

(2011) 02 GUJ CK 0117

In the Gujarat High Court

Case No : Special Civil Application No. 1976 of 2011

Halluma M. Faruk Fazalwala

APPELLANT

Vs

Torrent Power Ltd. and Another

RESPONDENT

Date of Decision : 14-02-2011

Acts Referred:

Electricity Act, 2003 — Section 126, 126(1), 127, 135

Citation : AIR 2011 Guj 52

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

Bench : Single Bench

Advocate : Mangukiya, for the Appellant; Bela A. Prajapati, for the Respondent

Final Decision : Dismissed

Judgement

Ravi R. Tripathi, J.—The Petitioner is before this Court being aggrieved by judgment and order passed by the Appellant Authority dated 1st

February 2011, which according to the Petitioner, was communicated to the Petitioner on 7th February, 2011, whereby, the Appellant Authority

was pleased to dismiss the appeal filed by the Petitioner.

2. Learned advocate Mr. Mangukiya for the Petitioner vehemently submitted that the authorities have committed an error in not allowing the appeal

being Appeal No. 8 of 2009/2010, filed u/s 127 of the Electricity Act, 2003 (hereinafter referred to as "the Act"). The learned advocate for the

Petitioner invited attention of the Court to the judgment and order passed by the Appellate Authority, a copy of which is produced at Page Nos.

72 to 76.

2.1 The learned advocate for the Petitioner submitted that if it was a case of "power theft", the company would have proceeded against the

Petitioner u/s 135 of the Act and not u/s 126 of the Act. The learned advocate for the Petitioner submitted that, assuming for the sake of argument

that the case of the Respondent - company is of "Electro Static Discharge", the same stands disproved by the fact that it is mentioned in point No.

6 of the case pleaded by the Respondent company that, "in the laboratory testing of the meter on 11th January, 2008, it was noticed that, "Real

Time Clock" had failed". In that very paragraph it is stated that, "on 10th January, 2008, the meter was displaying the reading "13946", whereas,

on 11th January, 2008, it was displaying the reading "9922". "The learned advocate for the Petitioner submitted that, if the "Electro Static

Discharge" was applied by the Petitioner, that has to be a temporary phase and once the meter is taken away by the company to the laboratory,

there is no question of any such change in the reading.

2.2 This submission of the learned advocate for the Petitioner is misconceived inasmuch as, this information is set out by the Respondent company

in support of the case that the "Real Time Clock" had failed and in support of that submission, it is stated that, "on 10th January, 2008, the meter

reading was "13946", which, without any reason, was displayed to be "9922" on meter on 11th January, 2008

3. The learned advocate for the Petitioner invited attention of the Court to Section 126 of the Act, which pertains to Assessment. Sub-section (1)

of Section 126 of the Act reads as under:

If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after

inspection of records maintained by any person, the Assessing Officer comes to the conclusion that such person is indulging in unauthorized use of

electricity, he shall provisionally assess to the best of his judgment the electricity charges payable by such person or by any other person benefited

by such use.

3.1 The learned" advocate for the Petitioner submitted that the Respondent company has failed to resort to Sub-section (1) of Section 126 of the

Act as it ought to have. The learned advocate for the Petitioner submitted that the Petitioner did make available the past, present and future data of

the electricity consumption of the Petitioner and therefore, the assessment given by the Respondent company before the Appellate Authority is

required to be taken into consideration.

3.2 In point No. 3 of the presentation by the Respondent company it is stated that the Respondent company had kept Consumer No. 255718 and

Consumer No. 347069 in separate boxes and therefore, while repairing the meter of Consumer No. 347069 or for any other purpose, the Seals

applied to the meter box of Consumer No. 255718 will not be required to be broken. The case of the Respondent company is that, the case

pleaded by the Petitioner that, while the staff of the Respondent company was there for repairing or other work of meter of Consumer No.

347069 that the Seals of the meter of Consumer No. 255718 were broken. The case of the Respondent company is that the case, put up by the

Petitioner, is not correct.

3.3 The learned advocate for the Petitioner has not pointed out that when the Petitioner noticed that the Seals of meter of Consumer No. 255718

were broken by the staff of the Respondent company had come to attend the meter of Consumer No. 347069.

3.4 This Court is of the opinion that if the Petitioner had noticed that the Seals of meter of Consumer No. 255718 are broken while the staff of the

Respondent company had come to attend the meter of Consumer No. 347069, the Petitioner ought to have immediately lodged a complaint about

the same. In absence of any such complaint having been filed, the contention of the Petitioner that the seals of the meter of Consumer No.

255718 were broken by the staff of the Respondent company when they were on the premises of the Petitioner to attend the meter of Consumer

No. 347069, is rightly not believed by the Appellate Authority.

4. The learned advocate for the Petitioner also tried to make out a case while answering the case pleaded by the Respondent company that the

final order was sent by Registered Post Acknowledgment Due on 6th January, 2008, which returned with an endorsement "Refused". Thereafter,

the final order was sent to the Petitioner by "UPC". The Petitioner demanded the "Laboratory Report" and other details by letter dated 22nd

November, 2008, which was sent to the Petitioner by letter dated 28th November, 2008. The Notice received by the Advocate of the Petitioner

was replied by 17th December, 2008. As the Petitioner did not make the payment of the Supplementary Bill, the said amount was included in the

Bill for the month of December.

4.1 The learned advocate for the Petitioner, at one stage, submitted that this may be on account of collusion between the post department and the Respondent company.

4.2 This submission of the learned advocate for the Petitioner is thoroughly misconceived inasmuch as, it is a settled law that there is a presumption that when a letter is sent by "UPC, it is received. Now, this presumption is on the basis that the Postal Authorities do discharge their functions in accordance with law. Only because, the Registered Post Acknowledgment Due letter is returned with an endorsement "Refused", to allege that the Respondent company, out of its thousands and thousands customers, selected the Petitioner and went to the extent of colluding with the postal staff to see that the Registered Post Acknowledgment Due letter is returned with an endorsement "Refused", is too tall a claim to be accepted by this Court.

5. The learned advocate for the Petitioner vehemently submitted that the meter was then got tested by the Respondent company by the "manufacturer". He submitted that there is no system of testing the meter by a "third party", known to law.

5.1 Assuming for the sake of argument that what is submitted by the learned advocate for the Petitioner is correct, then also, it is answered by the submission of the learned advocate for the Petitioner himself that there is a "booklet", giving details about the meter in question, issued by the manufacturer of that meter and that "booklet" claims that this meter is "Tamper Proof. That being so, the Respondent company rightly selected such meters to be installed at the places of the consumers and when such meters are found tampered, the Respondent company was justified in referring the meter to the manufacturer to find out as to why that meter has failed. To allege that the Respondent company has resorted to a system unknown to law of getting the meter checked by the third party, is again seems to be motivated out of frustration. The Respondent company, selecting such meter, which is claimed to be "Tamper Proof, spending for such meter and then finding that the meter is not recording the actual consumption of the electricity, the Respondent company is within its right to get the meter tested by the manufacturer. The only suggestion of the

learned advocate for the Petitioner seems to be that the manufacturer also colluded with the Respondent company against the Petitioner and that is

why, this argument is made. The Court finds the argument to be not acceptable and therefore, the same is turned down.

6. Last but not the least, the learned advocate for the Petitioner submitted that the Respondent company could not have issued the bill beyond a date on which the meter was last checked.

6.1 Technically, this submission of the learned advocate for the Petitioner is right but the same cannot be accepted for the reason that once the

Respondent company finds that the Petitioner has seen to it that the actual consumption is not recorded, the Respondent company is required to

issue Supplementary Bill and. that Supplementary Bill is in the form of imposing of penalty and for imposing of penalty, a criterion is accepted that,

"it will be for a particular period" and that is why, issuance of Supplementary Bill by the Respondent company is not found fault with.

7. Having perused the judgment and order passed by the Appellate Authority, the Court finds, that the same is not required to be interfered with

by this Court and hence, this petition fails: The same is dismissed.