

(2010) 04 GUJ CK 0114

In the Gujarat High Court

Case No : Special Civil Application No. 17081 of 2003

Himalaya Ice Factory

APPELLANT

Vs

Paschim Gujarat Vij Co. Ltd. and Another

RESPONDENT

Date of Decision : 26-04-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 04 GUJ CK 0114

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

Bench : Single Bench

Advocate : Ashish M. Dagli, for the Appellant; S.P. Hasurkar, 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 supplementary bill issued by the respondent on 01.12.2003. The petitioner has also prayed for the declaration that the action of the respondents in issuing huge supplementary bill is without any justification and on the face of it, the same is illegal and illogical.

2. This Court has passed an order on 09.12.2003 and granted ad-interim relief in terms of paragraph 14 (D) on condition that the petitioner shall file an undertaking to the effect that the finding recorded by the Company qua the movement of the meter shall be brought before the Court and shall deposit the amount considering the consumption recorded in the meter in question or the orders that may be passed by this Court in the present petition. The Court further observed that it would be obligatory on the part of the respondent to send the meter to the Company for checking as reflected in the Rojkam drawn during the Laboratory checking on 19.11.2003.

3. The petition was thereafter admitted on 24.09.2004 and ad-interim relief granted earlier was ordered to be continued giving liberty to the respondents to

move the Court with an appropriate application for modification or for vacating of interim relief.

4. Thereafter on 17.10.2005, this Court has modified its earlier order and directed the petitioner to pay the remaining outstanding dues in respect of the supplementary bill and delay payment charges, if any, in 6 equal monthly installments starting from 01.11.2005. The Court made it clear that if the petitioner fails to comply with any of the conditions, the interim relief granted earlier shall stand vacated without any further order.

5. The above order was challenged by the petitioner before the Division Bench in Letters Patent Appeal. Initially, the Division Bench has granted stay. However, subsequently the appeal was dismissed and stay was vacated. The only indulgence shown by the Division Bench was that the petitioner should make a request to the learned Single Judge for final hearing of the petition. However, no final hearing was taken place. On the contrary, on 14.07.2006, the order was passed granting interim relief in terms of paragraph 6 (B) of the Civil Application to the extent that the respondents were restrained from disconnecting power supply of the petitioner on the ground of non-payment of supplementary bill.

6. Under the above circumstances, the present petition is taken up for final hearing.

7. It is the case of the petitioner that the petitioner is Ice Factory situated at seashore of Porbandar. On account of frequent line fault and default, there was sudden reduction of voltage and hence, the petitioner made an application on 15.10.2002 intimating about the technical default on account of which the electric meter used by the petitioner was also burnt. Since no action was taken pursuant to the earlier application, the petitioner moved another application on 20.10.2002 pointing out that the display of the meter was stopped. On 21.10.2002, the respondent Board removed the meter of the petitioner by preparing the Rojkam. Thereafter on 19.11.2002, joint inspection was done and it was found OK. It was also recorded that the meter was required to be sent to the Company for checking. In the joint laboratory test, though the reading was not displayed, while putting the meter on battery mode, reading was taken and on that basis, supplementary bill dated 01.12.2003 was issued to the petitioner for Rs. 4,25,345.47.

8. It is this supplementary bill which is under challenge in the present petition.

9. Mr. Ashish M. Dagli, learned advocate appearing for the petitioner has submitted that it is only on the application made by the petitioner dated 15.10.2002 and 20.10.2002 that meter was changed. The petitioner has pointed out about the technical fault of the meter and also the fact that the meter was stopped showing any display of the reading. He has further submitted that in the month of October 2002, the bill issued by the respondent was for the period from September and October and the reading of the meter was 111718 and the said bill was paid on 11.10.2002. The date on which the meter was removed was

21.10.2002.

10. An attempt was made to start the display function of the meter. However, the same was failed and with the help of battery mode display was started and the reading was shown at 220645. The respondent Board has raised the supplementary bill considering the difference between the previous billing and reading reflected during battery mode, instead of adopting the average. There was no justification in raising such supplementary bill. It was not a case of theft and even during the course of Laboratory Testing Report, no such finding is recorded. Even pursuant to the order passed by this Court, the meter was sent for testing in the Company which also could not take the reading of the meter and the Company has also adopted the same method and on battery mode, the reading was taken, which was in conformity with the meter reading done at the laboratory. He has further submitted that there is no evidence whatsoever to adopt the reading of the meter found when it was put on battery mode. He has, therefore, submitted that considering the previous reading of the meter as well as in all subsequent transactions, the consumption of the petitioner never exceeded between 10,000 to 15,000 Units. Admittedly, the reading is required to be taken only for the period from 05.10.2002 to 15.10.2002 as the meter was burnt and it was changed on 21.10.2002 and from that day onwards, regular reading was taken. It is practically impossible to consume the Units as indicated in the supplementary bill. He has, therefore, submitted that the impugned supplementary bill is excessive, without any basis, not in accordance with the provisions of the Act and contrary to the Laboratory reports as well as the Company's finding on this issue.

11. An affidavit-in-reply is filed on behalf of the respondents. Mr. Hasurkar, learned advocate appearing for the respondents has submitted that the petitioner is a habitual offender. In the past also, several actions were taken against the petitioner and theft cases were detected, supplementary bills were raised which were also paid by the petitioner. He has further submitted that pursuant to the order passed by this Court, the meter was sent to the Company and report was received by the Electricity Company. The meter was sent for Laboratory Testing Report only for the purpose of ascertaining whether any power theft was there or not. From the perusal of the report dated 19.05.2004, it appears that the Company has not given any finding regarding power theft. However, the meter on battery mode reflects energy reading as 220645 and the test Report given by the manufacturing Company also confirms the same meter reading which was done during the joint laboratory testing. On the basis of the said meter reading and joint laboratory testing on 19.11.2003, energy consumption was assessed and bill dated 01.12.2003 was issued to the petitioner. This bill was based on difference of reading between previous billing and reading reflected during battery mode, which is confirmed by the Laboratory test as well as the test carried out by the Company. Despite the fact that interim relief was continued subject to payment of supplementary bill in six monthly installments, no payment was made by the petitioner even after dismissal of the Letters Patent

Appeal. Mr. Hasurkar has further submitted that only with a view to avoid the period of limitation, electricity Company has filed Special Civil Suit No. 43 of 2006 for recovery of the amount of the outstanding supplementary bill. He has produced detailed statements showing cases against the petitioner. He has also produced statement showing power consumption of the petitioner and details of actions in which the meter of the petitioner was changed and there was an immediate rise in consumption of power supply.

12. Based on these figures and facts, Mr. Hasurkar has submitted that the petitioner is in the habit of committing irregularities in consumption of power supply and, therefore, was subjected to issuance of supplementary bill by the Board. He has, therefore, submitted that the petitioner does not deserve for any equitable and discretionary relief from this Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India. He has, therefore, submitted that the petition deserves to be dismissed.

13. Having heard learned advocates appearing for the parties and having considered their rival submissions in light of the documents produced before the Court and also considering the conduct of the petitioner, the Court is of the view that the petitioner is not entitled to any relief from this Court. It is an admitted position that the petitioner has informed the respondent Electricity Company on 16.10.2002 with regard to the defect in the meter only after such meter reading was done on 05.10.2002. The second application was made to this effect on 20.10.2002 and on 21.10.2002, the meter was changed. The meter was thereafter sent to the Laboratory for testing and joint laboratory inspection clearly indicates the reading based on which supplementary bill was raised. This fact by itself would give rise to the presumption that the difference might have been consumed by the petitioner during the period between 05.10.2002 to 15.10.2002. This modus operandi is adopted by the petitioner in the past and after the meter reading is carried out, some fault arises in the meter, complaint is made and thereafter meter is changed. However, immediately after changing the meter, steep rise in the consumption is recorded. This thing has happened three or four occasions and concrete instances were pointed out in the reply. Pursuant to the order of this Court, even meter was sent to the manufacturing Company and it confirmed while putting the meter for testing on battery mode. Simply because the meter reading was done by putting the meter on battery mode, it cannot be said that it would not reflect the correct reading. The Court is, therefore, of the view that the petitioner is liable to pay the differential amount and there is no infirmity in the assessment of the electricity consumption made by the petitioner.

14. In any case, when the petitioner approaches this Court by invoking the equitable writ jurisdiction of this Court, the Court while granting relief in a writ petition would also take into consideration the petitioner's conduct. Here, several instances were found where the petitioner was indulged into irregularities and supplementary bills were raised and the theft cases were also detected against

the petitioner. In light of this fact, coupled with the confirmation by the Laboratory Test as well as the meter testing by the Company, it cannot be said that the reading shown by both the Agencies is not correct. Hence, the Court does not see any merit or substance in this petition. The petition is, therefore, dismissed. Rule is discharged. Interim relief stands vacated without any order as to costs.

15. Request for stay of this order and to grant extension of the interim relief is rejected.