

(2014) 07 GUJ CK 0095

In the Gujarat High Court

Case No : Letters Patent Appeal No. 68 of 2008 in Special Civil Application No. 1261 of 2001

Gujarat Electricity Board Head Office

APPELLANT

Vs

Mayadevi Harbhagvandas Tirthdham Uttar Buniyadi

RESPONDENT

Date of Decision : 18-07-2014

Acts Referred:

Citation : (2014) 07 GUJ CK 0095

Hon'ble Judges : V.M. Sahai, J;Abdullah Gulamahmed Uraizee, J

Bench : Division Bench

Advocate : Lilu K. Bhaya, Advocate for the Appellant; G.M. Amin, Advocate for the Respondent

Judgement

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Abdullah Gulamahmed Uraizee, J.—We have heard Ms. Lilu Bhaya, learned counsel for the appellants and Mr. G.M. Amin, learned counsel for the respondent.

2. By way of filing this appeal, the appellants-original respondents have challenged the order dated 14th June 2007 passed by the learned Single Judge in Special Civil Application No. 1261 of 2001 whereby the learned Single Judge has allowed the writ petition filed by the respondent-original petitioner and directed the appellants to give connection to the petitioner for water works on HP basis electric charges.

3. The facts of the appeal are that the respondent-original petitioner is a registered trust and is engaged in imparting education in a remote village of Krashna Nagar (Kothi), Taluka Dehgam, District Gandhinagar. The respondent has a facility of VIII Standard and X Standard with the main subject of agricultural farming. For the purpose of setting up of the School, the State Government has granted land to the respondent to enable it to run the educational institution. The respondent applied to the appellant for electricity connection and in the application, it was stated that the connection was needed

for installing facility for water, for domestic use of the inmates of the hostel, who belong to OBC category and also for school and for agricultural experiment purpose. The application of the respondent was accepted by the applicant and supply of electricity was made available from 19th February, 2000. The respondent institution was served with the bill of Rs. 10,000, which was not paid as a result electricity power was discontinued. The respondent made a correspondence with the appellant and requested for reconnection of the power and billing on HP basis. The request for billing on HP basis was not acceded to as a result thereof the respondent paid the bill and got the reconnection. Subsequently, the respondent wrote a letter to the appellant in the meantime for granting electricity connection on HP basis. This request was also not accepted by the appellant and therefore the respondent was constrained to file Special Civil Application No. 1261 of 2001 for the following reliefs:

- (a) Be pleased to admit this petition;
- (b) Be pleased to issue appropriate writ, direction or order restraining the respondents, their agents, servants and subordinates from disconnecting the power supply to the petitioner school bearing Customer No. WW 225 situated in the sim of village Krashna Nagar (Kothi), Taluka Dehgam, District Gandhinagar, pending the admission, hearing and final disposal of this petition;
- (c) Be pleased to issue appropriate writ, direction or order quashing and setting aside the impugned bills granted on unit consumption basis and be pleased to direct the respondents to charge electric bill on HP basis;

4. The learned Single Judge by the impugned judgment allowed the petition and directed the appellant to charge the respondents for electricity consumption on HP basis. The appellants are not happy with the learned Single Judge and therefore the present appeal.

5. It is contended by the learned counsel, Ms. Lilu Bhaya for the appellant that the schools and hostels do not come under agricultural activity. She has further contended that the application for connection by the respondent was for drinking water in the institution, hostel, school and agricultural experiment. According to her submission, as per the Tariff for Supply of Electricity at Low Tension for LFD (Residential/Non Residential/Educational and Other Institutions) Low Tension Industries, Water Works, Street Light, Temporary Supply and for Agricultural Consumers is applicable and the purpose of electricity consumption by the respondent cannot be said to be an agricultural one. She has relied upon the decision of the Supreme Court in the case of Chairman, M.P. Electricity Board and Others Vs. Shiv Narayan and Another, wherein the words and phrases "commerce", "commercial", "trading activity", "profession" and "professional activity" are explained. According to her, the activities carried out by the respondent are purely commercial in nature and therefore the learned Single Judge has erred in allowing the petition of the respondent.

6. On the other hand, Mr. G.M. Amin, learned counsel for the respondent-original

petitioner has supported the impugned judgment of the learned Single Judge. It is his contention that other similar schools are granted the connection on HP basis. He has further contended that the respondent has taken a specific stand that other similar schools are granted connection on HP basis, but the appellant has not denied in its reply this stand of the respondent. He has further submitted that the main activity of the respondent is of imparting agricultural education to the inmates of the hostel and therefore the activity would fall within the agriculture work. He has submitted that the judgment of the Supreme Court in the case of Shiv Narayan (supra) relied upon by the learned counsel for the appellant was referred to the larger Bench, which has set aside the judgment. Hence, he has submitted that the judgment of the learned Single Judge does not warrant interference.

7. Learned Single Judge has, while allowing the petition of the petitioner, has observed as under:-

5. The grant of land to the extent of 40,000 sq. mtr., as well as the terms of the grant clearly indicate that the petitioner trust was required to run agricultural school alone and nothing else. It is also natural that incidentally, the petitioner would create accommodation facility for the students from outside, and for that it would need supply of water, electricity etc., to avoid any hardship being caused to the inmates of the hostel as well as the students staying in the school. However, such facility cannot form the main purpose or activity of the petitioner. May be that while entering into the contract with the respondent, without realizing the consequence thereof, the petitioner may have stated that the supply was required for private water work, but by no stretch of imagination it can be said that it is a commercial activity, The respondent is not able to show that the water works of the petitioner was used for supplying water by charging money. It is very clear from the application made to the respondent that it was only meant for providing water for domestic use and the consumption by the inmates of the hostel and the students staying in that institution. Incidentally the petitioner might have diverted the water for some agricultural purpose also. But it is rather doubtful whether it can be said to be used for agricultural purpose. It is however, very certain that the consumption of electricity can never be said to be for commercial purpose, but it is only meant for agricultural school. Therefore, in my opinion, the action of the respondents in billing the petitioner on commercial basis is totally wrong.

6. So far as the submission of Mr. Majmudar that it is not agricultural school, but only agriculture is one of the subjects taught in the school is concerned, it cannot be accepted because of several reasons, The first and foremost reason is that nowhere in the affidavit-in-reply it has been stated by the deponent on what basis he made such statement. It is not his case that he personally visited the school and verified the subjects which were being taught by the said school. It is also not his case that he had perused the syllabus prescribed in the school. It is also not his case that he derived this knowledge from the person closely

connected with the school, except bare word that the respondent has not produced any material to show that the agriculture was only one of the subjects taught at the school and not the main subject. As against that the petitioner has produced enough reliable material to support its say that the school was imparting education in agriculture and it was essentially school of agriculture. In the application that has been submitted for obtaining electric connection, the purpose has been stated. The purpose has already been noted above and there is no need to repeat it here. Further it is also not disputed that the Government has granted 40,000 sq. mtr., agricultural land to the petitioner and in the revenue records also necessary entries have been made. The Government would certainly before allotting the land to the petitioner would make inquiry and ascertain the correctness of the claim made by the petitioner. It is but natural that only if Government was satisfied about the genuineness of the claim of the petitioner to run the agricultural school and for that purpose to do farming, it may have been granted land to the extent of 40,000=00 sq. mtr. Even the DEO has given code No. 053 and 054 which are meant for Krushi Vidyanagar No. 1 and No. 2. It may happen that incidentally, the school may be teaching some other subjects, for e.g., languages, General knowledge to see that their students do not lag behind when they pass out the necessary examinations and go to higher education institution like agricultural college etc., but that would not mean that the school is not imparting education mainly the subject of agricultural. Therefore, the respondent is not correct when it says that the school run by the petitioner is not agricultural school.

6.1. It is submitted by Mr. Amin that other agricultural school have been billed on the basis of HP consumption and not on the basis of the Unit. In support of his contentions, he has also drawn my attention to the copies of the bills annexed to annexure-C collectively to the petition. These bills pertain to the agricultural schools. These bills have not been controverted by the respondent. These bills also clearly show that the billing has been done on the basis of HP consumption. In view of the same, there is no reason why the respondent Board are not charging the petitioner on the basis of HP. I have also discussed above that merely because in the application, the purpose has been stated as "for private water works", it cannot be said that the petitioner is doing commercial activity and not running the school of agriculture. When this is so, the billing on the basis of the Unit consumption is not at all justified.

8. The contentions which are raised by the learned counsel for the appellant in the present appeal were also raised before the learned Single Judge and both these contentions are dealt with by the learned Single Judge by giving cogent, detailed reasons. There is no cavil that the petitioner-trust was granted the land by the Government for the specific object and purpose of running an agricultural school. The purpose of setting up of agricultural school is to impart training in respect of modern methods and techniques of agriculture so that the quality and the quantum of agricultural produce is enhanced. Therefore, the object of the respondent is laudable inasmuch as by running an agricultural school society at

large would be benefited and awareness amongst the agriculturists as to the modern techniques and methods of agriculture would be spread. It is true that the application form submitted by the respondent for getting the electricity connection mentions that it is required for hostel facility. But, that by itself would not help the appellant to contend that the electricity connection was to be used for a commercial purpose. The respondents have specifically asserted that they need the electricity connection for hostel facility, which is attached to school established on a land granted by the Government to impart the agricultural education. The appellants have not produced any evidence worth the name to show that the respondents are using the hostel facility for commercial purpose. The hostel facility attached to the agricultural school cannot be said to be a commercial activity, particularly when the students of the school and who are inmates of the hostel belong to OBC strata of the society if the petitioner school is not made available the electricity connection on HP basis for its hostel, then the very object of setting up of the agricultural school would be frustrated. The ratio of the judgment of the Honourable Supreme Court in the case of Shiv Narayan (supra) relied upon by Ms. Lilu Bhaya would not be applicable to the facts of the present case more particularly when we do not find that the hostel facility created by the respondent for the students of agricultural school is a commercial activity. Besides, the said judgment was set aside in reference by the larger Bench of the Honourable Supreme Court. We are in complete agreement with the reasons assigned by the learned Single Judge. We do not find any justifiable reason to interfere with the judgment of the learned Single Judge. We, therefore, dismiss the appeal albeit without costs.