

(2015) 02 GUJ CK 0009

In the Gujarat High Court

Case No : Special Civil Application No. 3486 of 1999

Ganesh Oil Mills

APPELLANT

Vs

Paschim Gujarat Vij Company Limited

RESPONDENT

Date of Decision : 03-02-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 02 GUJ CK 0009

Hon'ble Judges : Abhilasha Kumari, J.

Bench : Single Bench

Advocate : Ketan D. Shah, for the Appellant; Lilu K. Bhaya and P.K. Pancholi, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Abhilasha Kumari, J.—This petition under Article-226 of the Constitution of India has been preferred, challenging the order dated 28.01.1999, passed by the Appellate Committee of the respondent-Gujarat Electricity Board, whereby the appeal of the petitioner has been partly-allowed. The petitioner further prays that the impugned supplementary bill be held to be illegal, unjust and arbitrary and may be quashed and set aside.

2. The brief facts of the case are that the petitioner herein is a proprietorship concern engaged in the business of extraction of oil. The petitioner is a consumer of the erstwhile Gujarat Electricity Board, now known as Paschim Gujarat Vij Company Limited ("the respondent Electricity Company", for short). According to the petitioner, its business of extraction of oil in its oil mill is a seasonal one and the factory of the petitioner remains closed from the months of July to November, every year. According to the petitioner, the factory opens only in the first week of December. In November, 1997, when the petitioner tried to open its factory, it was found that the meter installed by the respondent was not functioning. The petitioner made an application dated 01.12.1997, to the Divisional Office of the respondent, after paying requisite fees, requesting for a

change of the meter. The officers of the respondent came to the site on 03.12.1997, and the meter was changed after drawing necessary proceedings. Thereafter, the meter was tested in the Meter Testing Laboratory at Sabarmati, Ahmedabad on 28.01.1998. A supplementary bill of Rs. 15,85,038.85 paise was issued by the respondent to the petitioner, on the ground of alleged theft of electricity. The petitioner deposited 30% of the supplementary bill, after which the electricity connection was restored on 12.02.1998. The petitioner filed an appeal against the supplementary bill before the Appellate Committee of the respondent, as well as a detailed representation dated 12.01.1999. By the impugned order dated 28.01.1999, the Appellate Committee partly-allowed the appeal of the petitioner. The petitioner is aggrieved as the appeal was not allowed, in toto. Hence, it has approached this Court by way of the present petition.

3. Mr. Ketan D. Shah, learned advocate for the petitioner has submitted that the Appellate Committee has committed a serious error in not accepting the detailed contentions of the petitioner in the memorandum of the appeal, to the effect that there was no theft of electricity. It is submitted that the impugned order of the Appellate Committee is based upon assumptions and presumptions, without considering the material on record. That the Laboratory Inspection Report dated 28.01.1998 indicates that the plastic seal installed on the metal meter box was found to be in its original position. The Godrej Lock is also found to be in its original position. The paper seal affixed on the metal meter box was found to be intact. On examining the plastic seal affixed on the terminal of the petitioner and after opening the seal, no irregularities were found. Thus, no irregularities were found in the seals affixed on the meter body, metal meter box and the terminal cover seals, the paper seal and locks, therefore, it is clearly not the case of theft of electricity. There is no concrete material on record to arrive at the conclusion that the petitioner has committed theft of electricity.

4. In support of this submission, reliance is placed on *Modern Terry Towels Ltd. Vs. Gujarat Electricity Board and Others*, .

5. It is next submitted that the Laboratory Inspection Report further shows that the PT coils are deliberately burnt by applying artificial high voltage. This finding is on the basis of assumptions and presumptions, without any proof.

6. Learned advocate for the petitioner further submits that the business of the petitioner is a seasonal one, as groundnuts are available at a very high rates during the period between July to November. Therefore, it is not profitable to extract oil by purchasing groundnuts at such a high rate, therefore, during this period, the factory remains closed for every year. There was prior intimation to the office of the respondent that the factory is closed, which has not been taken into consideration by the Appellate Committee.

7. That, the documents annexed by the petitioner to the memorandum of the appeal have not been specifically dealt with by the Appellate Committee in the

impugned order and no specific findings regarding the said documents have been given. Hence, the impugned order passed by the Appellate Committee lacks proper application of mind.

8. In support of this submission, learned advocate for the petitioner has relied upon the judgment in the case of Punjab State Electricity Board and Another Vs. Ashwani Kumar, .

9. The petition has been strongly opposed by Ms. Lilu K. Bhaya, learned advocate for the respondent Electricity Company by submitting that the impugned order of the Appellate Committee has been passed after taking into consideration all the contentions raised by the petitioner and the documents produced by him.

10. The submission of the petitioner that its unit is a seasonal one has been considered in the order of the Appellate Committee, which has concluded that as per the relevant circular of the respondent, the consumer has to apply in advance before the closure of the previous year, in order to avail of the seasonal benefit. However, the petitioner has not made any such application, therefore, he is not entitled to a seasonal benefit. It is submitted that the intimation given by the petitioner is dated July and August, 1997, of the same year, therefore, as the said intimation is not given in advance, before the closure of the previous year, the seasonal benefit cannot be extended to the petitioner as per the Policy of the respondent-Company. The respondent Company has to arrange its affairs according to the demand and it is incumbent upon the consumer to intimate it in advance. However, the Appellate Committee has given the benefit which was permissible under law, derived at the net chargeable days, to the petitioner. Thereafter, the supplementary bill issued to the petitioner has been revised and reduced.

11. That the Appellate Committee has also considered that there was no consumption in the months of July, August and September, 1997, and has taken into consideration the recession and small diversity of taking the load factor instead of unity at 0.9. Thus, the bill issued to the petitioner pursuant to the decision of the Appellate Committee, is in accordance with law.

12. It is next submitted that as per the Laboratory Inspection Report, there was no neutral wire coming out from the terminal block of the meter. It has been further observed that black spots were found on every part of the meter and the three potential coils of the meter were found to be burnt. It has been observed by the Appellate Committee in the impugned order that if an electric fault would have occurred in the system of the respondent, then all the three pressure coils would not get over headed and burnt, in the manner in which they were found. It could only have happened by the application of high voltage from outside, artificially. Looking to the Laboratory Inspection Report, it has been concluded by the Appellate Committee that the petitioner has burnt the potential coils of the meter with a view to commit theft of electricity.

13. That, as the Laboratory Inspection Report indicates that the meter has been

burnt due to high voltage applied artificially from some external source, there is sufficient evidence to hold that the petitioner has committed theft of electricity. When a finding of theft has been arrived at, the supplementary bill came to be issued according to the ABCD formula, which is in accordance with law.

14. On the basis of the above submissions, it is prayed that this Court may not interfere with the order passed by the Appellate Committee and the petition be dismissed.

15. This Court has heard learned counsel for the respective parties at length, perused the averments made in the petition, contents of the impugned order and other documents on record.

16. Learned advocate for the petitioner has laid great emphasis on the aspect that the Laboratory Inspection Report indicates that the plastic seal installed on the metal meter box, Godrej lock and paper seal affixed on the metal meter box, are found to be intact and no irregularities are found after opening the seal. According to the learned advocate for the petitioner, this indicates that there was no theft of electricity and the finding of the Appellate Committee to the contrary, is based on assumptions and presumptions.

17. A perusal of the Laboratory Inspection Report indicates that black spots were found on every part of the meter and three potential coils of the meter were found to be burnt, which does not happen in normal circumstances even when there is an electric fault in the system of the respondent-Electricity Company. Therefore, it indicates that the meter has been burnt by the application of high voltage from outside, in an artificial manner. The Laboratory Inspection Report has arrived at this conclusion after proper checking and application of mind, and has also taken into consideration the possible faults that could have occurred before concluding that, in normal circumstances, even if there is an electric fault, the meter would not get burnt and the three pressure coils of the meter would not get burnt except by the application of high voltage from outside, artificially. It may be kept in mind that this conclusion has been arrived at by highly qualified, technical persons, and there is nothing on record to indicate that it is incorrect. The Appellate Committee has, therefore, relied on this conclusion of the Laboratory Inspection Report and has found that the meter could only have been burnt by application of high voltage from outside, in an artificial manner. This finding is based upon cogent material on record, in the shape of the Laboratory Inspection Report, therefore, it is not required to be interfered with. The petitioner has not produced any material on record to the contrary before the Appellate Committee. Merely by stating that the finding is based on assumptions and presumptions is not sufficient to dislodge it, as this finding flows from the opinion expressed in the Laboratory Inspection Report, part of which are being relied upon by the petitioner itself. In the view of this Court, the finding arrived at by the Appellate Committee, to the effect that it is a case of theft of electricity, being a finding of fact based upon cogent material on record, cannot be interfered with.

18. Once the finding that the petitioner has committed theft of electricity is upheld, it follows that the supplementary bill would be issued in accordance with the procedure for theft of electricity and the ABCD formula would be applied. The supplementary bill has been issued as per the ABCD formula, which is applicable to cases of theft.

19. In order to satisfy itself regarding the above finding, the Appellate Committee has checked whether the meters situated in other similar units in the same locality were found to be burnt in a similar manner. Upon scrutiny, it was found that no such incident had been reported in respect of meters getting burnt in a manner that the current coils are not damaged, but the potential coils are damaged. The Appellate Committee has taken care to rule out any other possibility.

20. The submission of the petitioner regarding his business being a seasonal one has been dealt with at length, by the Appellate Committee. The petitioner has relied upon Nil consumption recorded in his meter from August to November, 1997, and upon the two applications given by him in July and August, 1997. The Appellate Committee has found, after checking the record and on the basis of the relevant circular of the respondent, that a consumer who wants to avail of a seasonal benefit must apply in advance, in the previous year. In the present case, the petitioner has not made an application in advance in the previous year, therefore, it was found that he is not entitled to a seasonal benefit even though Nil consumption is recorded during the period.

21. The learned advocate for the petitioner has submitted that the particulars of the circular mentioned in the impugned order have not been stated, whereas in the affidavit-in-reply filed on behalf of the respondent, Clause No. 4.1. 5(a) and (b) of the Conditions of Supply have been quoted. Clause (b) of the Conditions of Supply states that a consumer, who desires to be billed for the minimum charges on annual basis shall intimate to that effect in writing in advance about the off-season period during which energy consumption, if any, shall be mainly for overhauling of the plant and machinery. It is submitted that it is nowhere mentioned in the Conditions of Supply that the application may be made in the previous year.

22. It is true that in impugned order, the specific details of the Circular have not been stated. The respondent has not produced the Circular on record, but has mainly relied upon Clause-4.1.5(a) and (b) of the Conditions of Supply in the affidavit-in-reply. However, there is no reason to disbelieve the Appellate Committee that a circular, as mentioned in the impugned order, was in operation at the time of the passing of the impugned order, requiring a consumer to make an application in advance, in the previous year, if he wants to avail of the seasonal benefit. Merely because the said Circular has not been produced by either the petitioner, or the respondent, does not mean that it did not exist when the impugned order was passed. The petitioner has not applied in advance, as the applications are made in July and August, 1997, and the period for which the

petitioner wants a seasonal benefit is from July to November of the same year.

23. The respondent is an Electricity Company that has to arrange the distribution and supply of electricity to its consumers upon the estimated demand. For this purpose the consumer is required to intimate the Electricity Company well in advance regarding the requirement of power, or lack of it, by the consumer. The petitioner has made applications in July and August, 1997, and has wanted to avail of the benefit during the same months, upto November, 1997. This is not in accordance with the Policy of the respondent-Company. It cannot even be said that the applications are made in advance as they are made in the same months for which the benefit is sought. As the petitioner has not applied well in advance, in the previous year, the benefit of seasonal shut down has rightly not been granted to it. The findings of the Appellate Committee, to the effect that the benefit of seasonal shut down cannot be granted to the petitioner as it has not made an application well in advance, therefore, cannot be said to be unreasonable or arbitrary.

24. In the view of this Court, the order of the Appellate Committee is based upon cogent findings arrived at after scrutinizing of the material on record. It is not necessary for the Appellate Committee to discuss, in detail, each and every document produced by the petitioner before it. Suffice it to say that the impugned order reveals that the Appellate Committee has gone through the entire record. Hence, this Court is unable to accept the contention of petitioner that the documents produced by it have not been dealt with and the impugned order has been passed only on the basis of assumptions and presumptions.

25. Coming to the judgment relied upon by the petitioner in *Modern Terry Towels Ltd. Vs. Gujarat Electricity Board and others* (Supra.), this Court has held as below:

"28. The appellate authority is required to take into consideration that it is primarily required to record of fact after appreciating the evidence on record, and for this purpose it shall have to consider whether there is evidence, or whether it is a case of lack of evidence or a case of insufficient evidence. The rule of "no evidence" as summarised by this Court in the case of *Siddharth Mohanlal Sharma Vs. South Gujarat University*, , has been succinctly stated in the following terms.

"The English Courts have not construed the words "no evidence" narrowly. The rule of "no evidence" is there attracted not only in cases where there is complete lack of evidence, that is to say, where there is not a little or shred of evidence, but also in cases where the evidence, if any, is not capable of having any probative value, or on the basis of which no Tribunal could reasonably and logically come to the conclusion about the existence or non-existence of facts relevant to the determination. According to the English decisions, even though a domestic tribunal may act on evidence not admissible according to legal rules in a Court of law, unless such evidence has some probative value in the sense

mentioned above, it would be a breach of natural justice and/or an error of law to found any adverse decision thereon. The "no evidence", rule has the same content and meaning in our country as in England. "No evidence" does not merely signify total dearth of evidence, evidence which does not reasonably support the conclusion is also comprehended within the meaning of the said expression. In other words, cases where there is complete lack of evidence and cases where the evidence, if any, is incapable of rationally leading to the conclusion reached, are both treated on a par so far the applicability of the rule of "no evidence" concerned. Mere suspicion, even if honestly and bona fide entertained on the basis of apparently cogent circumstances, is held to be out of bounds even in domestic inquiries, where the principle that in punishing the guilty scrupulous care must be taken to see that the innocents are not punished, is found to apply as much as it applies to regular criminal trials. In the ultimate analysis, the test which must be applied is whether there is some material capable on having any evidential value. If not, the case must be held to fall within the mischief of the rule of "no evidence"" 29. Though the appellate committee is not a Court of Law and is not expected to function like a Civil Court it is necessary that it approaches the case before it by applying principles of natural justice and passing a reasoned order. As stated by the Supreme Court in the case of Punjab State Electricity Board and Another Vs. Ashwani Kumar, :

"When the provision for appeal by way of review has been provided by the statutory instructions, and the parties are directed to avail of the remedy, the authorities are enjoined to consider all the objections raised by the consumer and to pass, after consideration, the reasoned order in that behalf, so that the aggrieved consumer, if not satisfied with the order passed by the Board/appellate authority, can avail of remedy available under Article 226 of Constitution Therefore, by necessary implication, the appropriate competent authority should hear the parties, consider their objections and pass the reasoned order, either accepting or negating the claim. Of course it is not like a judgment of a Civil Court....." This approach is all the more necessary because as laid down by this Court in the case of Shamji Ramji Vs. Deputy Engineer (O and M) GEB, Dwarka and others reported in 2000(4) GLR 3101, a consumer has no right to engage an Advocate to represent his case before the appellate authority.

30. In light of what is stated hereinbefore, it is apparent that in the present case the Board has failed to discharge the onus which lay upon it and the appellate committee has similarly failed to apply its mind to this aspect of the meter. The appellate order at Annexure "A" is therefore set aside. The petitioner, during the course of hearing, very fairly agreed that in light of the observations of this Court as regards the true scope of term "theft" and "malpractice", it would willingly go before the appellate authority and present its case again provided the appellate committee ensures that the Board supplies all the necessary data which the petitioner had requested for."

26. The principles of law enunciated by this Court in the above judgment cannot

be disputed. However, in the present case, the impugned order shows that the Appellate Committee has taken into consideration the material on record and, after doing so, has recorded findings of fact. Therefore, this judgment would not be helpful to the petitioner.

27. In Punjab State Electricity Board and another Vs. Ashwani Kumar (Supra.), this Court has held that the appropriate Competent Authority should hear the parties, consider the objections and pass a reasoned order, either accepting or negating the claim. If the principles of law enunciated by the Supreme Court in the said judgment are applied to the present case, it is found that the impugned order has been passed by the Appellate Committee after hearing the parties and considering the objections and the material on record.

28. The impugned order is a well-reasoned one, covering every aspect of the matter and the evidence on record. The findings of fact arrived at by the Appellate Committee in the impugned order are based on material on record and cannot be termed as "assumptions and presumptions" as stated by the petitioner.

29. For the above reasons, this Court does not find any perversity, illegality or arbitrariness in the impugned order dated 28.01.1999, passed by the Appellate Committee, so as to warrant the interference of this Court.

30. Consequently, the petition is dismissed. Rule is discharged. There shall be no orders as to costs.

At this stage, Mr. Ketan D. Shah, learned advocate for the petitioner prays that the implementation of the judgment be stayed for some time. In the interest of justice, the implementation of the present judgment is stayed for a period of fifteen days.