as provided under Rule 6(10) aforesaid. Learned Sr. counsel has also placed reliance on the case of K.C. Ninan (Supra).

7. On the other hand, Mr. R. P. Sharma, learned counsel for the respondents, submits that in all the 3 (three) cases, the bills issued in all the three cases are correct as they are legally entitled under Section 56 (2) of the Electricity Act, 2003, to recover the sum from the consumer only after the bill on account of the electricity charge is served upon him. He submits that the word 'due' has been used under Section 56 (1) as well as under Section 56 (2). The term 'due' refers to the amount for which the demand is raised by way of bill. Therefore, it would imply that the first due would be applicable when the bill is raised for the first time. Accordingly, as per Section 56 (2) if after the expiry of 2 years of the original demand, any genuine or bonafide mistake is detected by the licensee, it would be entitled to raise a supplementary bill. Further, if the sum due raised in the original bill and not paid by the consumer, that must be continuously shown as an arrear of charges in subsequent bills. In the instant cases, it is evident from record that the mistakes with regard to calculation of MF in the bills were

discovered subsequently and as such the said mistake is a genuine and bonafide mistake. Therefore, he submits that the APDCL has the right to issue a supplementary bill to correct the bonafide mistake.

7.1. The learned counsel for the respondents, submits that as the disconnection notices were issued within 2 years from the date of issuance of supplementary bill, as such they are not barred by the limitation imposed under Section 56 (2). He submits that in all the three cases, the disconnection notices were issued within the period of two years as prescribed under Section 56(2) of the Electricity Act, 2003. Hence, the APDCL has the right to recover as well as disconnect under the provisions of law.

7.2. Mr. Sharma, learned counsel, submits that in the instant cases, the APDCL has issued the supplementary bill on 05.12.2014, 15.10.2015, 20.06.2018, respectively. Therefore, the first due of the bill is to be calculated from the day the supplementary bills were issued. And the disconnection notices of the respective bills were also issued within the prescribed time under Section 56 (2) of the Electricity Act, 2003. Therefore, based on the above finding of the Apex Court, the bills are correct and valid under law. Under the facts and circumstances narrated above and the submissions made, the learned counsel for the respondents prays for dismissal of the Writ Petitions by upholding the respective supplementary bills along with the disconnection notice to be legally valid.

7.3. In support of his submissions, Mr. Sharma, learned counsel, has placed reliance of the judgements of Hon'ble Supreme Court in the case M/s Prem Cottex (Supra) and K.C. Ninan (Supra). He submits that in the light of aforesaid judgments the bills and disconnection notices issued by the APDCL are correct and legally sustainable under Section 56 (2) of the Electricity Act, 2003.

8. Due consideration has been extended to the submissions of the learned counsels for the parties and the materials available on record.

9. On consideration of the matter, this court finds that issues to be determined are as to whether the bills amount demanded by the respondent authority for recovery of electricity due from the petitioners is barred under provisions of Sub-Section 2 of section 56 of the Electricity Act, 2003, and as to whether the respondent authority has an authority to raise the revised/supplementary or additional bills on the ground of a mistake.

10. In the writ petition (C) No. 1147 of 2015, letter dated 18.09 2014 issued by the respondent no. 3, and energy bill dated 09.09.2014 for the period 07.08.2014 to 05.09.2014 was raised by informing that the petitioner's unit was billed on the basis of the multiplier factor of 1 instead of 10 and the energy bill for the period of 07.08.2014 to 05.09.2014 has been prepared by considering the multiplier factor of 10. It is also

informed by letter dated 05.12.2014 to the petitioner that due to oversight the energy bill for the period 23.07.2011 to 07.08.2014 was prepared by considering the multiplier factor of 1 instead of 10. Accordingly, the statement of calculation demanding an amount of Rs. 14,59,680/- was raised by the respondents.

11. In the writ petition (C) No. 7154 of 2015, after inspection of the petitioner's unit it was found and recorded that the multiplier factor and CT ratio to be 30 and 150/5 which has been wrongly recorded as MF 15 instead of 30 and CT 150/5 instead of 75/5. Pursuant to such inspection, the respondents raised a bill of Rs. 4,60,165/- (Rupees Four Lakhs Sixty Thousand One Hundred Sixty Five Only) vide bill dated 15.10.2015, whereby, the said bill was shown to be payable by the petitioner's unit due to less billing in view of the discrepancies recorded earlier in MF and CT ratio. Thereafter, a revised arrear bill to the petitioner unit vide its bill dated 12.11.2015 for an amount of Rs. 4,32,588/-(Rupees Four Lakhs Thirty Two Thousand Five Hundred Eighty Eight only). The disconnection notice dated 12.11.2015 was also served to the petitioner.

12. In the writ petition (C) No. 2318 of 2019, vide revised bill dated 21.06.2018 a bill amount of Rs. 25,40,414/- (Twenty Five Lakh Forty Thousand Four Hundred Fourteen) for the period of 07.09.2007 to 31.12.2017 with a bill statement for recovery of the losses due to an error on the part of the respondent authorities of insertion of MF of 20 instead of 40. The petitioner approached the Consumer Grievance Redressal Forum and the same was rejected on 06.09.2018. Thereafter an appeal was preferred before the Ombudsman and vide order dated 21.12.2018, the said appeal was also rejected by the Ombudsman.

13. To appreciate and analyse the issues, it is apposite to refer to the relevant provisions of the Electricity Act, 2003. Section 56 of the Electricity Act, 2003, provides as under:

56. Disconnect 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, -

(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 ofthe electricity.

14. On the bare reading of the above provision, it is clear that Sub-Section 1 of Section 56 of the Electricity Act, 2003, 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 2 (two) years provided by Sub-Section 2 of the Section 56 of the Act. The period of limitation of 2 (two) years would commence from the date on which the electricity charges become first due under Sub-Section 2 of the Section 56 of the Act.

15. The above provision restricts the right of the licensee company to disconnect electricity supply due to non-payment of dues by consumer unless such sum has been shown continuously as recoverable as arrear of charges of electricity supplied and the bills raised for the past period.

16. As held by the Hon'ble Supreme Court, if the licensee company were to be allowed to disconnect electricity supply after the expiry of limitation period of 2 (two) years after the same become first due, it would defeat the object of the Sub-Section 2 of the Section 56 of the Act. It is also seen that the sub section 2 of Section 56 does not preclude the licensee company from raising a supplementary demand after the expiry of the limitation period of 2 (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 2 (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. Therefore, the provision of Sub-Section 2 of the Section 56 of the Act does not preclude the licensee company from raising any additional or supplementary demand after the expiry of the limitation period in case of mistake or bonafide error. It does not, however, empower the licensee company to take recourse to the coercive measure of disconnection of electricity supply for recovery of the additional demand.

17. Now, this court would refer to the Electricity (Right of Consumer) Rules, 2020, (the Rules of 2020 in short) and The Assam Electricity Regulatory Commission (Electricity Supply Code and Related Matters) Regulations, 2004 (the Regulation, 2004 in short) as the learned counsel for the parties have referred and relied on the provisions.

18. Rule 2 (d) defines the billing cycle or billing period to mean that the period for which regular electricity bills as specified by the Commission are issued for different categories of consumers by the distributing licensee.

19. Rule 5 of the said the Rules of 2020 provides, which is reproduced hereinbelow:

"...5. Metering-(1) No connection shall be given without a meter and such meter shall be the smart pre- payment meter or pre-payment meter. Any exception to the smart meter or prepayment meter shall have to be duly approved by the Commission. The Commission, while doing so, shall record proper justification for allowing the deviation from installation of the smart pre-payment meter or pre- payment meter.

(2) At the time of seeking a new connection the consumer shall have the option to -

(a) purchase the meter, MCB or CB and associated equipment himself, or

(b) require that the meter, MCB or CB and associated equipment be supplied by the distribution licensee, on payment of applicable charges. The distribution licensee shall ensure that tested and sealed meters of approved meter

(3) manufacturers are available to consumers for purchase and information of the places from where the consumers can purchase them is made available on its website.

(4) The meter shall be read at least once in every billing cycle in urban as well as rural areas by an authorised representative of the distribution licensee.

(5) In case of smart meters, the meters shall be read remotely at least once in every month and in case of other pre-payment meters, the meters shall be read by an authorised representative of the distribution licensee at least once in every three months. The data regarding energy consumption shall be made available to the consumer, through website or mobile App or SMS, etc. Consumers having smart pre-payment meters may also be given the data access for checking their consumption on real time basis.

(6) For post payment meters, if the meter is inaccessible to the meter reader on two consecutive meter reading dates, the consumer shall have the option to send the picture of the meter indicating the meter reading and date of meter reading through registered mobile or through e-mail. In such a case, distribution licensee may not send any notice or provisional bill to the consumer.

(7) Testing of meters shall be done by the distribution licensee within a period as may be specified by the Commission, not exceeding thirty days, of receipt of the complaint from the consumer about their meter readings not being commensurate with his consumption of electricity, stoppage of meter, damage to the seal, burning or damage of the meter, etc."

20. Rule 6 provides, which is reproduced hereinbelow:

“6. Billing and payment-- (1) Tariff for each category of consumers shall be displayed on distribution licensee's website and consumers shall be notified of change in tariff including fuel surcharge and other charges, a full billing cycle ahead of time, through distribution licensee's website as well as through energy bills.

(2) The distribution licensee shall prepare the bill for every billing cycle based on actual meter reading, except where pre-payment meters are installed, and the bill shall be delivered to the consumer by hand or post or courier or e-mail or any other electronic mode at least ten days prior to the due dateof payment.

(3)In case of non-receipt of original bill, the consumer shall be entitled to get a duplicate copy of thebill and shall also have the option to deposit self-assessed bill as per the procedure approved by the Commission:

Provided that the excess or deficit payment, as the case may be in case of self-assessment, shall be adjusted in the next bill or bills, as the case may be.

(4) In case of pre-payment metering, the distribution licensee shall issue the bill, to the consumer, on his or her request.

(5) The distribution licensee shall intimate the consumer about despatch of bill through SMS or email, or by both, SMS and e-mail, immediately and the intimation shall consist of the details of bill amount and the due date for payment.

(6) The distribution licensee shall also upload the bill on its website on the day of bill generation:

Provided that the billing details of last one year for all consumers shall also be made available on the licensee's website.

(7) The distribution licensee shall issue the first bill within a time period to be specified by the Commission, not exceeding two billing cycles, of energising a new connection where post payment meters are installed.

(8) In case the consumer does not receive the first bill within such period, he may complain, in writing. to the distribution licensee and the distribution licensee shall issue the bill within a time period, not exceeding seven days.

(9) The distribution licensee shall not generate more than two provisional bills for a consumer duringone financial year and if the provisional billing continues for more than two billing cycles exceptunder extraordinary situation due to force majeure, the consumer may refuse to pay the dues until billis raised by the distribution licensee as per actual meter reading

(10) If any bill is served with a delay of such period as specified by the Commission, not exceeding sixty days, the consumers shall be given a rebate of two to five percent as specified by the Commission.

(11) The information regarding the authority with whom grievance or complaint pertaining to bill can be lodged shall be provided along with the bill and the same shall also be made available on distribution licensees website.

(12) In case of vacation of premises, the distribution licensee shall arrange to take a special reading of the meter on receiving the consumer's written request and issue a final bill including all arrears till the date of billing and issue a No-Dues Certificate on receiving final payment, within a time period not exceeding seven days from the receipt of such final payment.

21. Clause 4.2.2.1 of the Regulation, 2004, which provides billing frequency and serving of bills prescribes that bill frequency for all categories of consumers should preferably one month. Bills shall be served to the consumers every month giving them time of 15 (fifteen) days from the date of presentation for payment. Any deviation from the same should be recorded in the bill indicating reasons thereof. The distribution licensee shall intimate the consumer of the due date on which he will receive his energy bills and also the due date for payment of the bills. This will normally be the due date for all billing cycles for the consumer. In case the due date falls on a holiday in any month, the next working day shall be the due date for that month.

22. Clause 4.3 of the said Regulation, 2004 provides as under:

4.3 DISCONNECTION OF SERVICE:

4.3.1 Disconnection due to non-payment

4.3.1.1 Where a person neglects to pay any charge for electricity or any other sum due from him to a Licensee, by the due date mentioned in the bill, in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee may, after giving not less than fifteen (15) 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 supply of electricity, 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.

4.3.1.2 The Licensee shall not be entitled to terminate the power supply in case person deposits under protest -

(α) an amount equal to the sum claimed from him, or

(b) the electricity charges due from him for each month calculated based on the average of past 6 months.

4.3.2 Disconnection on other reasons:

The licensee may also disconnect power supply to a consumer on any of the following grounds serving proper notice

a) Mandated the Licensee to do so by a person with legal authority to issue such mandate

(b) Entitled the Licensee to do so under an agreement with the consumer.

(c) The Licensee reasonably believes that the consumer has contravened any of the provisions of these Regulations which entitle the Licensee to disconnect the supply.

(d) The Licensee reasonably believes that failure to disconnect may or likely to cause a health hazard or safety risk or damage to property or to the consumer or to any other person; such as prevalence excessive leakage current as provided under 49 of the I.E. Rules, 1956.

(e) The Licensee reasonably believes that the consumers installation does not satisfy with the applicable rules or any other reasonable requirements prescribed by the Licensee.

(f) Reasonably knows that security provided by the consumer has become insufficient or the consumer has to provide additional security, which the consumer has failed to deposit within time limit prescribed.

4.3.3 Recovery of old dues:

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 a period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied.

23. Clause 6.2.1.1 the said Regulation, 2004 provides for computation of load security which prescribes, inter alia, that the category under commercial category as 120 per kW/month which is an estimated consumption. For small industry-rural and urban (connected load to 25 kVA) is 50 and 100 respectively.

24. The learned counsel for the petitioners, in addition to the ground of limitation under 56(2) of the Electricity Act, 2003, have referred to the above provisions of both the Rules of 2020 and the Regulation, 2004 and submits that the above provisions have not been followed, therefore, since the petitioners have already cleared the monthly dues, the impugned bills have been prepared contrary to the Rules and Regulations, same are beyond recoverable from the petitioners.

25. On careful consideration of the above provisions and the submissions of learned counsel for the petitioners, this Court is of the view that the above provisions of the Rules of 2020 would not apply and the Regulation, 2004 would not be an issue which requires determination in the facts of the present case as the fundamental issue is as to whether the bills and the demand raised by the licensee respondents are barred by the limitation provided under Sub-Section 2 of Section 56 of the Electricity Act, 2003. The bills raised and demanded by the licensee respondents are the additional or supplementary bills which have been raised on account of mistake. As held by the Hon'ble Supreme Court, the preparation and raising of bill by way of additional or supplementary bill on account of mistake, in my considered view, is not barred by the said provision. What is barred under the above provision is the bill raised after lapse of 2 (two) years from the date of first due.

26. Now, reference may be made to the case laws relied on by the learned counsel for the parties.

In the case of B. C. Chaturvedi (supra), it has been held by the Hon'ble Supreme Court, which is as follows:

"23. It deserves to be pointed out that the mere fact that there is no provision parallel to Article 142 relating to the High Courts, can be no ground to think that they have not to do complete justice, and if moulding of relief would do complete justice between the parties, the same cannot be ordered. Absence of provision like Article 142 is not material, according to me. This may be illustrated by pointing out that despite there being no provision in the Constitution parallel to Article 137 conferring power of review on the High Court, this Court held as early as 1961 in Shivdeo Singh case that the High Courts too can exercise power of review, which inheres in every court of plenary jurisdiction. I would say that power to do complete justice also inheres in every court, not to speak of a court of plenary jurisdiction like a High Court. Of course, this power is not as wide as which this Court has under Article 142. That, however, is a different matter."

In the case of Binny Ltd.(supra), it has been held by the Hon'ble Supreme Court, which is as follows:

"9. The superior court's supervisory jurisdiction of judicial review is invoked by an aggrieved party in myriad cases. High Courts in India are empowered under Article 226 of the Constitution to exercise judicial review to correct administrative decisions and under this jurisdiction the High Court can issue to any person or authority, any direction or order or writs for enforcement of any of the rights conferred by Part III or for any other purpose. The jurisdiction conferred on the High Court under Article 226 is very wide. However, it is an accepted principle that this is a public law remedy and it is available against a body or person performing a public law function. Before

considering the scope and ambit of public law remedy in the light of certain English decisions, it is worthwhile to remember the words of Subba Rao, J. expressed in relation to the powers conferred on the High Court under Article 226 of the Constitution in Dwarkanath v. ITO2 (SCR, pp. 540 G-541 A):

“This article is couched in comprehensive phraseology and it ex facie confers a wide power on the High Courts to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression ‘nature’, for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Court to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Article 226 of the Constitution with that of the English courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary from of Government into a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself.”

In the case of Jodhpur Tea & Industries Pvt. Ltd. (supra), it has been, which is as follows:

“7. For the aforesaid reasons, this Court has no option but to hold that during the period when the 1994 Schedule of Tariff was in force, which this Court understands to be up to 1998, the petitioner being a tea manufacturing unit without a garden is entitled to be included in Category 6 of the 1994 Schedule of Tariff and on that basis to all consequential reliefs as would reasonably flow to the petitioner.”

In the case of M/s Prem Cottex (supra), it has been held by the Hon’ble Supreme Court, which is as follows:

“21. Coming to the second aspect, namely, the impact of sub-section (1) on sub-section (2) of Section 56, it is seen that the bottom line of sub-section (1) is the negligence of any person to pay any charge for electricity. Sub-section (1) starts with the words “where any person neglects to pay any charge for electricity or any some other than a charge for electricity due from him”.

22. Sub-section (2) uses the words “no sum due from any consumer under this section”. Therefore, the bar under sub-section (2) is relatable to the sum due under Section 56. This naturally takes us to sub- section (1) which deals specifically with the negligence on the part of a person to pay any charge for electricity or any sum other than a charge for

electricity. What is covered by Section 56, under sub-section (1), is the negligence on the part of a person to pay for electricity and not anything else nor any negligence on the part of the licensee.

23. In other words, the negligence on the part of the licensee which led to short billing in the first instance and the rectification of the same after the mistake is detected, is not covered by sub-section (1) of Section 56. Consequently, any claim so made by a licensee after the detection of their mistake, may not fall within the mischief, namely, "no sum due from any consumer under this section", appearing in sub-section (2).

24. The matter can be examined from another angle as well. Sub-section (1) of Section 56 as discussed above, deals with the disconnection of electric supply if any person "neglects to pay any charge for electricity". The question of neglect to pay would arise only after a demand is raised by the licensee. If the demand is not raised, there is no occasion for a consumer to neglect to pay any charge for electricity. Sub-section (2) of Section 56 has a non obstante clause with respect to what is contained in any other law, regarding the right to recover including the right to disconnect. Therefore, if the licensee has not raised any bill, there can be no negligence on the part of the consumer to pay the bill and consequently the period of limitation prescribed under sub-section (2) will not start running. So long as limitation has not started running, the bar for recovery and disconnection will not come into effect. Hence the decision in Rahamatullah Khan and Section 56(2) will not go to the rescue of the appellant."

In the case of Rahmatullah Khan (supra), it has been held by the Hon'ble Supreme Court, which is as follows:

"5.1. The words "first due" used in the first part of sub-section (2) of Section 56 is used in the context of the sum quantified by the licensee in the bill; while the second part of sub-section (2) of Section 56 indicates the date when the first bill for the supply of electricity was raised by the licensee under the applicable State Electricity Supply Code.

5.2. By treating the words "first due" to mean the date of detection of mistake, would dilute the mandate of the two year limitation period provided by Section 56(2), since a mistake may be detected at any point of time. Furthermore, the words "recoverable as arrears of charges" would be rendered completely otiose and nugatory.

5.3. The period of limitation under Section 56(2) cannot be extended by raising a supplementary bill. The "sum due" raised in the original bill, and not paid by the consumer, must be continuously shown as arrears of charges in subsequent bills, for it to become recoverable by taking recourse to the coercive mode of disconnection of electricity supply.

5.4. If after the expiry of two years of the original demand, any genuine or bona fide mistake is detected by the licensee in the original bill, it would be entitled to raise a

supplementary bill. The licensee company would be entitled to resort to other modes of recovery, but not by disconnection of supply under sub-section (1) of Section 56 of the 2003 Act.

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 Electricity Act, 1910 governed the law pertaining to the use and supply of electricity in India. Section 24 of the 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 charge or other sum, together with any 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 sub-section 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 SEB 6 this Court while interpreting Section 24 of the Electricity Act, 1910 held that : (SCC p. 467, para 5)

“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.”

(emphasis supplied)

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 18-3-2014 for the period July 2009 to September 2011. The licensee company discovered the mistake of billing under the wrong Tariff Code on 18-3-2014. 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.”

In the case of K. C. Ninan (supra) it has been held by the Hon’ble Supreme Court, which is as follows:

“129. The second issue pertains to the implication of the period of two years provided in Section 56(2) on the civil remedies of Utilities to recover electricity dues. Section 56(2), which begins with a non obstante clause, provides a limitation of two years for recovery of dues by the licensee through the means of disconnecting electrical supply. It puts a restriction on the right of the licensee to recover any sum due from a consumer under Section 56 after a period of two years from the date when such sum became first due. If this provision is invoked against a consumer after two years, the action will be permissible when the sum, which was first due, has been shown continuously as recoverable as arrears of charges for electricity supplied. Under Section 56, the liability to pay arises on the consumption of electricity and the obligation to pay arises when a bill is issued by the licensee for the first time. Accordingly, the period of limitation of two years starts only after issuance of the bill.

134. The period of limitation under Section 56(2) is relatable to the sum due under Section 56. The sum due under Section 56 relates to the sum due on account of the negligence of a person to pay for electricity. Section 56(2) provides that such sum due would not be recoverable after the period of two years from when such sum became first due. The means of recovery provided under Section 56 relate to the remedy of disconnection of electric supply. The right to recover still subsists.”

27. On perusal of the above judgement of the Hon’ble Supreme Court, it is clear that the section 56(2) of the electricity Act, 2003, restricts the right of the licensee company to disconnect electricity supply due to non-payment of dues by consumer unless such sum has been shown continuously as recoverable as arrears of charges of electricity supplied and the bills raised for the past period. If the licensee company were to be allowed to disconnect electricity supply after the expiry of limitation period of 2 (two) years after the same become first due, it would defeat the object of the Sub-Section 2 of the Section 56 of the Act.

28. It is also seen that the sub section 2 of Section 56 does not preclude the licensee company from raising a supplementary demand after the expiry of the limitation period of 2 (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 2 (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. Therefore, the provision of Sub-Section 2 of the Section 56 of the Act does not preclude the licensee company from raising any additional or supplementary demand after the expiry of the limitation period in case of mistake or bonafide error. It does not, however, empower the licensee company to take recourse to the coercive measure of disconnection of electricity supply for recovery of the additional demand. The cases of B. C. Chaturvedi (supra) and Binny Ltd.(supra) pertains to the power of the Court under Article 226 of the constitution which are settled propositions of law having least applicability in the

present case.

29. On consideration of the matters in its entirety and the provisions of the Act and the Rules and in the light of the judgements of the Hon'ble Supreme court, in my considered view, the action of raising impugned bills by the respondents against the petitioners is not hit by the Sub-Section 2 of Section 56 of the Electricity Act, 2003, as the same appears to be additional bills or supplementary bills raised on account of mistake. However, the notice for disconnection of the electricity supply of the petitioners would not be permissible in view of the fact that the bills cannot be said to be arrears due to the petitioners. The additional or supplementary bill which has been raised on account of mistake or bonafide error is not barred under the provisions as it does not preclude the authority from raising a supplementary demand after the expiry of limitation period of 2 (two) years. It only restricts the right of the licensee to disconnect the electricity supply due to non-payment of dues after the period of limitation of 2 (two) years has expired nor does it restrict other modes of recovery which may be initiated by the licensee authority for recovery of additional or supplementary demand.

30. In the light of ratio laid down by the Hon'ble Supreme Court and applying the same in the present case, in my view, the respondent authority has raised an additional/supplementary demand on 05.12.2014 in WP(C)No.1147 of 2015; on 15.10.2015 in WP(C)No. 7154 of 2015 and on 21.06.2018 in WP(C) No. 2318 of 2019, on the discovery of mistake and discrepancies of billing under the wrong multiplier factors & CT Ratio and the limitation period of 2 (two) years have by then already expired. I am also of the considered view that Sub-section 2 of Section 56 of the Electricity Act, 2003 does not preclude the licensee company from raising an additional or supplementary demand after an expiry of limitation period of 2 (two) years in case of mistake or bonafide error. However, it does not empower the licensee authority to take recourse to the coercive measure of disconnection of electricity for recovery of additional demand. The period of limitation under Sub Sections 2 of Section 56 is relatable to sum due under Section 56. It relates to the sum due on account of negligence of a person to pay for electricity supply. It provides that such sum due would not be recoverable after the period of 2 (two) years from when such sum became first due. The recovery provided under Section 56 relate to the remedy of disconnection of electric supply. The right to recovery of the licensee authority is still open.

31. In view of the discussions made hereinabove, I am of the considered view that no notice of disconnection can be issued under Sub section 1 of Section 56 of Electricity Act, 2003. At the same time, the raising of additional/supplementary bill of an amount of Rs. 14,59,680/- (Rupees Fourteen Lakhs Fifty Nine Thousand Six Hundred Eighty) in WP(C)No.1147 of 2015; Rs. 4,60,165/- (Four Lakhs Sixty Thousand One Hundred Sixty Five) in WP(C)No. 7154 of 2015 and Rs. 25,40,414/- (Rupees Twenty Five Lakhs Forty

Thousand Four Hundred Fourteen) in WP(C) No. 2318 of 2019 against the petitioners, on account of mistake or bonafide error is not barred under Sub section 2 of Section 56 of Electricity Act, 2003.

32. Consequently, the notice for disconnection of the electricity supply to the petitioners are hereby set aside and quashed. However, the respondent authorities would be at liberty to recover the above additional/supplementary bills against the petitioners by resorting to appropriate mode of recovery without resorting to the coercive measure of disconnection of electricity supply against the petitioners.

33. In the result, the writ petitions are partly allowed and disposed of. No order as to costs.