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**(2009) 06 GUJ CK 0005**

**In the Gujarat High Court**

**Case No :** Special Civil Application No. 4262 of 1997

Gujarat Electricity Board

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

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**Date of Decision :** 18-06-2009

**Acts Referred:**

Electricity Act, 1910 — Section 26(6), 36(2)

**Citation :** (2009) 06 GUJ CK 0005

**Hon'ble Judges :** R.R. Tripathi, J

**Bench :** Single Bench

**Advocate :** R.V. Acharya, for the Appellant; Manisha Narsinghani, AGP for Respondents 1-2 and A.J. Shastri, for Respondent 3, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Ravi R. Tripathi, J.—The present petition is filed by Gujarat Electricity Board through its Executive Engineer (O&M) City Sub Division, Kadi. Though Gujarat Electricity Board is no more in existence, the learned advocate appearing for the petitioner has not taken care to carry out the necessary amendment in the cause title of the petition.

2. The grievance of the petitioner is that order dated 17.1.1997 passed in Appeal No. 7 of 1996 by respondent No. 1 - Deputy Secretary, Energy and Petrochemicals Department is not in accordance with law and the same is required to be quashed and set aside.

3. The facts pertaining to the filing of the petition are mentioned in paragraph 2 wherein it is stated that:

It may be pointed out at the outset that the petitioner had issued bill for an amount of Rs. 1,91,813.21 Ps, against which the respondent No. 3 had preferred an appeal before the respondent No. 2 u/s 26(6) of the Indian Electricity Act, 1910 (hereinafter referred to as "the Act"). Though the subject matter did not pertain to the dispute as to whether the meter is correct or not and the

impugned bill was issued only because there was some calculation error in the previous bill, the Electrical Inspector quashed the bill by his order dated 12th April 1989. The said order dated 12th April 1989 was challenged by the petitioner herein by preferring an appeal before the respondent No. 1 u/s 36(2) of the Act. The said appeal of the petitioner was allowed by the respondent No. 1 by his order dated 6th October 1995 holding that the order of the Electrical Inspector is without jurisdiction and he could not have exercised the powers u/s 26(6) of the Act since the matter did not pertain to the question regarding correctness of the meter. Without challenging the said order dated 6th October 1995 before the appropriate higher forum, the respondent No. 3 herein filed a review application before the respondent No. 1 contending that even if there is some calculation error, it should be construed as a question regarding correctness of the meter. The respondent No. 1 entertained the said review application, renumbered the appeal as Appeal No. 7/96, and proceeded to pass the impugned order at Annexure A, which is wholly without jurisdiction since once having allowed the appeal of the petitioner, the respondent No. 1 has no jurisdiction, competence, authority or power to review his order. Even on merits, the petitioner is challenging the impugned order at Annexure A.

4. Other relevant facts of the petition are stated in paragraph 3.

5. Learned advocate Mr. Shastri appearing for respondent No. 3 invited the attention of this Court to the fact that respondent No. 3 had approached the Civil Court by filing Special Civil Suit No. 386 of 1988 in the Court of learned 5th Joint Civil Judge (SD), Mehsana. The suit was filed for declaration and permanent injunction. The learned advocate invited attention of this Court to the contents of paragraph 2 of the judgment and the same contains the denial of the averments made in the plaint.

6. What is important for consideration of this Court is that it is the case of respondent No. 3-plaintiff that on 19.2.1987 in the absence of the personnel of respondent No. 3 firm the personnel of the petitioner Board had visited the place of respondent No. 3 and had taken away the electric meter and the electric supply was disconnected. The personnel of the petitioner Board informing Jitubhai who was present in the premises of respondent No. 3 took away the meter for testing and signatures of the persons who were present at the site were taken. The petitioner then served respondent No. 3 firm with bill dated 25.2.1987 applying ABCD formula amounting to Rs. 52,005.00. The petitioner Board had also intimated the respondent No. 3 that only after 20% of the amount of the bill is paid the objections of respondent No. 3 will be taken into consideration and the electric supply will be restored. Respondent No. 3 deposited the amount of Rs. 10,400/- being 20% of the bill was paid on 25.2.1987 and filed the appeal before the Board. The said appeal was dismissed by the Board without giving any opportunity to produce the evidence or to present the case and asked respondent No. 3 to pay the amount of the bill. It is the case of respondent No. 3 herein that earlier meter was checked by the

officers of the petitioner Board and every time the meter was found to be intact. It is also the case of the plaintiff-respondent No. 3 that the meter was checked in Kalol Laboratory and panchnama was made in Kadi Laboratory. The checking was carried out without keeping the panchas - independent persons present; that the persons concerned were compelled to sign panchnama. Though in the panchnama, wiring of the meter, the meter seals and the glass of the meter box were found to be in order the petitioner Board drew an inference that the seals in the meter were tampered and came to the conclusion that respondent No. 3 herein has indulged in theft of electricity and issued the bill for Rs. 52,005.00 illegally.

7. The learned Judge raised the following issues:

- (1) Whether plaintiff proves that plaintiff is entitled to file this suit?
- (2) Whether defendant proves that the plaintiff was tampered with the meter and theft the electric supply illegally?
- (3) Whether plaintiff proves that this Court has jurisdiction to try this suit?
- (4) Whether defendant proves that this suit deserves to be dismissed on the ground of delay, laches and estoppel?
- (5) Whether defendant proves that defendant is entitled to recover the amount of difference which was calculated subsequently as alleged in w.s.?
- (6) What order and decree?

8. The learned Judge has answered issue Nos. 1 and 3 in the affirmative while issue Nos. 2,4 and 5 in the negative and passed the final order allowing the suit of the plaintiff.

9. The learned advocate for respondent No. 3 invited attention of this Court to the discussion relating to issue No. 5 in paragraph 10 of the judgment wherein he pointed out that the case of the petitioner Board that the petitioner Board has committed an error in supplying the bill without applying multiplication of ten is also considered at length by the learned Judge and has given a finding against the Board. This judgment of the learned 5th Joint Civil Judge (SD), Mehsana was challenged by filing First Appeal before this Court being First Appeal No. 4870 of 1995. This Court (Coram: B.C. Patel & S.D. Dave JJ. (as they then were)) by order dated 8.8.1996 dismissed the First Appeal. The said order is reproduced below for the ready reference:

Gujarat Electricity Board has preferred this appeal against the judgment and decree passed by the learned 5th Joint Civil Judge (SD) at Mehsana below Exh.93 on 16th December 1994 in Special Civil Suit No. 386 of 1988.

2. In the cross-examination, officer of the Board has stated that when the panchnama was prepared, the meter was in order and the disc was found rotating correctly. There is also mention about the seal applied on the meter at

the relevant time. It is also observed by the learned trial Judge that the Board has not produced the relevant records before the court to indicate as to what type of seal was applied. It is required to be noted that while applying seal, details are noted in a register but that register is not produced before the trial court and the trial court has rightly drawn adverse inference against the Board.

No other contentions are raised before us.

3. In view of what is stated above, the appeal stands dismissed summarily.

10. In view of the fact that no other contentions were raised before this Court the petitioner Board cannot be allowed to contend before this Court that case of the petitioner Board is not that of the tampering of the meter but as of supplying the bill without applying multiplication of ten.

11. In view of the aforesaid judgment and order of the learned 5th Joint Civil Judge (SD), Mehsana which is confirmed by this Court in First Appeal, this Court finds no substance in the present petition. The petition is dismissed. Rule is discharged. Interim relief, if any stand vacated. No order as to costs.