
(2011) 08 GUJ CK 0038
In the Gujarat High Court

Case No : Letters Patent Appeal No. 525 of 2010 in Special Civil Application No. 4662 of 2008

Jayesh C. Dhangar, Deputy Engineer (O and M) APPELLANT
Vs

Chandravatiben Maheshbhai and Another RESPONDENT

Date of Decision : 16-08-2011

Acts Referred:

Electricity Act, 2003 — Section 126, 127, 135, 50

Citation : (2011) 08 GUJ CK 0038

Hon'ble Judges : S.J. Mukhopadhaya, C.J.; J.B. Pardiwala, J

Bench : Division Bench

Advocate : Lilu K. Bhaya, for the Appellant; Gayatri B. Jadeja, for the Respondent

Final Decision : Allowed

Judgement

J.B. Pardiwala, J.—In this appeal, the Appellant -Dakshin Gujarat Vij Company Limited through its Deputy Engineer (O & M), Udhna Sub-division No. 2 seeks to challenge the judgment and order dated 1.9.2008 passed by the learned Single Judge in Special Civil Application No. 4662 of 2008 and two other allied writ petitions, whereby, the learned Single Judge rejected the petitions confirming the order passed by Respondent No. 2 herein -Assistant Electrical Inspector and Appellate Authority under the Electricity Act, 2003.

2. Facts relevant for the purpose of deciding this appeal can be summarized as under:

2.1 Respondent No. 1 had been sanctioned two electrical connections;

(i) Industrial connection of 15 HP and (ii) Lighting connection. On 16.5.2006, checking of the connections was undertaken and it was found that the lighting connection was being used in the industrial connection. As per the case of the Appellant, this amounts to unauthorized use of electricity as provided u/s 126 of the Electricity Act, 2003 (for short "the Act, 2003"). After the inspection, the

checking sheet was prepared which was duly signed by Respondent No. 1 without any objection. Appropriate proceedings were initiated for an unauthorized use of electricity u/s 126 of the Act, 2003 and a provisional bill of Rs. 27,134=05 ps. was issued to Respondent No. 1 vide letter dated 20.5.2006. Respondent No. 1 was called upon to submit her objections, if any, to the provisional bill within seven days vide letter dated 22.5.2006. It appears that the Respondent No. 1 represented before the Appellant in this regard. Thereafter, vide letter dated 16.1.2007, Respondent No. 1 was issued final supplementary bill for Rs. 25,028=44 ps.

2.2 Record reveals that aggrieved by the issuance of the final bill of the amount of Rs. 25,028=44 ps., Respondent No. 1 approached Respondent No. 2 the Appellate Authority by filing the appeal u/s 127 of the Act, 2003. The appeal was numbered as Appeal No. 136/2006-07. At the time of filing of the appeal, an amount of Rs. 8,345/- was deposited by Respondent No. 1 as condition precedent.

2.3 It appears that the Appellate Authority partly allowed the appeal and directed the Appellant herein to issue supplementary bill for 6244 Units for the amount of Rs. 3,730=26 ps. In doing this, the Appellate Authority directed the Appellant to consider only the difference between the rate for commercial tariff and industrial tariff and apply penalty at 0.5 times i.e. 50% as against 1.5 times penalty which is prescribed by Act, 2003.

2.4 It is at that stage that the Appellant preferred Special Civil Application No. 4662 of 2008 and challenged the order passed by Respondent No. 2 Appellate Authority.

2.5 The learned Single Judge came to the conclusion that the consumption of Units as provided under Sub-section (5) of Section 126 is by way of presumption and, therefore, if it is found by the Appellate Authority, otherwise, there is No. absolute proposition that it must be charged for six months, preceding the date of the inspection. The learned Single Judge also came to the conclusion that in Sub-section (6) of Section 126, assessment is to be made at the rate equal to 1.5 times of the tariff applicable, but while applying the tariff, if the tariff rate already paid is given "set off", penalty at 0.5 times as imposed by the Appellate Authority is justifiable after taking into consideration the proportion of the difference between the tariff of the industrial use and the tariff of the commercial use as it was a bona fide mistake on the part of Respondent No. 1 Consumer. On such reasonings, learned Single Judge thought fit to reject the petition confirming the order passed by the Appellate Authority.

3. We have heard learned advocate Ms. Lilu K. Bhaya for the Appellant and learned advocate Ms. Gayatri B. Jadeja for Respondent No. 1. Learned advocate for the Appellant submitted that learned Single Judge has committed gross error in coming to conclusion that lighting connection which was being used in the industrial connection by Respondent No. 1 was of bona fide mistake. Learned

advocate for the Appellant would further contend that there was No. material before the learned Single Judge for coming to conclusion that it was a bona fide mistake on the part of Respondent No. 1 Consumer. Learned advocate would further contend that Electricity Supply Code framed by Gujarat Electricity Regulatory Commission in exercise of powers conferred u/s 50 of the Act, 2003, provides vide Clause 7.2.6 that the Units are required to be calculated at 1.5 times.

3.1 Learned advocate for the Appellant further contended that against the formula for calculation of bill provided in the Electricity Supply Code, which is statutory in nature, Respondent No. 2 -Appellate Authority calculated the Units at 0.5 times and the same has been erroneously upheld by the learned Single Judge. Learned advocate further submitted that the tariff rate for lighting connection is Rs. 4.75 ps. per Unit, whereas, in the industrial connection, tariff rate is Rs. 3.75 ps. per Unit. Learned advocate submitted that nowhere the Electricity Supply Code provides to calculate the difference between two tariffs for issuing the supplementary bill for unauthorized use of electricity. It is also submitted that the Electricity Supply Code provides for penal multiplier for 1.5 times for the cases falling u/s 126 of the Act, 2003. Lastly, it has been submitted that the learned Single Judge has committed gross error in coming to conclusion that while issuing the bill u/s 126 of the Act, 2003, the amount of tariff rate which is paid should be given "set off" and the bill can be issued for the differential amount only.

4. Per contra, learned advocate appearing for Respondent No. 1 -Consumer submitted that learned Single Judge has not committed any error much less an error of law warranting any interference in this appeal. Learned advocate further submitted that it is true that there are two connections; (i) Industrial connection of 15 HP and (ii) Lighting connection, but, on the date of checking, Respondent No. 1 was not intentionally and knowingly using lighting connection for the industrial purpose. Learned advocate submitted that the issuance of supplementary bill of Rs. 25,028=44 ps. by the Appellant is not justified because Respondent No. 1 is having a separate electric connection for lighting purpose. Learned advocate tried to explain that on 25.11.2005, Respondent No. 1 purchased Generator with 600 W Amp. capacity. At the time of installation of this Generator, the Wireman committed a mistake by connecting the lighting connection into industrial connection, which was not known to Respondent No. 1 and it was a bona fide mistake of Wireman. Lastly, learned advocate tried to justify the findings recorded by learned Single Judge that as per Clause 6 of Section 126 of Act, 2003, tariff at 1.5% rate is to be calculated, but, as Respondent No. 1 has already paid 1%, only 0.5% is required to be recovered and therefore, the Appellate Authority rightly directed the Appellant herein to issue a supplementary bill of Rs. 3,730=26 ps.

5. Having given our anxious thoughts and considerations to the respective contentions of the rival parties, we are of the view that the appeal preferred by

the Appellant merits consideration for the reasons which we shall record hereinafter.

6. It would be appropriate to have a look at the provisions of Section 126 of the Electricity Act, 2003. Section 126 of the Electricity Act,

2003 reads as under:

Section 126: Assessment - (1) 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.

(2) The order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such manner as may be prescribed.

(3) The person, on whom an order has been served under Sub-section (2), shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who shall, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment within thirty days from the date of service of such order of provisional assessment, of the electricity charges payable by such person.

(4) Any person served with the order of provisional assessment may, accept such assessment and deposit the assessed amount with the licensee within seven days of service of such provisional assessment order upon him:

[(5) If the assessing officer reaches to the conclusion that unauthorized use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorized use of electricity has taken place and if, however, the period during which such unauthorized use of electricity has taken place cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection.]

(6) The assessment under this section shall be made at a rate equal to [twice] the tariff applicable for the relevant category of services specified in Sub-section (5).

Explanation - For the purposes of this section, -

(a) "unauthorized use of electricity" means the usage of electricity

(i) by any artificial means; or

(ii) by a means not authorised by the concerned person or authority or licensee;
or

(iii) through a tampered meter; or

(iv) for the purpose other than for which the usage of electricity was authorised;
or

(v) for the premises or areas other than those for which the supply of electricity was authorised.

7. Plain reading of Section 126 would suggest that if on inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, it is found that the person is indulging in unauthorized use of electricity, the Assessing Officer shall provisionally assess to the best of his judgment the electricity charges payable by such person benefited by such use. Clause 5 of Section 126 makes it abundantly clear that once the Assessing Officer reaches to the conclusion that unauthorized use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorized use of electricity has taken place and if, however, the period during which such unauthorized use of electricity has taken place cannot be ascertainable, then such period shall be limited to a period of twelve months immediately preceding the date of inspection. Clause 6 of Section 126 further provides that the assessment shall be made at a rate equal to twice the tariff applicable for the relevant category of services specified in Sub-section (5).

It can thus be seen that Section 126 of the Act provides for a mechanism to deal with unauthorised use of the electricity. Term "unauthorised use of electricity" has also been explained in clause(b) of the explanation which includes use of electricity by any artificial means or by means unauthorized by the concerned person or authority or the licensee, or used through tampering of meters, or used for the purpose other than for which electricity was authorized. Sub-clause (v) of clause(b) of the explanation in clear terms provides that by use of electricity for the premises or areas other than those for which the supply of electricity was authorised shall be considered unauthorised use of electricity.

8. We take notice of an important aspect that in the present case, there is No. denial to the fact that there was unauthorized use of electricity. This is not even disputed by Respondent No. 1, however, to our utter surprise, a defence has been put forward that though the lighting connection was being used in the industrial connection, it was a bona fide mistake on the part of Wireman who had come to install a Generator Set at the premises of Respondent No. 1. We have perused the order of the Appellate Authority. We do not find in the order of the Appellate Authority anywhere wherein this defence has been accepted. The contention was raised, however, there is No. finding in this regard recorded by the Appellate Authority based on some evidence on the basis of which one can reach to a conclusion that there was a bona fide mistake. We fail to understand that once it is accepted that there was unauthorized use of electricity then where is the question of considering as to whether the same was with necessary mens rea or guilty mind or was bona fide. On the contrary, we find that the Appellate

Authority completely misdirected itself by coming to conclusion that there was No. tampering with the meter and only 2.425 KW of the light load of the office situated on the third floor has been connected/joined for the industrial purpose. If there would have been tampering with the meter, then, it would have been a case of theft of electricity falling within Section 135 of the Act, 2003. Section 126 speaks only about unauthorized use of electricity and Clause 6 of Section 126 makes it very clear that unauthorized use of electricity means; "for the purpose other than for which the usage of electricity was authorized." We are unable to persuade ourselves to accept the reasoning given by the learned Single Judge that it was a bona fide mistake of the consumer and if it is a bona fide mistake of the consumer then the penalty can be applied at 0.5 times instead of 1.5 times after giving "set off" to the tariff rate already paid.

9. At this stage, we may quote a decision rendered by the Division Bench of this Court in case of *Torrent Power AEC Ltd. v. Gayatri Intermediates Pvt. Ltd.* reported in 2006 (2) GLH 375, wherein, the Division Bench of this Court has decided the issue of "unauthorised use of electricity" while considering the question as to whether theft cases in Section 135 are covered by the expression "unauthorised use of electricity" in Section 126. Though this issue does not arise in the present case, but, the observations as regards mens rea are important, therefore, relevant observation is quoted as under:

Now coming to the conclusion about unauthorised use of electricity through tampered meter, the words "through tampered meter" are eloquent and they do not necessarily mean that a person drawing electricity through a tampered meter is aware about the meter having been tampered. Hence, the ingredient of dishonesty which is an essential ingredient for constituting offence u/s 135 is not to be found in the definition of "unauthorised use of electricity" in explanation (b) to Section 126 which appears to be covering cases such as - where the consumer is making use of a meter tampered by his predecessor in title without the knowledge that the meter was tampered or the cases whether the consumer has used excessive load as compared to the permissible load. But where the consumer knowing that the meter is tampered (by himself or somebody else) draws electricity through the same would be guilty of the offence u/s 135(1)(b).

On interpretation, therefore, we hold that the expression "unauthorised use of electricity" in Section 126 only deals with cases of unauthorised use even in absence of mens rea and such cases are different from the theft cases enumerated and illustrated in Section 135(1) which involve mens rea.

10. In cases of unauthorized use of electricity as explained u/s 126 of the Act, 2003, No. benefit of "set off" can be given. The Electricity Supply Code framed by Gujarat Electricity Regulatory Commission in exercise of powers conferred u/s 50 of the Act, 2003 provides vide Clause 7.2.6 that the Units are required to be calculated at 1.5 times. Further, the tariff for lighting connection is Rs. 4.70 ps. per Unit, whereas, the tariff for industrial connection is Rs. 3.75 ps. per Unit. We do not find anything in the Electricity Supply Code which provides to calculate

the difference between two tariffs when it comes to issue a supplementary bill for unauthorized use of electricity. We cannot ignore the fact that multiplier of 1.5 times is penal in nature to cover cases falling within the purview of Section 126 of the Act, 2003.

11. In the above view of the matter, we are unable to persuade ourselves to accept the reasonings assigned by the learned Single Judge while rejecting the petition. We have noticed number of infirmities in the impugned judgment and order passed by the learned Single Judge. In this view of the matter, we are left with No. other option but to quash and set aside the judgment and order passed by the learned Single Judge dated 1.9.2008 in Special Civil Application No. 4662 of 2008.

12. In the result, the appeal succeeds and the same is hereby allowed with No. order as to costs. The judgment and order passed by the learned Single Judge dated 1.9.2008 is hereby quashed and set aside. Special Civil Application No. 4662 of 2008 is hereby allowed and the order passed by Respondent No. 2 - Electrical Inspector and Appellate Authority, Surat dated 25.6.2007 in Appeal No. 136/2006-07 is hereby quashed and set aside.