

(2010) 04 GUJ CK 0018

In the Gujarat High Court

Case No : Special Civil Application No. 17845 of 2003

Ganesh Oil Industry

APPELLANT

Vs

Gujarat Electricity Board and Others

RESPONDENT

Date of Decision : 20-04-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Electricity Act, 1910 — Section 26(6)

Citation : (2010) 04 GUJ CK 0018

Hon'ble Judges : K.A. Puj, J

Bench : Single Bench

Advocate : Zubin F. Bharda, for the Appellant; R.V. Acharya, for Respondent Nos. 1, 2 and 3 and Rashesh Rindani, AGP, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Puj, J.—The petitioner has filed this petition under Article 226 of the Constitution of India praying for quashing and setting aside the impugned judgment and order dated 17.11.2003 passed by the respondent No. 3 i.e. the Appellate Committee, in Appeal No. A-84 of 2003. The petitioner has also prayed for the direction to the respondent No. 1 - the Electrical Inspector to decide the dispute raised by the petitioner as per Section 26(6) of the Indian Electricity Act, 1910.

2. This Court had passed the order on 22.12.2003, issuing the Notice on the respondents and by way of an ad interim order, the respondent - Electricity Board was restrained from disconnecting the electricity supply of the petitioner on condition that the petitioner shall deposit 20% additional amount of the revised supplementary bill, which the petitioner might have received from the respondent Electricity Board. The petitioner has paid the said amount of Rs. 2,04,560/- on 30.12.2003. The petition was admitted on 25.10.2004 and the petitioner was directed to pay the outstanding dues of the respondent Electricity Board in respect of the supplementary bill and the delay payment charges, if any,

in six equal monthly installments, starting from 16th November, 2004. The petitioner was also directed not to transfer the unit and/or the property without the permission of the Board. The petitioner was directed to pay the monthly consumption bills regularly and also directed to file an undertaking in these proceedings to the above extent within a period of 15 from the date of the order.

3. Mr. Zubin F. Bharda, learned Advocate, appearing for the petitioner, submits that all the conditions have been complied with by the petitioner and there is no dispute about the same.

4. On behalf of the respondent - Electricity Board, affidavit-in-reply is filed by the Deputy Engineer, Radhanpur, on 03 March, 2004. Ms. R.V. Acharya, learned Advocate, appears on behalf of the respondent Nos. 1, 2 and 3 and Mr. Rashesh Rindani, learned AGP, appears on behalf of respondent No. 4 - Electrical Inspector.

5. The case of the petitioner is that the petitioner is manufacturer of oil, having its manufacturing unit, situated at National Highway Road, Sardarpura, Taluka-Radhanpur, District Patan. The petitioner has challenged the validity, legality and propriety of the impugned judgment and order passed by the respondent No. 3 in Appeal No. A-84 of 2003 on 17.11.2003 and the action of the respondent No. 2 raising an exorbitant supplementary bill of Rs. 12,79,193.43 ps alleging theft by converting the case of slowness of meter into a case of theft of electrical energy on absolutely technical and flimsy grounds.

6. It is the case of the petitioner that on 15.01.2002, the respondent No. 2 came to the business premises of the petitioner for replacing the Board meter with static meter and at that time installing the static meter, the inspection sheet was prepared and four seals were applied. Out of which, one seal bearing No. 4-I-093501 of Satya brand was applied on terminal point and one seal bearing No. 4-I-093502 of the same brand was applied on the Meter Metal Box (MMB). Again on 03.12.2002, the respondent No. 2 inspected the business premises of the petitioner and upon checking the installation with accurate check meter, the respondent No. 2 found that the meter was running slow by 60.88% defect. Petitioner therefore expressed his desire to approach the Electrical Inspector under the provisions u/s 26(6) of the Indian Electricity Act, 1910 to get the meter in question tested. The inspection sheet was prepared by the respondent No. 2 on the said date wherein the respondent No. 2 mentioned the serial number on the seal on MMB to be 2-I-093502. The petitioner thereafter made an application on 09.12.2002 before the Electrical Inspector who examined the meter in question. Pursuant to the said application, the Electric Inspector visited the business premises of the petitioner on 03.01.2003, in the presence of the respondent No. 2 who at that time brought to the notice of the Electrical Inspector the difference in the serial number of the plastic seal which was applied on the MMB and raised technical objection against the checking of the meter by the Electrical Inspector and it was alleged that the petitioner had indulged into the commission of theft of electric energy by tampering with the seal of MMB. Thereafter, the inspection sheet was prepared by respondent No. 2 on

03.01.2003 and it was alleged that theft has been committed by tampering with the seal applied on the MMB. On 07.01.2003, the electricity supply of the petitioner was disconnected and a supplementary bill amounting to Rs. 12,79,193.03 was issued. On payment of 30% amount of the bill, the electric supply was restored and the statutory Appeal was preferred by the petitioner. The said Appeal came to be decided by the Appellate Committee on 17.11.2003 and it was partially allowed. However, the main contention of theft of electric energy was upheld by the Appellate Committee.

7. It is the order of the Appellate Committee which is under challenge in the present petition.

8. Mr. Zubin Bharda, learned Advocate, appearing for the petitioner has submitted that the Electrical Inspector while refusing to exercise powers u/s 26(6) of the Electricity Act, 1910, in order to discharge his duties cast upon him under the Act, on absolutely flimsy and technical grounds that there being a difference in the serial number of seals affixed on the meter metal box, he has not exercised his powers. He has further submitted that the respondent authorities have converted the case of slowness of meter into a case of theft of electric energy. He has further submitted that the respondent authorities have not assigned any reason, whatsoever, as to how this slowness of meter was converted into a case of theft of electric energy committed by the petitioner. Mr. Bharda further relied on the decision of the Apex Court in the case of Madhya Pradesh Electricity Board and Others Vs. Smt. Basantibai, wherein it is held that the dispute where meter in question is correct one or false is to be decided by the Electrical Inspector and for that pending dispute the Electricity Board cannot issue a supplementary bill or threaten disconnection of supply of electricity. He has further submitted that even in the Appeal preferred by the petitioner, most of the contentions of the petitioner were accepted by the Appellate Committee, however, the Appellate Committee has come to the conclusion that the petitioner has committed theft of electricity by tampering with the MMB seal. He has further submitted that the Appellate Committee has also accepted the fact that the intention of the petitioner to get the meter checked by Electrical Inspector was made both in the checking sheets as well as in the statement of consumer dated 03.12.2002. He has further submitted that the Appellate Committee has also recorded the finding that the laboratory report clearly shows that there was no tampering in terminal cover seal but only the plastic MMB seal was found duplicate and tampered with. Despite this fact, the Appellate Authority has come to the conclusion that the theft of electric energy was committed by the petitioner and accordingly the supplementary bill issued by the respondent authorities was confirmed qua theft of electric energy aspect is concerned and only partial relief was granted with regard to number of days.

9. Mr. Bharda, in support of his submission, has relied upon the decision of this Court in the case of Modern Terry Towels Limited v. Gujarat Electricity Board and Ors. as reported in (2003) 44 GLR 3122, wherein it is held that merely because

there is an exposure of a stud hole without more, a presumption cannot be raised against the consumer that there was unauthorized use of energy by employing artificial means. These are the aspects which have to be taken into consideration by the authority while adjudicating a case before it. The standard of proof need not be of the nature as required in criminal proceedings but has to be akin to that required in civil proceedings i.e. based on preponderance of probabilities.

10. Based on the above factual position as well as settled legal position, Mr. Bharda has strongly urged that the supplementary bill raised by the respondent authorities on the basis of alleged commission of theft and the same being confirmed by the appellate authority are required to be quashed and set aside and the matter should be remanded to the respondent No. 4 Electrical Inspector with direction to decide the slowness of the meter.

11. Ms. R.V. Acharya, learned Advocate, appearing for the respondents, on the other hand strongly supported the order passed by the Appellate Committee. She has submitted that the Appellate Committee, consisting of experts, after considering all the aspects, has reduced the supplementary bill to a considerable amount, which cannot be interfered with by this Court while exercising its jurisdiction under Article 226 of the Constitution of India. She has further submitted that the petitioner has failed to give any explanation as to why the seal on meter metal box was changed and the number was not tallied. She has further submitted that no reason, whatsoever, was assigned by the petitioner as to how the meter was running slow to the extent of 60.88%. She has further submitted that the checking sheets as well as the statement of the petitioner confirmed that the seal on meter metal box was changed and meter was running slow to the extent of 60.88%. Since both these aspects are found, not merely because of slowness of meter, but, because of commission of theft and, hence, the Electrical Inspector has rightly taken the view that it should not be reported to him u/s 26(6) of the Indian Electricity Act, 1910. She has further submitted that since meter metal box seal was found duplicate and tampered with, the petitioner was booked for theft of electric energy on the strength of laboratory report and the slowness of the meter found at the time of checking and a supplementary bill amounting to Rs. 12,79,193.42 was issued to the petitioner on 07.01.2003. She has further submitted that the appellate committee, consisting of experts, after considering all the aspects, has reduced the supplementary bill. Hence, there is no question for showing any indulgence in the order passed by the Appellate Committee. She has therefore submitted that the petition be summarily dismissed with costs.

12. Having heard the learned Advocates for the parties and having considered the impugned order passed by the Appellate Committee and in light of the statutory provision contained u/s 26(6) of the Act and other relevant provisions, the Court is of the view that, the Appellate Committee has considered all the aspects of the matter and arrived at the correct conclusion, which is not required

to be interfered with by this Court while exercising its jurisdiction under Article 226 of the Constitution of India. The Appellate Committee has recorded undisputed facts in its order and based on those undisputed facts, it has come to the conclusion that the case of theft of electrical energy is established against the petitioner. The court, therefore, should not interfere into the said finding. There is no answer to the allegation as to how the seal applied on the meter metal box was tampered with and why the meter was running slow to the extent of 60.88%. Both these aspects are clear and they are proved. In this view of the matter, the Appellate Authority has rightly come to the conclusion and confirmed the supplementary bill raised by the respondent authorities by considering the case of commission of theft of electric energy. The decision relied upon by Mr. Bharda would not render any assistance to the petitioner since the judgment of the Apex Court is altogether in a different context as there was only issue regarding the slowness of the meter and there was no allegation of theft in that case. The judgment of this Court in the case of *Modern Terry Towels Ltd. v. Gujarat Electricity Board* (supra) would also not render any assistance to the petitioner as admittedly the order of the appellate authority was without assigning any reasons, and in that context, the court has made certain observations that the statutory authorities must have passed reasoned order. Here, in the present case, the Appellate Authority has considered all the aspects of the matter and thereafter come to the conclusion that the impugned order cannot be said to be passed without any reasons or cannot be said to be a non-speaking order. Hence, both the authorities relied upon by the petitioner would not render any assistance to the petitioner. Considering the entire facts and circumstances of the case and taking overall view of the matter, the court is of the view that there is no infirmity in the order passed by the appellate authority. Hence, the said order is hereby confirmed. The petition is accordingly dismissed. Rule is discharged without any order as to costs. Interim relief granted earlier shall stand vacated.