(2014) 07 GUJ CK 0020

In the Gujarat High Court

Case No : Special Civil Application Nos. 11262 of 2004, 4076 and 4981 of 2006

J.R.K. Sea Foods Pvt. Ltd. APPELLANT

Vs

Paschim Gujarat Vij Co. Ltd. RESPONDENT

Date of Decision : 14-07-2014

Acts Referred:
Constitution of India, 1950 — Article 226
Electricity Act, 1910 — Section 20, 26, 26(6)

Citation : (2014) ELR 989 : (2015) 1 GLR 268

Hon'ble Judges : C.L. Soni, J

Bench : Single Bench

Advocate : B.P. Gupta, Advocate for the Appellant; Lilu K. Bhaya, Advocate for the Respondent

Judgement

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C.L. Soni, J.—Learned advocates appearing for the parties pointed out that all these petitions are filed by one and the same petitioner against the same respondents. They, therefore, requested to hear and decide all three matters together. At their request, all the three matters though heard one by one, but are decided by this common judgment.

2. In Special Civil Application No. 11262 of 2004 filed under Article 226 of the Constitution of India, challenge made by the petitioner is to the order dated 25.8.2004 passed by the Appellate Committee of the Gujarat Electricity Board in Appeal No. A-72/2004 preferred by the petitioner against the supplementary bill issued to the petitioner for Rs. 90,29,240.07 ps. for theft of electrical energy as also to the revised bill dated 31.8.2004 issued to the petitioner for Rs. 50,49,846.55 ps. after the decision of the Appellate Committee. The case of the petitioner is that on 7.2.2000, electrical installation of the petitioner was checked and it was found that the meter at the installation was found running slow to the extent of 12.83% but no fraud or tampering with the meter was found. Based on such checking, the petitioner was issued supplementary bill for a period of six

months commencing from September 1999 to 7.2.2000 for Rs. 1,11,283/- which the petitioner was forced to pay. Though such meter was running slow by 12.83%, it was not replaced under the guise of non-availability of the meter with the Divisional Office. But, after lapse of 209 days, on 8.9.2000, H.T. (High Tension) checking squad of the respondent Board took away the meter. The meter was removed on 8.9.2000 and was then tested in the laboratory on 30.6.2004. As per the laboratory report dated 30.6.2004, right side seals of the meter body were found tampered and some scratches were found on the meter disc. On the basis of such report, supply of the petitioner was disconnected on 30.6.2004 and bill for Rs. 90,29,240.07 ps. was issued to the petitioner. The petitioner preferred appeal before the Appellate Committee against the said supplementary bill and the Appellate Committee after hearing the parties gave part relief and confirmed the finding as regards theft of energy and directed the Board to revise the supplementary bill by taking reduced load factor. Based on such decision of the Appellate Committee, the petitioner is issued revised supplementary bill for Rs. 50,49,846.55 ps.

3. In Special Civil Application No. 4076 of 2006 filed under Article 226 of the Constitution of India, supplementary bill for theft of energy as well as the order made by the Appellate Committee dated 11.8.2005 are in respect of the meter placed at the premises of the petitioner after removing its earlier meter on 8.9.2000, which was found running slow. The case of the petitioner is that on 24.1.2001 and on 27.1.2001, the meter of the petitioner was checked and upto July 2001, the petitioner was issued regular bills which the petitioner paid. The petitioner, being H.T. Consumer, G-7 card was maintained from 19.6.2001 to 19.7.2001 and the seals mentioned in G-7 card were in proper condition. However, on 18.8.2001, when the officers of the respondent Board came to the business premises of the petitioner for the purpose of taking reading of the meter, they found that there was no display on the meter and therefore, along with the officers of the laboratory staff, under the guidance of the Executive Engineer, the meter of the petitioner was checked and seal No. 3A047419 was removed. They kept the meter in closed condition and provisionally affixed seal No. 4A036226 on MMB (Metal Meter Box) since they were not having new meter at that point of time. Necessary endorsement was made In this regard. On 1.9.2001, the meter of the petitioner was replaced by new meter. At the time of replacing the meter, panch rojkam was made, however no adverse remark was recorded. The officers of the Board removed CTPT and terminal cover to check continuity of cable to affix new meter and after checking the same, old cable was affixed with new meter and from the rojkam, it reveals that seal No. 3A046674 was removed at the time of checking and seal was proper and continuity of the cable of CTPT unit was in proper condition, however after replacement of the meter, nothing was done but subsequently at the instance of the petitioner, the respondent Board checked the meter in laboratory on 9.2.2005. The laboratory checking indicated tampering with the meter though it is specific case of the petitioner that when the provisional seal was affixed, the said seal was checked

and not the seal which was removed by the officers and therefore, as per the Circular Nos. 162 and 183, Sub Divisional Office was required to make arrangement to send the seals in question before the Appellate Committee, however the same was not done. The Appellate Committee acted contrary to circular and confirmed the finding as regards theft but gave relief for reduction of supplementary bill, based on which, revised bill for Rs. 29,03,080.56 ps was issued to the petitioner. The petitioner has thus challenged the decision of the Appellate Committee dated 11.8.2005 and revised supplementary bill dated 19.9.2005.

4. In Special Civil Application No. 4981 of 2006, it is the case of the petitioner that the replaced meter was not showing display and therefore, on 17.10.2003, the petitioner informed the Executive Engineer by application in writing pursuant to which the respondent carried out inspection on 28.10.2003 and also prepared rojkam. However, since no laboratory testing was done, the petitioner approached this Court and as per the direction of this Court, on 31.3.2005, the meter was tested in the laboratory. The petitioner was then issued supplementary bill on 1.4.2005 for an amount of Rs. 1,29,06,208.92 ps. It is the case of the petitioner that before the Appellate Committee, the petitioner though requested to direct the respondent to produce the seals of the meter and sealed wire before the Appellate Committee as per the Circular Nos. 162 and 183, however without following the said circulars, the Appellate Committee heard the appeal on 27.9.2005. The petitioner was then informed by the Chief Executive Engineer (Appeal) on 27.10.2005 that the appeal of the petitioner was decided and asked the petitioner to approach the concerned office of the respondent for the purpose of getting revised bill. The petitioner was then issued revised bill on 9.11.2005 for an amount of Rs. 50,80,460.64 ps. The petitioner has thus challenged the order of the Appellate Committee as also the revised bill in this petition.

ARGUMENTS AND CONCLUSION IN SPECIAL CIVIL APPLICATION NO. 11264 OF 2004

5. Learned advocate Mr. Rajesh Savjani appearing for Mr. B.P. Gupta for the petitioner submitted that when the electric installation of the petitioner was checked on 7.2.2000, the meter was found running slow to the extent of 12.83%. Neither tampering with the seals not abstraction of the electric energy by dishonest or fraudulent manner was alleged against the petitioner. Mr. Savjani submitted that the petitioner was allowed to continue with the same meter for long period of seven months and on 8.9.2000, the meter was replaced by another meter. Mr. Savjani submitted that immediately after inspection, the petitioner was issued bill for slow running of the meter for an amount of Rs. 1,11,283.69 ps., which the petitioner was forced to pay without referring the matter to the Electrical Inspector under Section 26(6) of the Electricity Act, 1910 (''the Act'' for short). Mr. Savjani submitted that after a period of nearly four years, the removed/replaced meter was sent for laboratory test and simply on

the basis of some scratches on the meter and alleged tampering of right side seals of the meter, the petitioner was issued supplementary bill for theft of energy on the basis of the laboratory test report for Rs. 90,29,240.07 ps. Mr. Savjani submitted that it was not open to the respondent to send meter for laboratory test after issuing bill for slow running of the meter. Mr. Savjani submitted that on mere surmises and conjectures, the laboratory test report was submitted alleging theft of energy by the petitioner and the Appellate Committee without recording cogent finding as regards theft of energy came to the conclusion that the petitioner has committed theft of energy. Mr. Savjani submitted that it is settled position of law that unless there were allegations of tampering with the meter or fraudulent act of the petitioner, it was not open to the respondents to issue supplementary bill for theft of electrical energy just on the basis of laboratory test report, after the petitioner was made to pay bill for slow running of the meter and especially when the respondents accepted such slow running of the meter by not referring the meter to the Electrical Inspector under Section 26(6) of the Act. Mr. Savjani submitted that there is no conclusive finding recorded even in the test report as regards tampering of seals or abstraction of electrical energy unauthorizedly by the petitioner and the Appellate Committee therefore was not justified in relying upon such laboratory test report.

6. Learned advocate Mr. Savjani has relied on following authorities:-

(1) In the case of Madhya Pradesh Electricity Board and Others Vs. Smt. Basantibai, ;

(2) In the case of Belwal Spinning Mills Ltd. etc. Vs. U.P. State Electricity Board and another, ;

(3) In the case of Bombay Electric Supply and Transport Undertaking Vs. Laffans (India) Pvt. Ltd. and Another, .

7. Learned advocate Ms. Lilu K. Bhaya for the respondents submitted that simply because the meter was found slow running at the time of checking of the electrical installation of the petitioner that itself is no ground to say that the respondents were not authorized to get the meter tested in the laboratory to find out whether the slow running of the meter was on account of technical defect in the meter or tampering with meter. Ms. Bhaya submitted that when the meter was found running slow to the extent of 12.83%, as an immediate measure for recovery of difference of consumption charges, the petitioner was issued bill for an amount of Rs. 1,11,283.69 ps. Ms. Bhaya submitted that on account of non-availability of other meters, it was not possible to immediately remove and replace the meter, however delay in replacing the said meter would not take away the right of the respondents from ascertaining whether the meter was tampered with or not, especially when the petitioner had not made any application to refer the meter to the Electrical Inspector under Section 26(6) of the Act. Ms. Bhaya submitted that the delay in sending the meter for laboratory

test would not brush aside the finding recorded in the laboratory test report about tampering of the meter by the petitioner. Ms. Bhaya submitted that what is required to be seen is whether even after long delay, the condition of meter with seals, wires etc. remained the same when they were opened for the purpose of testing in the laboratory. Ms. Bhaya submitted that in the laboratory, the meter with its seals and wires were found in the same condition when they were packed and testing was carried out in the laboratory in presence and without protest of the petitioner. Ms. Bhaya submitted that when on testing of the meter, it is found that the meter was tampered with, the laboratory test report is a conclusive evidence of theft against the petitioner which is relied on by the Appellate Committee and therefore, no interference is called for in the decision of the Appellate Committee by this Court while exercising the powers under Article 226 of the Constitution of India. Ms. Bhaya submitted that the laboratory test report clearly reveals that the petitioner tampered with the meter body, seals and meter mechanism and therefore, no error could be found with the finding reached by the Appellate Committee about the theft of energy by the petitioner. She thus urged to dismiss the petition.

8. Learned advocate Ms. Bhaya has relied on following decisions:-

(1) In the case of J.M.D. Alloys Ltd. Vs. Bihar State Electricity Board and Others, ;

(2) In the case of Himson Knitting Industries Ltd. Vs. South Gujarat Vij Company Ltd., reported in 2009(2) GLH 315;

(3) In the case of Western Electricity Supply Co. of Orissa Ltd. & others Vs. M/s. Baba Baijanath Roller and Flour Mill Pvt. Ltd. (Civil Appeal No. 4023 of 2014 dated 26.3.2014);

(4) In the case of Banuma Polytex Ltd. Vs. Gujarat Electricity Board and Another, .

9. Having heard learned advocates for the parties, it appears that when the electrical installation of the petitioner was checked on 7.2.2000, the meter was found running slow by 12.83%. For such slow running of the meter, the petitioner was issued bill for an amount of Rs. 1,11,283.69 ps. for a period of six months prior to the date of inspection. The petitioner in its appeal before the Appellate Committee has stated that the appellant was forced by the respondents to pay the said amount without referring the meter to the Electrical Inspector under Section 26(6) of the Act. However, the fact remains that even the petitioner did not make any application under Section 26(6) of the Act for referring the meter to the Electrical Inspector.

10. There is no dispute about the fact that the meter was not immediately removed and replaced by another meter. In the remark column of the checking report at page 71, though it is stated that for non-availability of meters at Division, the meter was not replaced, however it is further stated that it must be replaced as per the Board''s present Rules (Rules prevailing then) immediately.

The said meter was then replaced by static meter on 8.9.2000. It is stated in the rojkam dated 8.9.2000 that the replaced meter was wrapped in paper, put in paper box and packed for laboratory test. The meter and seals on the meter were then inspected and tested in the laboratory on 30.6.2004 i.e. almost after a period of three years and nine months. The question arises whether it was open to the respondents to get the meter tested in laboratory when there was no allegation of tampering with meter or of any fraudulent act on the part of the petitioner to abstract the electrical energy unauthorizedly and when the meter was found slow running to the extent of 12.83% on checking the installation, based on which even bill for six months was issued to the petitioner.

11. Section 26 of the Act reads as under:-

26. Meters : (1) In the absence of an agreement to the contrary, the amount of energy supplied to a consumer or the electrical quantity contained in the supply shall be ascertained by means of a correct meter, and the licensee shall, if required by the consumer, cause the consumer to be supplied with such a meter :

Provided that the licensee may require the consumer to give him security for the price of a meter and enter into an agreement for the hire thereof, unless the consumer elects to purchase a meter.

(2) Where the consumer so enters into an agreement for the hire of a meter, the licensee shall keep the meter correct, and, in default of his doing so, the consumer shall, for so long as the default continues, cease to be liable to pay for the hire of the meter.

(3) Where the meter is the property of the consumer, he shall keep the meter correct, and in default of his doing so, the licensee may, after giving him seven days notice, for so long as the default continues, cease to supply energy through the meter.

(4) The licensee or any person duly authorised by the licensee shall, at any reasonable time and on informing the consumer of his intention, have access to, and be at liberty to inspect and test, and for that purpose, if he thinks fit, take off and remove any meter referred to in sub-section (1) : and except where the meter is hired as aforesaid, all reasonable expenses of, and incidental to, such inspecting, testing taking off and removing shall, if the meter is found to be otherwise than correct, be recovered from the consumer; and, where any difference or dispute arises as to the amount of such reasonable expenses, the matter shall be referred to an Electrical Inspector, and the decision of such Inspector shall be final;

Provided that the licensee shall not be at liberty to take off or remove any such meter if any difference or dispute of the nature described in sub-section (6) has arisen until the matter has been determined as therein provided.

(5) A consumer shall not connect any meter referred to in subsection (1) with any electric supply-line through which energy is supplied by a licensee, or

disconnect the same from any such electric supply-line, [but he may by giving not less than forty-eight hours'' notice in writing to the licensee require the licensee to connect or disconnect such meter and on receipt of any such requisition the licensee shall comply with it within the period of the notice].

(6) Where any difference or dispute arises as to whether any meter referred to in sub-section (1) is or is not correct, the matter shall be decided, upon the application of either party, by an Electrical Inspector; and where the meter has, in the opinion of such Inspector ceased to be correct, such Inspector shall estimate the amount of the energy supplied to the consumer or the electrical quantity contained in the supply, during such time, not exceeding six months, as the meter shall not, in the opinion of such Inspector have been correct; but save as aforesaid the register of the meter shall, in the absence of fraud, be conclusive proof of such amount or quantity;

Provided that before either a licensee or a consumer applies to the Electrical Inspector under this sub-section, he shall give to the other party not less than seven days'' notice of his intention so to do.

(7) In addition to any meter which may be placed upon the premises of a consumer in pursuance of the provisions of subsection (1), the licensee may place upon such premises such meter, maximum demand indicator or other apparatus as he thinks fit for the purpose of ascertaining or regulating either the amount of energy supplied to the consumer, or the number of hours during which the supply is given, or the rate per unit of time at which energy is supplied to the consumer, or any other quantity or time connected with the supply :

Provided that the meter, indicator or apparatus shall not, in the absence of an agreement to the contrary be placed otherwise than between the distributing mains of the licensee and any meter referred to in sub-section (1) :

Provided also that, where the charges for the supply of energy depend wholly or partly upon the reading indicating of any such meter, indicator or apparatus as aforesaid the licensee shall, in the absence of an agreement to the contrary, keep the meter, indicator or apparatus correct; and the provisions of sub-sections (4) (5) and (6) shall in that case apply as though the meter, indicator or apparatus were a meter referred to in sub-section (1).

Explanation-A meter shall be deemed to be "correct" if it registers the amount of energy supplied, or the electrical quantity contained in the supply, within the prescribed limits of error and a maximum demand indicator or other apparatus referred to in sub-section (7) shall be deemed to be "correct" if it complies with such conditions as may be prescribed in the case of any such indicator or other apparatus.

12. As per Section 26(6) of the Act, any difference or dispute as to whether any meter is correct or not, the matter is to be decided by the Electrical Inspector upon the application of either party and where the meter has, in the opinion of

the Inspector, ceased to be correct, the Inspector shall estimate the amount of energy supplied to the consumer or electrical quantity contained in the supply for the period not exceeding six months, as the meter shall not have been correct in the opinion of the Inspector. However, for the period interior to six months, register of the meter shall be conclusive proof of the amount or quantity of supply in absence of any fraud. As per explanation at the end of sub-section (7) of Section 26 of the Act, the meter shall be deemed to be correct if it registers amount of energy supplied or electrical quantity contained in the supply within prescribed limit of error and a maximum demand indicator or other apparatus referred in sub-section (7) shall be deemed to be correct if it complies with such conditions as may be prescribed in case of any such indicator or other apparatus. When the meter of the petitioner was found running slow to the extent of 12.83%, it could be said that there was a dispute as to correctness of the meter. However, since the petitioner did not make any application for referring the dispute to the Electrical Inspector, it remained bound by the bill given to it for slow running of the meter. Similarly, when the respondents chose not to apply for reference to the Electrical Inspector, they would remain bound by their act of issuing bill for slow running of the meter to the petitioner. It was not open to the respondents to by pass the reference to Electrical Inspector and to get the meter tested in the laboratory. The law mandates for decision of the disputes as regards correctness of the meter only by Electrical Inspector and such mandate cannot be permitted to be violated by the respondents by taking recourse to laboratory test. The provisions of Section 26(6) of the Act cannot be allowed to be frustrated at the whims of the respondents.

13. In the case of Smt. Basantibai (supra) the Hon''ble Supreme Court has observed in para 9 as under:-

9. It is evident from the provisions of this section that a dispute as to whether any meter referred to in sub-sec. (1) is or is not correct has to be decided by the Electrical Inspector upon application made by either of the parties. It is for the Inspector to determine whether the meter is correct or not and in case the Inspector is of the opinion that the meter is not correct he shall estimate the amount of energy supplied to the consumer or the electrical quantity contained in the supply during a period not exceeding six months and direct the consumer to pay the same. If there is an allegation of fraud committed by the consumer in tampering with the meter or manipulating the supply line or breaking the body seal of the meter resulting in not registering the amount of energy supplied to the consumer or the electrical quantity contained in the supply, such a dispute does not fall within the purview of sub-sec. (6) of S. 26. Such a dispute regarding the commission of fraud in tampering with the meter and breaking the body seal is outside the ambit of S. 26(6) of the said Act. An Electrical Inspector has, therefore, no jurisdiction to decide such cases of fraud. It is only the dispute as to whether the meter is/is not correct or it is inherently defective or faulty not recording correctly the electricity consumed, can be decided by the Electrical Inspector under the provisions of the said Act.

14. In the case of Belwal Spinning Mills Ltd. (supra), the Hon''ble Supreme Court has held and observed in para 37, 45 to 50 as under:-

37. After giving our careful consideration to the facts and circumstances of the cases in these appeals and the submissions made by Mr. Gupta, Mr. Sen and Mr. Andherujina, the learned Solicitor General, it appears to us that Section 20 of the Electricity Act authorises the licensee to enter the premises of the consumer to remove fittings and other apparatus installed by the licensee. Clause (a) of sub-section (1) of Section 20 authorises the licensee to enter the premises of the consumer for ''inspecting, testing, repairing or altering the supply lines, meters, fittings and apparatus for the supply of energy belonging to the licensee. The licensee, therefore, cannot only enter the premises of the consumer for inspecting, testing etc. but the licensee also can alter the meter whenever such alteration is needed. Such power under Section 20 does not depend on the adjudication of correctness of the meter and other apparatus by the Electrical Inspector on a reference under Section 26(6) of the Electricity Act. But such power flows from the statutory duties and functions of the licensee to maintain the correct meter for recording the quantum of electricity supplied to the consumer. Such duty to ensure maintenance of correct meter in the premises of the consumer has been indicated in sub-section (1) and sub-section (2) of Section 26. The power of removing the meter under Section 20, however, is circumscribed by the proviso to sub-section (4) of Section 26 only when the dispute as to the functioning of the meter has been referred to the Electrical Inspector under Sub section (6) of Section 26. A licensee is authorised under sub-section (7) of Section 26 to place, in addition to the meter installed in the premises of consumer as referred to in sub-section (1) of Section 26, other meter or apparatus as the licensee deem fit for the purpose of recording or regulating the amount of energy supplied to the consumer. Such power also does not depend on the existence of any dispute as to the correctness of the meter installed.

45. Sub-section (1) of Section 26 provides that in the absence of any agreement to the contrary, the amount of energy supplied to a consumer or the electric quantity contained in the supply, shall be ascertained by means of a correct meter. Sub-sections (2), (3) and (4) of Section 26 provide for the inter se rights and duties of the consumer and the licensee to keep the meter and other apparatus necessary for recording the consumption of electricity by the consumer in good condition and for such purpose the licensee has been clothed with the power to enter the premises of the consumer for testing, checking, maintaining etc. the meter and other apparatus and for repairing and altering the same if needed. Explanation to sub-section (7) of Section 26 provides that "a meter shall be deemed to be ''correct'' if it registers the amount of energy supplied or the electrical quantity contained in the supply within the prescribed limits of error and a maximum demand indicator or other apparatus referred to in sub-section (7) shall be deemed to be correct if it complies with such conditions as may be prescribed in the case of any indicator or other apparatus."

46. Sub-section (6) of Section 26 provides that in case of any difference or dispute as to whether any meter referred to in subsection (1) is or is not correct, the matter shall be decided upon the application of either party, by Electrical Inspector. It also provides that on a finding that meter ceased to be correct, the Electrical Inspector has to make an estimate of consumption of electricity during the statutory period as referred to in subsection (6) of Section 26. What is the statutory period for which estimation is to be made by the Electrical Inspector has already been indicated. Sub-section (6) of Section 26 also provides that save as aforesaid, namely estimation of consumption of electricity by the Electrical Inspector for the statutory period, "the register of the meter shall, in the absence of fraud, be conclusive proof of such amount or quantity." (Emphasis added)

47. On a conjoint reading of various sub-sections of Section 26 of the Electricity Act, it is evident that consumption of electricity or electrical quantity in the supply, shall be ascertained by means of a correct meter and the meter and other apparatus for recording the consumption of electricity by a consumer will be deemed to be correct if the recording is within the permissible limit of error as prescribed. if a dispute as to the correctness of the meter is raised by any party for reference, such dispute can be decided only by the Electrical Inspector and both the licensee and the consumer have to accept the estimate of supply of electricity to the consumer as may be determined by the Electrical Inspector for the statutory period referred to in subsection (6) of Section 26.

48. Although the licensee is clothed with the power to maintain a correct meter installed at the premises of the consumer and for such purpose can enter the premises of the consumer and the licensee can also repair or alter the meter and other electrical apparatus if found defective on checking or testing by the licensee, but if the dispute as to the correct status of the meter or other electrical apparatus is raised either by the licensee or by the consumer by making reference to the Electrical Inspector under sub-section (6) of Section 26, then such dispute can be determined only by the Electrical Inspector and the meter or apparatus cannot also be changed by the licensee unless the dispute is resolved by the Electrical Inspector. If there is a dispute as to the proper functioning of the meter or check meter or other electrical apparatus under sub-section (6) of Section 26, the Electrical Inspector upon entering the reference would determine the dispute as to the proper functioning of the meter and other electrical apparatus and in the event the Electrical Inspector comes to the finding that the meter ceased to be correct, he is to determine the quantum of the electricity consumed during the statutory period referred to in sub-section (6) but for any other period anterior to the statutory period, the legislature, in no uncertain term, has indicated in the latter part of sub-section (6) of Section 26 that reading registered in the disputed meter will not only be presumed to be correct but such reading shall be conclusive proof of the quantity of electricity consumed or the amount of electricity supplied to the consumer provided no fraud has been practised by the consumer. In appreciating the intention of the legislature, the provision for treating the recording of the disputed meter to be

the conclusive proof of the amount of quantity supplied to the consumer in the absence of fraud where a dispute is raised by either of the party about the functioning of the meter, cannot be overlooked. Subsection (6) has been amended and the legislature has introduced a conscious departure by deleting the requirement of assessing the quantity of electricity consumed for the entire period during which the Electrical Inspector or the competent authority was of the opinion that the meter had ceased to be correct. In our view by limiting the period for estimation to be made by the Electrical Inspector by the amendment of subsection (6) and further providing that for the anterior period, in the absence of fraud, the register of the meter shall be conclusive proof of the supply of the electricity it is quite evident that even if it transpires that the installed meter ceased to be correct, then for the period anterior to the statutory period for which the estimation is not to be made by the Electrical Inspector, the register of the meter about the consumption of the electricity supplied to the consumer shall be binding between the parties by treating such recording as conclusive proof of the consumption in the absence of any fraud practised by the consumer. By the amendment of sub-section (6) the Electrical Inspector has been purposely absolved from the duty to determine as to from which point of time beyond the said statutory period, the meter had ceased to function so that for such entire period, the estimation of the supply of electricity need not be made. Such amendment of sub-section (6), in our view, only means that beyond the statutory period, in the event of dispute between the parties as to the proper functioning of the meter and other electrical apparatus, the consumer has liability to pay the estimated amount indicated by the Electrical Inspector limiting the estimate upto the statutory period and not beyond that but for the other anterior period the consumer is required to pay according to the consumption of electricity registered in the disputed meter provided there is no fraud practised by the consumer because dispute of such anterior period remains unresolved by the change introduced by the amendment.

49. Such legislative change by the amendment of sub-section 6 of Section 26, in our view, has been introduced to set at rest any dispute between the licensee and the consumer about the actual consumption of the quantity of electricity by the consumer where no fraud has been practised by the consumer for all other period anterior to statutory period for estimation. There is good reason for such legislative change because it may not be possible to precisely determine exactly from which point of time the meter ceased to be correct. The scheme under the Electricity Act clearly reveals that a correct meter is to be installed and such correct meter is to be maintained by the licensee in the premises of the consumer so that consumption of electricity is computed on the basis of reading in the meter. The scheme also reveals that unilateral decision of either of the parties about the correct status of the meter is not to be accepted by the other party if the other party raises objection as to the status of the meter. Whenever both parties do not accept a meter to be correct and the dispute is raised, such dispute is got to be resolved by referring to a statutory authority under Section

26(6), namely, the Electrical Inspector. Within the integrated scheme under Section 26 of the Electricity Act, it is not possible that even though dispute is raised about the mal functioning of the meter such dispute will be treated as statutorily resolved for a limited period in accordance with the amended sub-section (6) of Section 26 but for other period anterior to the same, the dispute will remain unresolved and claim of the licensee be open to be challenged. Therefore, simply on the finding that meter had ceased to be correct by the Electrical Inspector on entering the reference a licensee may not be justified in contending that a particular meter had ceased to be correct from a particular point of time even though the licensee, despite its statutory duty to maintain the correct meter by repairing or rectifying the defective meter and by replacing it if necessary has failed to take appropriate step. Both Mr. Sen and the learned Solicitor General in their fairness, have submitted that beyond the statutory period for which no estimation for the consumption of electricity is to be made by the Electrical Inspector attaching statutory finality to such estimation, although the licensee is not precluded from raising revised claim for other period anterior to the statutory period of estimation but such claim will be open to be challenged by the consumer. In our view by the amendment of sub-section (6) of Section 26, the Legislature has intended to put an end of such contest between the licensee and the consumer and has set at rest of any dispute relating to any period anterior to the statutory period of estimation by providing that in a case of dispute as to functioning of meter, the reading in the meter for the period beyond the period of statutory estimation, will be final.

50. As in none of these appeals, there is any allegation that the concerned consumer had practised fraud or had tampered with the meter or other electrical apparatus provided for recording the supply of electricity to the consumer, the consumer will be entitled to the statutory protection of correctness of the recording of the consumption or supply of electricity consumed in the meter/ check meter as conclusive proof of such amount of quantity of electricity consumed for all the period anterior to statutory period of estimation under Section 26(6) of the Act because admittedly there is dispute as to the proper functioning of the meter and check meter installed at the premises of the consumer.

15. In the case of Laffans (India) (P) Ltd. (supra), the Hon''ble Supreme Court has held and observed in para 9 and 13 as under:-

9. What is contemplated by Section 26(6) is a running meter, but which on account of some technical defect registers the amount of energy supplied or the electrical quantity contained in the supply beyond the prescribed limits of error. It contemplates a meter which is either running slow or fast with the result that it does not register the correct amount of energy supplied. There is an additional reason for coming to such a conclusion. Section 26(6) confers power upon the Electrical Inspector to estimate the amount of energy supplied to the consumer or the electrical quantity contained in the supply, during such time, not

exceeding six months, as the meter shall not, in the opinion of such Inspector, have been correct. Where the meter is running slow or fast, it will be possible for the Electrical Inspector to estimate the amount of energy supplied to the consumer by determining the extent or percentage of error in recording the supply, whether plus or minus. However, where the meter is burnt or is completely non-functional, such an exercise is not at all possible. Therefore, Section 26(6) can have no application in a case where a meter has become completely non-functional on account of any reason whatsoever.

13. For the period for which, according to the appellant, the meter was not correct, none of the parties has referred the dispute to the Electrical Inspector. The meter though it is alleged by the appellant to have remained not correct, readings have been regularly recorded, bills raised and also paid by the consumer-respondent No. 1. According to Section 26(6), the readings would bind the appellant and respondent No. 1 both. It has never been the case of the appellant at any stage that the meter was not correctly recording the consumption of electricity on account of being non-functional due to any fraud committed or device or trick adopted by the consumer-respondent No. 1 or that the body seal of the meter was found broken or tampered with. The respondent No. 1 was accepting and honouring the demands raised by the appellant and, therefore, respondent No. 1 cannot be expected to have raised a dispute and sought for a reference for determination by Electrical Inspector. The appellant could not have, therefore, revised the demand for such period based on average consumption during the previous year. There is yet another reason why the entitlement of the appellant to recover charges from the respondent No. 1 may have to be denied. According to the proviso appended to subsection (4) of Section 26, the licensee cannot take off or remove any such meter as to which difference or dispute of the nature described in sub-section (6) has arisen until the matter has been determined by the Electrical Inspector. The purpose is to preserve the evidence. The dispute shall be expeditiously disposed of by the Electrical Inspector by applying scientific method of investigation to find out if the meter was incorrect and if so then what was the extent of error. In the present case, the meters said to be incorrect have been removed and replaced by the appellant. Admittedly, no dispute has been raised and referred to the Electrical Inspector. The most material evidence being the meter itself has been lost by the act of the appellant in removing the incorrect meter. The appellant cannot be permitted to take advantage of its own act and omission-the act of removing the meter and the omission to make a reference to the Electrical Inspector.

16. When the electrical installation of the petitioner was checked on 7.2.2000, there was no allegation of fraud or tampering with the meter nor even the same was actually found recorded in the checking-sheet dated 7.2.2000 at page 71. What is recorded is that as per the accue test result, the meter was found slow running to the extent of 12.83%. Below accue test result, it is stated that supplementary bill be issued as per the Board''s Rules for slowness shown to the

extent above. Then, after a period of about seven months, when the meter was replaced by new static meter, it is found recorded in the rojkam that the seal No. 1045722 on MMB, seal No. A-039204 of meter Terminal Cover and seal No. 2A92694 on TTB were removed, however there is no mention about tampering with any of the seals. This replaced meter was not sent for inspection in the laboratory for about three years and nine months. As stated above, the petitioner was already issued supplementary bill for slow running of the meter. Though neither of the parties referred the dispute to the Electrical Inspector under Section 26(6) of the Act as to whether the meter was or was not correct, however there was no allegation of fraud committed by the petitioner as regards manipulation or tampering with the meter or tampering with seals on the meter, nor even the checking-sheet dated 7.2.2000 and the rojkam dated 8.9.2000 suggested tampering with the meter seals. In such facts situation, it was not permissible to send the meter for inspection in the laboratory especially when the petitioner was made to pay bill for an amount of Rs. 1,11,283.69 ps. for slow running of the meter. The only remedy available to the respondents was to refer the meter for inspection to the Electrical Inspector under Section 26(6) of the Act after the meter was found running slow. That having not been done, even if the laboratory test suggested tampering with right side meter body seals and found duplicate, the petitioner could not have been issued supplementary bill for theft of energy.

17. In the case of J.M.D. Alloys Ltd. (supra) relied on by Ms. Bhaya, it was found that the seal on the CT/PT terminal box was tampered with and natural working of the meter was affected by taking recourse to the external devices. In such fact situation, the Hon''ble Supreme Court held that a dispute of such kind cannot be referred to the Electrical Inspector under Section 26(6) of the Act. This judgment will have no application to the facts of the present case.

18. In the case of Himson Knitting Industries Ltd. (supra), relied on by Ms. Bhaya, it was found by the checking squad during inspection of the electrical installation that the meter was running slow to the extent of 47.51% and consumer was issued supplementary bill for last six months. The consumer challenged such bill on the ground that the Electricity Board had no power to issue such bill as the meter was to be considered as defective meter and unless the meter was inspected by the Electrical Inspector under Section 26(6) of the Act, the bill could not have been issued to the consumer. In such fact situation, it was held that the Board had no case that the meter was defective. It was the consumer who raised a dispute that the meter was defective. If the consumer had such a grievance, the same should have been raised then and there and the consumer should have made request for getting the meter tested by the Electrical Inspector. The Court has held that if the Board replaces the meter without consent of the consumer on the ground that the meter was defective without testing original meter by the Electrical Inspector, the Board cannot raise supplementary bill. Therefore, it was not a case of commission of any theft, fraud or unauthorizedly abstracting the energy or manipulation or tampering with the

meter. The sole challenge was against issuance of the bill to the consumer on account of slow running of the meter found during inspection without reference to the Electrical Inspector under Section 26(6) of the Act. Therefore, this judgment will be of no help to the respondents.

19. In the case of M/s. Baba Baijanath Roller and Flour Mill Pvt. (supra), it was found during inspection that HT meter, TP box, inner door and meter terminal quick seals, plastic seals and paper seals were tampered with. B-Phase PT wire was found cut and as such meter was not getting B-phase potential. In such facts situation, the Hon''ble Supreme Court has held and observed in para 11 as under:-

11. We have noticed the facts in this case. We have also considered the Sections of the Act of 1910 and it appears to us that Section 26 is relevant only when there is any difference or a dispute arises in connection with correctness of a meter, in that case the matter shall be decided, upon being applied by either party, by an Electrical Inspector and in the opinion of the Inspector if it is found that the meter is defective, the Inspector shall estimate the amount of energy supplied to the consumer or the electrical quantity contained in the supply during such time not exceeding six months but if there is a question of fraud in tampering with the meter, in that case there is no question of applicability of Section 26 of the said Act in such a matter. In the instance case, we have asked the learned counsel appearing for the respondent whether following Section 26(6), the respondent ever asked or applied for checking of the meter by the Electrical Inspector on the ground of defective meter. The answer was in the negative. Therefore, it shows that the ingredients of Section 26(6) were not followed by the respondent to meet the necessity of checking the meter in question in accordance with the said provision."

20. In the facts of the above-said case, it was held that there was no question of applicability of Section 26 of the Act. Present is not the case where during inspection of the electrical installation of the petitioner, any tampering with meter, seals etc. was found, nor even there is any allegation of fraud or manipulation committed by the petitioner to prevent the meter from recording correct consumption of electricity supplied. Therefore, this judgment will also be of no help to the respondents.

21. The decision in the case of Bahuma Polytex Ltd. (supra) relied on by Ms. Bhaya is about the exercise of jurisdiction by High Court under Article 226 of the Constitution of India, where the disputed questions of fact are found involved. Since in the facts of that case, the Court found that it was not possible to decide the disputed questions of fact, the Court relegated the petitioner of the said case to the remedy of appeal. The Court in the said case was not concerned about issue as to whether, in absence of allegation of fraud or tampering with meter, when the bill for slow running of the meter was issued to the consumer, the meter could be sent for laboratory test and the consumer could be subsequently issued supplementary bill for theft of energy on the basis of laboratory test

report. Exercise of powers under Article 226 of the Constitution of India depends upon facts of each case. The decision cited will have no application to the facts of the present case.

22. However, this Court has also examined the order of the Appellate Committee on the aspect of theft of electricity energy. The Court finds that the Appellate Committee has observed that MMB seals, TC seals, TTBC are not found tampered but are in proper condition ("FOUND OK" as observed by the Appellate Committee). The Court finds from the inspection-sheet dated 7.2.2000 and from the rojkam made on 8.9.2000 that MMB seal, TC seal and TTBC were found in proper condition. However, in the inspection report of the laboratory test carried out after a period of three years and nine months, it is recorded that two seals being A/0 11036 and A/2 10344 were found tampered and duplicate. It is further observed in the report that after opening the sealing screw on the right side of the meter, the lead (top cover) of the meter from right side was possible to be lifted to the extent of 60 degree and scratches were found on the name plat of KVH and KVAH. It is further recorded that no foreign substance was found from the meter. The inner wiring counter, Pot bearing C.C., P.C., terminal block, all were found in proper condition. On such inspection, the petitioner is stated to have committed theft of energy. Though the Court has no expertise on such subjects, however it cannot be ignored that if MMB seal, TC seal and TTBC seal were not found tampered, how was it possible to have access to the meter placed in MMB. At this stage, it cannot be lost sight of the fact that when the meter was replaced on 8.9.2000, as recorded in rojkam, the meter was taken out after removing MMB seals, TC seal and TTBC seal. If for taking out the meter, the above-said seals were required to be removed even by the officers and when nothing is mentioned about tampering with the meter in the rojkam, whether the Appellate Committee is justified in relying on laboratory inspection report to hold that the petitioner committed theft of energy. In the view of the Court, the observations made in the laboratory inspection report about two seals found tampered and duplicate and that top cover of the meter was possible to be lifted easily to the extent of 60 degree, could not have been taken as the basis to hold that the petitioner had committed theft of energy as against the strong evidence available on record as regards intact and proper condition of MMB seal, TC seal, TTBC seal. Therefore, in the facts of the case emerging from the material on record, the finding recorded by the Appellate Committee about theft of energy by the petitioner cannot be sustained. Irrespective of the conclusion reached by this Court about unauthorized action of the respondents of sending the meter for testing in the laboratory after having found that the meter was running slow by passing making of reference to the Electrical Inspector, the Court is also of the view that the respondents were not authorized to issue supplementary bill to the petitioner for theft of energy. Under the circumstances, the petition is required to be allowed and the order passed by the Appellate Committee and the supplementary bill issued to the petitioner for theft of energy are required to be quashed and set aside.

ARGUMENTS AND CONCLUSION IN SPECIAL CIVIL APPLICATION NO. 4076 OF 2006

23. Learned advocate Mr. Savjani for Mr. B.P. Gupta for the petitioner submitted that for HT (High Tension) consumer, G-7 card is required to be maintained. Though G-7 card maintained by the petitioner is signed by the officer, nowhere it is observed that the seals on MMB and TTB were found tampered. Mr. Savjani submitted that in the rojkam prepared on 9.2.2000 also, there is no mention about tampering of any seal. Mr. Savjani submitted that existence of artificial element was also not found when the rojkam was made and even during the laboratory test. Mr. Savjani submitted that just on the assumption that the seals on MMB, TC, TTB must have been tampered by the petitioner though the petitioner had categorically contended that the officers of the Board might have tampered with the seals, the conclusion about theft of energy by the petitioner was arrived. Mr. Savjani submitted that in order to see that the Appellate Committee could itself examine the seals alleged to have been tampered by the petitioner, the petitioner requested the Appellate Committee to call for the seals for physical verification by the Appellate Committee as per the Circular dated 27.3.1986 of the Board and to permit the petitioner to examine the checking officer as witness. However, the Appellate Committee turned down such request simply on the ground that it was a quasi judicial authority and it is not necessary to call for any person as witness and even to verify the seals or meter etc. Mr. Savjani submitted that though the Appellate Committee is not required to strictly follow the provisions of the Evidence Act, however when it was required to verify the condition of the seals preserved by the Board after the inspection, it was incumbent for it to call for the seals for verification and also to permit the petitioner to examine the checking officer as witness to find out whether the petitioner could be said to be responsible for alleged tampering with the seals.

24. As against the above arguments, learned advocate Ms. Lilu K. Bhaya appearing for the respondents submitted that G-7 card is always to be maintained by the consumer and non-observance of the condition of the seals in the said card cannot be a ground to urge that there was no tampering with the seals. Ms. Bhaya submitted that MMB and other seals were inspected in presence of the representative of the petitioner, and as per the laboratory test report, black spots were found in the cable coming from TTB, scratches were found on the seals of CTPT, terminal cover and on MMB main door. Such inspection report was without any protest signed by the representative of the petitioner. Ms. Bhaya submitted that in view of such testing report of the laboratory, the Appellate Committee was not required to permit the petitioner to examine the checking officer as witness and it was also required to call for seals for physical verification. Ms. Bhaya submitted that in the facts of the case, the circular relied on by the petitioner had no application and therefore, the Appellate Committed has rightly turned down the request made by the petitioner. Ms. Bhaya submitted that the Appellate Committee having recorded the finding about theft of energy on the basis of the material available with it, this Court would not like to sit in

appeal over the decision of the Appellate Committee while exercising the power under Article 226 of the Constitution of India.

25. Ms. Bhaya submitted that on the day of inspection, since it was found that the meter was not displaying consumption data, it was removed for inspection in the laboratory and it is clearly recorded that all seals with MMB etc. were duly packed for inspection and such seals with MMB and other seals were examined and inspected in presence of the representative of the petitioner. Ms. Bhaya submitted that in such view of the matter, the petitioner was not justified in alleging that the seals must have been tampered by the officers of the Board. She thus urged to dismiss the petition.

26. Having heard learned advocates for the parties, it appears that when the electrical installation of the petitioner was checked on 1.9.2001, the meter was found not displaying the consumption data and therefore, the meter with MMB and seals were removed and packed in the condition as they were for the purpose of laboratory test as mentioned in the rojkam dated 1.9.2001 at Annexure-F.

27. During laboratory test in presence of the representative of the petitioner, the MMB with meter and seals were found in the same condition when they were packed and thereafter, they were inspected/examined in the laboratory in presence of the representative of the petitioner. It was found that CTPT cover, meter terminal cover, seals on main door of MMB, port and MD seal were tampered as recorded in the laboratory test report dated 9.2.2005 at page 69.

28. The circular on which reliance is placed is dated 27.3.1986 at Annexure-I, which provides for preserving of tampered/duplicate meter seals by the laboratory. It is mentioned in the circular that subdivision shall arrange to send tampered/duplicate seals before the Appellate Committee when the case comes up before the Appellate Committee. Based on this circular, such request was made to the Appellate Committee to call for the seals alleged to be tampered with.

29. The Appellate Committee did not accede to the request of the petitioner on the ground that it is a quasi judicial forum and as per the Rules and practice, it is not necessary to call any person as witness or to verify the seals or meter etc.

30. It is required to be noted that the said circular nowhere provides that in every case, where the allegation is of tampering of seals, the Appellate Committee is required to verify the seals or meter etc. The purpose for preserving the tampered/duplicate seals appears to be that if the Appellate Committee on its own wants to ascertain the existence of tampered/duplicate seals, it can do so but the circular cannot be relied on by the consumer to ask for verification of seals by the Appellate Committee as a matter of right.

31. In the case on hand, when the rojkam clearly mentions about packing the MMB, meter and other seals in the same condition when they were removed in

presence of the representative of the petitioner and no objection was raised as regards change of their condition when they were tested and since they were found tampered during inspection in the laboratory in presence of the representative of the petitioner, it cannot be said that the Appellate Committee has committed any error either in relying upon the laboratory test report or in refusing to call the checking officer as witness as also to verify the seals.

32. Mr. Savjani, however, contended that in view of the decision of this Court in the case of Modern Terry Towels Ltd. Vs. Gujarat Electricity Board and Others (Special Civil Application No. 5348 of 2002 dated 1.8.2002), the Appellate Committee was not justified in refusing the request to call seals and to verify the same as the same was the evidence relied to hold that the petitioner had committed theft of energy. In the said case, the Court has held and observed in para 28 and 29 as under:-

28. The appellate authority is required to take into consideration that it is primarily required to record findings of fact after appreciating the evidence on record, and for this purpose it shall have to consider whether there is evidence, or whether it is a case of lack of evidence or a case of insufficient evidence. The rule of ''no evidence'' as summarised by this Court in the case of Siddharth Mohanlal Sharma Vs. South Gujarat University, , has been succinctly stated in the following terms.

The English Courts have not construed the words ''no evidence'' narrowly. The rule of ''no evidence'' is there attracted not only in cases where there is complete lack of evidence, that is to say, where there is not a tittle or shred of evidence, but also in cases where the evidence, if any, is not capable of having any probative value, or on the basis of which no Tribunal could reasonably and logically come to the conclusion about the existence or non-existence of facts relevant to the determination. According to the English decisions, even though a domestic tribunal may act on evidence not admissible according to legal rules in a Court of law, unless such evidence has some probative value in the sense mentioned above, it would be a breach of natural justice and/or an error of law to found any adverse decision thereon.

The '' no evidence'', rule has the same content and meaning in our country as in England. ''No evidence'' does not merely signify total dearth of evidence, evidence which does not reasonably support the conclusion is also comprehended within the meaning of the said expression. In other words, cases where there is complete lack of evidence and cases where the evidence, if any, is incapable of rationally leading to the conclusion reached, are both treated on a par so far the applicability of the rule of ''no evidence'' concerned. Mere suspicion, even if honestly and bona fide entertained on the basis of apparently cogent circumstances, is held to be out of bounds even in domestic inquiries, where the principle that in punishing the guilty scrupulous care must be taken to see that the innocents are not punished, is found to apply as much as it applies to regular criminal trials. In the ultimate analysis, the test which must be applied is whether there is some material capable on having any evidential value. If not, the case must be held to fall within the mischief of the rule of ''no evidence''.

29. Though the appellate Committee is not a Court of Law and is not expected to function like a Civil Court it is necessary that it approaches the case before it by applying principles of natural justice and passing a reasoned order. As stated by the Supreme Court in the case of Punjab State Electricity Board and Another Vs. Ashwani Kumar, :

When the provision for appeal by way of review has been provided by the statutory instructions, and the parties are directed to avail of the remedy, the authorities are enjoined to consider all the objections raised by the consumer and to pass, after consideration, the reasoned order in that behalf, so that the aggrieved consumer, if not satisfied with the order passed by the Board/appellate authority, can avail of the remedy available under Article 226 of the Constitution. Therefore, by necessary implication, the appropriate competent authority should hear the parties, consider their objections and pass the reasoned order, either accepting or negativing the claim. Of course it is not like a judgment of a Civil Court xxxx.

This approach is all the more necessary because as laid down by this Court in the case of Shamji Ramji Gohil Vs. Deputy Engineer (O and M), Gujarat Electricity Board and Others, , a consumer has no right to engage an Advocate to represent his case before the appellate authority.

The decision relied on will have no application to the facts of the case. Present is not the case of complete lack of evidence or evidence available is in incapable of rationality in leading to the conclusion reached. Present is not a case of mere suspicion but as stated above, the MMB, the meter and the seals which were taken in the same condition were found to be in the same condition in presence of the petitioner and then were tested in the laboratory and in such testing, the finding of tampering with MMB, meter, seals etc. were recorded. Therefore, it is neither a case of no evidence nor such evidence which could be said to be incapable of rationality in leading to the conclusion reached by the Appellate Committee.

33. The Appellate Committee has in its order, recorded following finding as regards theft of energy by the petitioner:-

It is also not in dispute that the meter with the MMB and MMB main door and window seals and terminal cover seal and CTPT-TC seal were removed, wrapped and sealed and other seals were inspected in the laboratory on 9.2.2005 in the presence of the representative of the appellant and at that time necessary laboratory inspection report was prepared and it was singed by the representative of the appellant. Now it is stated in that laboratory inspection report that the meter fixing plate bolls were found loose in the MMB. It is also stated in that laboratory inspection report that black spots were found on the cable coming from TTS. Also some scratches were found on the seals of the

CTPT, terminal cover and the MMB main door, thus all these seals were also found tampered with. It is also stated in that laboratory inspection report that the seal were wire of MD seal was found tampered with and some scratches were found on the male and female parts of the meter terminal cover seal. Thus, the laboratory inspection report clearly shows that there was tampering with meter terminal cover seal, CTPT-TC seal and MMB main door seal and even with the Y phase PT cable. Now there is no reason for us not to rely on the laboratory inspection report, which is singed by the representative of the appellant without any protest. It is also pertinent to note that the irregularities found at the time of laboratory inspection are not vehemently controverted by the appellant on any material ground. No doubt the appellant admitted to explain those tampering of the seals by raising some contentions in his written submissions. The appellant contended that the CTPT and TC seals were found tampered with in the laboratory but those seals might have been tampered with by the checking authority or the officers of the respondent Board at the time when those seals were removed. He further contended that the MMB door seal was temporarily fixed during the time when the display was not available and there was no necessary for him to tamper with such seal. But obviously this explanation offered by the appellant with regard to the tampering with the seals does not seem reasonable, probable and trustworthy. There is nothing on the record to show that the CTPT and terminal cover seals were tampered or some scratches were made on them at the time when they were removed by the officers of respondent Board. If really some scratches were caused at the time of the removal of those seals by the officers of the respondent Board, the appellant could have stated that fact in the Rojkam or the checking sheet which were prepared at the time of replacement of the meter. But obviously no such protest with regard to the tampering of the seals is raised by the appellant or his representative at the relevant time of the checking or subsequent thereto. Now the explanation offered by the appellant with regard to the tampering of the MMB door seal also does not seem reasonable and probable. It cannot be said that there was no reason for the appellant to tamper with these seals as display was not available. So considering such circumstances, we are of the opinion that the explanation which the appellant offered in his written submissions or oral submissions does not seem reasonable and probable and hence it is not just and proper to accept that explanation. It is pertinent to note that there is no reasonable and probable explanation on behalf of the appellant as to how some black spots were found on the cable and Y phase PT. It is on the other hand very clear that the laboratory inspection was carried out by the team of the expert engineers in the presence of representative of the appellant and there is nothing on the record to show that there was any error in the laboratory inspection report. It is also pertinent to note that the consumption pattern prior to the date of replacement of the meter and subsequent thereto supports the theft. So, considering such facts and circumstances, we are of the opinion that there is sufficient and reliable evidence emerging from the laboratory inspection report and even from the Rojkam and checking sheet to establish that an arrangement was made in the meter of the electrical installation to the appellant to abstract the electrical energy without being it fully recorded in the meter. So, in our view, the case of theft is clearly established against the appellant.

In such view of the matter, no interference is called for in the finding recorded by the Appellate Committee while exercising the powers under Article 226 of the Constitution of India.

ARGUMENTS AND CONCLUSION IN SPECIAL CIVIL APPLICATION NO. 4981 OF 2006

34. Learned advocate Mr. Rajesh Savjani appearing for Mr. B.P. Gupta for the petitioner submitted that after the meter was replaced on 8.2.2003, the petitioner has been issued regular bill and it also maintained G-7 card for ''Duke'' type meter. Mr. Savjani submitted that as per G-7 card, MD seal No. 5-S02934 was affixed while seal No. 5-S02935 was affixed on MMB. Mr. Savjani submitted that upto 21.9.2003, the meter was checked and the officers of the respondent Board never found any fault in the meter as well as in CTPT link or in any other instruments. Mr. Savjani submitted that the seals of meter were in proper condition and even seal No. 5-S02934 of MD and seal No. 5-S02935 of MMB were also in proper condition and there was no irregularity or malpractice or tampering with the meter or with any seal was alleged. Mr. Savjani submitted that it was only when the electrician of the respondent Board came on 17.10.2003 for taking reading of the meter and found the meter not showing display, the petitioner was informed by the Deputy Engineer and thereupon on 20.10.2003, the installation of the petitioner was checked and inspection report was prepared. Mr. Savjani submitted that on checking of the installation, no adverse remarks were made against the petitioner but new provisional seals were affixed on TCOPT, TTB, MMB, MD etc. Mr. Savjani submitted that the officers of the Board came for the purpose of wrapping the meter with MMB and at that time, rojkam was carried out and TC seal Nos. 3A0478 and 3A0479 were removed and wrapped and taken for further inspection. Mr. Savjani submitted that though the checking was made on 20.10.2003, however till 30.3.2005, the meter was not sent for testing to the laboratory and therefore, the petitioner had approached this Court and it was only after this Court issued direction, the meter was checked in the laboratory on 31.3.2005. Mr. Savjani submitted that in the laboratory test, no clear finding as regards tampering of seals and meter has been recorded and the Appellate Committee just relied on such laboratory test report without independently examining the material for holding that the petitioner has committed theft of energy. Mr. Savjani submitted that though specific request was made before the Appellate Committee to call for the seals for verifying the condition as to whether there was tampering or not by relying on the Circular Nos. 162 and 183, however the Appellate Committee has not followed such procedure of calling for the seals and thus failed to exercise the jurisdiction vested with it.

35. Learned advocate Ms. Lilu K. Bhaya for the respondents submitted that the

testing of MMB, meter with seals etc. was carried out in the laboratory and the seals were found tampered and one screw of R and Y phase in terminal block was found opened. It was found that there was a clear tampering with MMB seal, TTB seal, MMB seal hook and display of the meter was stopped by giving high voltage through TTB. Ms. Bhaya submitted that such report was rightly relied on by the Appellate Committee to hold that the petitioner had committed theft of energy. Ms. Bhaya submitted that the circulars relied on by Mr. Savjani gave no mandate to the Appellate Committee to verify whether the seals were tampered with or not and therefore, the Appellate Committee could not be said to have committed any illegality in not acceding to the request of the petitioner to call seals for examination by the Appellate Committee. Ms. Bhaya submitted that since the petitioner has failed to make out any case as to why the finding recorded by the Appellate Committee cannot be accepted, this Court may not interfere with such finding of the Appellate Committee while exercising the powers under Article 226 of the Constitution of India.

36. Having heard learned advocates for the parties, it appears that since it was found on checking that the meter at the installation of the petitioner was not showing display, the MMB with meter and seals with 7-core CTPT cable were removed and wrapped. Such MMB seal and the meter etc. then were inspected in the laboratory on 31.3.2005. Copy of the laboratory test report is placed at Annexure-G. As found stated in the report, the MMB seal wire was found tampered and sealing hook was found re-welded after opening and seal of TTB was also found tampered and some scratches were found on that seal. It is also stated that sealing system was also found different. Amongst other observation during inspection in the laboratory, it is also found observed in the report that the display on the meter was stopped by passing high voltage through TTB and thus it is a case of theft of energy.

37. Examining the contentions raised on behalf of the petitioner in respect of theft of energy, the Appellate Committee has observed in its order as under:-

It is pertinent to note at the outset that there is no dispute that the display of the meter of the electrical installation of the appellant was not available and in order to replace the meter because of that defect, the Executive Engineer of Veraval Division went to the site of the unit of the appellant with some other officers of the respondent Board on 20.01.2003, and at the time, the representative of the appellant was present. It is also not in dispute that on checking the meter, it was found that the display of the meter was not available and the meter with MMB and 7 core cables were removed, wrapped and sealed for further inspection in the laboratory. It is also not in dispute that necessary checking sheet and local Rojkam were prepared to that effect and they were singed by the representative of the appellant without any protest. It is also not in dispute that the MMB seal and meter were inspected in laboratory on 31.03.2005 in presence of the representative of the appellant and at that time, necessary laboratory inspection report was prepared and it was singed by the representative of the appellant with some protest.

Now, it is stated in that laboratory inspection report that the MMB sealing hood was found re-welded and the re-welded portion was found painted with brush and a fresh colour on the hook was clearly observed during laboratory inspection. The MMB seal wire was found out at 3 places. It was also found during laboratory inspection that there was a rust observed on the upper portion of that sealing hook and newly painted portion of the sealing hook was not having any rust on it. On opening the MMB, it was found that there was TTB with a plastic seal. This TTB plastic seal was examined after cutting open the male and female parts and the teeth of the seals were found scratch marks and the seal wire twisting was of different type than that normally used by the laboratory. Thus, TTB seal was found tamperes with. It was also found that one screw of R and Y phase CT terminals in terminal block was found open. Thus, laboratory inspection report clearly shows that there was tampering with MMB seal, TTB seal, MMB seal hook and with the screws of R & Y phase CT. It is also stated in that laboratory inspection report that the display of the meter was stopped by giving high voltage through TTB. Now, there is no reason for us not to rely on this laboratory inspection report. No doubt, the laboratory inspection report is signed by the representative of the appellant with protest that he did not agree to the fact. But, it is not specifically stated in that protest that on what finding, the protest is objected to, and what finding is not correct. So, considering such facts and circumstances, it can not be said that the laboratory inspection report is not reliable and trustworthy merely because it is signed by there representative of the appellant under some vague protest. So, considering such facts and circumstances, we are of the opinion that there is sufficient and reliable evidence emerging from the checking sheet, Rojkam and particularly from laboratory inspection report to establish that an arrangement was made by the appellant to abstract electrical energy dishonestly without being it fully recorded in the meter. Now, the appellant contended that the findings of the laboratory inspection report are not proper and not reasonable and it is not sufficient to establish the case of theft against him. He contended that at the time of replacement of meter on 20.10.2003, the checking sheet and Rojkam were prepared and no tampering with MMB seal is mentioned in that rojkam and in that checking sheet and if really, there was tampering with MMB seal and MMB hook, the possibility cannot be ruled out that those facts of tampering might have been mentioned by the checking authority in the Rojkam and checking sheet. But obviously, the contention of the appellant does not stands at all. It is admittedly clear that the meter with MMB was removed, wrapped and sealed at the time of replacement of meter only because of the fact that the display of the meter was not available. There is nothing on record to show that the electrical installation was thoroughly checked with MMB seal etc., at that time. When the meter was not thoroughly checked at that time of its replacement, it may be probable or possible that such irregularities with MMB seal and hook might have not been noticed by checking authority. So, it cannot be said that there was no tampering with MMB seal or

MMB hook merely because this fact is not mentioned in the checking sheet or Rojkam. So, this contention of the appellant does not stand at all.

Now, the appellant further contended that such irregularities might have been caused at the time when meter was lying with the office of the respondent board nearly for 15 months from the date of replacement to the date of such laboratory inspection. But, this contention of the appellant does not stand at all, as it is clearly stated in the laboratory inspection report that the package in which the meter and MMB were packed were found in tact and proper at the time of laboratory inspection. If this is so, then it cannot be said that there was any possibility or even probability to make tampering with MMB seal or TTB seal or with meter mechanism, when the meter was lying in office before laboratory inspection. Now, the appellant contended that if the voltage of the meter was made disappeared by giving high voltage, the possibility could not be ruled out that it might have caused some damage to the meter glass etc. But, this contention of the appellant does not stand at all. There is no evidence to show that there was every possibility to cause some damage to the other parts of the meter if such high voltage is given to the meter from outside. So, in our view, this contention of the appellant does not stand at all. However, as we stated above, there is sufficient and reliable evidence and circumstances emerging from the checking sheet, Rojkam and laboratory inspection report to establish the case of the theft of electrical energy against the appellant as per the rules of the respondent Board. So, in our view, the case of theft of the electrical energy is clearly established against the appellant.

The above finding of the Appellate Committee cannot be disturbed while exercising powers under Article 226 of the Constitution unless a strong case is made out that the finding is not supported by any evidence. The petitioner has not been successful in making out such case.

38. When the Appellate Committee has found that the packed MMB, meter, seals etc. were found intact and in proper condition at the time of laboratory inspection and such laboratory inspection was carried out in presence of the representative of the petitioner, there was no reason not to rely on laboratory test report.

39. Learned advocate Mr. Savjani, however, contended that in view of the circular providing for preserving the seals for production before the Appellate Committee, the Appellate Committee was required to call for the seals to verify as to whether the observations made in the laboratory test report as regards tampering with seal was correct or not. Similar contention is dealt with by this Court in the above-referred Special Civil Application No. 4076 of 2006 and for the reasons stated therein, the contention is not accepted. The Appellate Committee has observed in its order that there is no rule to call for the Executive Engineer to produce meter, seals etc. before the Appellate Committee and therefore, the application made by the petitioner to call upon the Executive Engineer to produce the meter, seal etc. cannot be accepted. The Court finds no error in such view taken by the Appellate Committee, especially when the MMB, meter, seals etc.

were inspected in the laboratory in presence of the representative of the petitioner.

40. For the reasons stated above, no interference is called for in the decision of the Appellate Committee while exercising the powers under Article 226 of the Constitution of India.

FINAL ORDER

Special Civil Application No. 11262 of 2004 is allowed. Impugned order of the Appellate Committee dated 25.8.2004 passed in Appeal No. A-72/2004 as also the revised supplementary bill dated 31.8.2004 for an amount of Rs. 50,49,846.55 is quashed and set aside. If the petitioner has deposited such amount, the same shall be adjusted towards its future bill. Rule is made absolute accordingly.

Special Civil Application Nos. 4076 of 2006 and 4981 of 2006 are dismissed. Rule is discharged. Interim relief, if any, stands vacated.

