(2023) 02 GUJ CK 0052

In the Gujarat High Court

Case No : R/Special Civil Application No. 15575, 15578 Of 2021, 5950, 5958, 5996, 5961, 5968, 5969, 5994, 6016, 15312, 16333 Of 2022

Kurjibhai Mohanbhai Goti — APPELLANT

Vs

Dakshin Gujarat Vij Co. Ltd. — RESPONDENT

Date of Decision : 09-02-2023

Acts Referred:

Constitution Of India, 1950 — Article 226, 227
Electricity Act, 2003 — Section 126, 126 (6)(b)(v), 127

Citation : (2023) 02 GUJ CK 0052

Hon'ble Judges : Biren Vaishnav, J

Bench : Single Bench

Advocate : Jigar Rava, Lilu K Bhaya, Dharitri Pancholi, Jay Trivedi, Sanjay Udhwani

Final Decision : Dismissed

Judgement

Biren Vaishnav, J

1 All these petitions under Article 226 of the Constitution of India, challenge the order of the Appellate Authority under the Electricity Act by which the appeal of the petitioners have been dismissed. These appeals were decided pursuant to the order dated 19.11.2019 passed by this Court in Special Civil Application No. 20532 of 2017 and allied petitions by which the earlier appellate orders in question were set aside and the Court sent the matters back for a fresh decision. In order to avoid repetition, the facts as set out in the decision of this Court on 19.11.2019 read as under:

"2. For the sake of convenience, Special Civil Application No. 20532 of 2017 is treated as a lead matter. 3. By this petition under Articles 226 and 227 of the Constitution of India, the petitioner – Dakshin Gujarat Vij Company Limited has prayed for the following reliefs:

"(A) To allow this petition.

(B) To issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction quashing and setting aside the judgment and order dated 26.12.2016 passed by the Assistant Electrical Inspector and Appellate Authority, Surat in Appeal No. 08/20152016 vide order No. SVN/SRT/APL/8724/2016 and confirm the bill for Rs.87,051.29 ps. issued by the petitioner.

(C) To stay, the execution, implementation and operation of the judgment and order dated 26.12.2016 passed by the Assistant Electrical Inspector and Appellate Authority, Surat in Appeal No. 08/20152016 vide order No.SVN/SRT/APL/8724/2016 pending admission, hearing and final disposal of this petition.

(D) To grant adinterim relief in terms of Para9 (C) hereinabove."

4. The brief facts of the case are as under:

4.1. The respondent no.1 is consumer of the petitioner with contracted load of 6.5 KW for industrial purpose. The connection of the respondent no.1 was checked by the Installation Checking Squad of the petitioner on 30.9.2015. It was found that electricity was being supplied in plot Nos. 5 and plot no.6 for 4.895 KW for lighting and industrial purpose. The checking was done in the presence of the representative of the respondent no.1. The checking squad in the remarks column had instructed to verify with the original application form A1 form and verify the power boundary and take action in accordance with law. Thereafter, after verifying the Application Form and power boundary, the respondent no.1 was booked for unauthorized use of electricity under Sec.126 of The Electricity Act, 2003 and issued provisional bill for Rs.87,051.29ps. vide letter dated 9.11.2015. The respondent no.1 was called upon to make representation against the said bill within seven days from the receipt of the said provisional bill. However the respondent no.1 did not raise objections within 7 days. Thereafter, final bill came to be issued on 9.12.2015 for Rs.87,051.29ps.

Thereafter the respondent no.1 preferred Appeal under Sec.127 of the Electricity Act, 2003 before the respondent no.2 by depositing 50% of the bill.

4.2. That without considering the facts and without considering documentary evidence and without considering the legal submissions which were made before the Assistant Electrical Inspector & Appellate Authority, Surat vide his judgment and order dated 26.12.2016 decided the said appeal and quashed and set aside the bill. The Appellate Authority quashed the bill only on the ground that there is violation of Clause Nos.7.30,

7.33 and 7.36 of The Electricity Supply Code,2015 and hence the bill deserves to be quashed and set aside."

2 Reading of the facts indicate that it was the case of the Electricity Company that when the Checking Squad visited the premises in question, it was found that the consumer was using the connections unauthorizedly in the premises in addition to the one for which the connection was given. On assessment under

Sec.126 of the Electricity Act, 2003, and on a challenge by the petitioners before the Appellate Authority, the Appellate Authority found that clauses 7.30, 7.33 and 7.36 of the Electricity Supply Code, 2015, were not followed and therefore, the bills were set aside and the matter was remanded to the appellate authority to decide afresh.

2.1 The Appellate Authority by the impugned order have reassessed the bills by finding that the Electrical Inspector can give only a fixed charge and since the bills have been paid, the assessment should be made at a single rate instead of a penal rate of two.

3 Mr.Jigar Raval, learned counsel for the petitioners, would make the following submissions:

3.1 Reading the order of this Court dated 19.11.2019, it is clearly indicated that the bills were in violation of the Clauses set out therein and the bills were therefore set aside.

3.2 In the impugned orders, though the Appellate Authority had on remand held that the violation of the Clauses continued, he did not allow the appeal in-toto, though such violation was positively found.

3.3 He invited the Court's attention to the observations made in the order dated 19.11.2019, in para 10 of the order to submit that it was an admitted fact that though the Electricity Supply Code was published in the official gazette on 24.09.2015, and the Supplementary Bills were post that date, the bills ought to have been set aside.

3.4 The entire proceedings stood vitiated in light of the fact that the assessment was not carried out by the Assessing Authority and no verification that the petitioners were carrying out unauthorized use of electricity beyond the boundary was done. He would therefore submit that the orders of the Appellate Authority be quashed and set aside.

4 Ms.Lilu Bhaya, learned counsel appearing for the Electricity Company, would submit that in the earlier round the Electricity Company had filed petitions challenging the orders by which the bills were set aside on the ground of misrepresentation of the Supply Code. In fact, there was no violation. It was brought to the notice of the Court in those petitions, that though the Supply Code was published on 24.09.2015, it was circulated and received by the Company only on 09.11.2015.

4.1 Ms. Bhaya, learned counsel, would submit that having satisfied itself that the Company had given sufficient explanation for raising the bills beyond the period, the Court had then only remanded the matters and therefore, no illegality was committed by the authorities. The Court had not gone into the merits of the case. It was the case of the Electricity Company that transferring electricity from one premises to another was an unauthorized use of electricity as per Sec.126 (6) (b) (v) of the Act and assessment was accordingly done.

5 Having considered the submissions made by the learned advocates for the respective parties, what is evident is that the petitioners had been using electricity connections as is evident from the checking sheets for premises beyond their boundary, albeit, in the same course of business. It was their case that they were doing so without breach of the boundary limits. Since the bills were issued not within the time frame under clauses 7.30, 7.33 and 7.36 of the Electricity Supply Code of 2015, the bills were set aside by the Appellate Authority. That gave rise to the batch of petitions at the hands of the Electricity Company. True it is that, the Court remanded the matters for a fresh decision but what the Court observed was that the Appellate Authority could not have allowed the appeals on the technical ground by invoking the provisions of Clauses 7.30 and 7.36 of the Code. The order passed by this Court reads as under:

"7. Having considered the rival submissions and having gone through the material on record, it appears that the inspection was carried out on 30.09.2015 and the provisional bill was issued on 09.11.2015 which was required to be issued within 3 days as per Clause7.30 of the Code. However, it appears that the Electricity Supply Code, 2015 came into effect from 24.09.2015 and the same was published by the Gujarat Electricity Regulatory Commission on 06.11.2015. In such circumstances, it appears that the petitioner has acted as per Clause No.4.1.11 of the earlier Code i.e. Electricity Supply Code, 2010.

8. The various Clauses of the Code, 2015 reads as under:

"Unauthorised Use of Electricity (UUE) Procedure for booking a case for Unauthorised Use of Electricity

7.30 Within three working days of the date of inspection, the Assessing Officer shall, analyze the case after carefully considering all the evidence including the consumption pattern, wherever available and the report of inspection. If it is concluded that no unauthorized use of electricity has taken place, no further action will be taken and the consumer will be informed accordingly. Notice to consumer

7.32. 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 prescribed in Gujarat Electricity (Manner of Service of Provisional Assessment Order) Rules, 2004. 7.33.

The person, on whom an order has been served under clause 7.32of this Code, 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.

Hearing in case of suspected Unauthorised Use of Electricity:

7.36 Within 7 days from the date of submission of consumer's objections, the licensee shall arrange a hearing with the consumer. Assessment

7.40 The Assessing Officer shall assess the energy consumption considering the following:

(1) Period of assessment: If the Assessing Officer reaches to the conclusion that unauthorized use of electricity has taken place, he shall take into account the following and arrive at the least period (duration) of unauthorized use of electricity:

(a) for the period of twelve months

(b) for the period from the date of previous inspection if any by the licensee's officer to the date of detection from the date of service connection to the date of detection

(d) wherever electronic meters are installed andtheloadcurvesarestudied periodically, the period of unauthorized use of electricity could be limited to the exact period as could be determined scientifically.

(e) Based on the valid document produced by the accused person.

(2) Assessment charge: The assessment for units assessed as per clause 7.41of this Code shall be done on the basis of applicable tariff and in accordance with the Electricity (Amendment) Act, 2007 and any subsequent amendments, excluding the consumption recorded by the meter or already billed during the assessment period at applicable tariffs.

(3) If a consumer is found indulging in more than one act of unauthorizeduse of electricity, the charges payable by the consumer in respect of each such unauthorizeduse shall be separately assessed and billed accordingly. 7.41 The methodology for assessment of consumption for unauthorizeduse of electricity shall be as follows:

(1)In case of nondemand based consumers, if the connected load of the consumer is found in excess of load contracted,then the fixed charge shall be charged for the excess load at twice the applicable fixed charge as per the tariff. In addition to this, the energy charges to be recovered on differential basis at penal rate, if tariff of energy charge changes due to increased load with respect to the slab of contracted load and actual connected load. The period for computation in such case shall be as stated in Clause 7.40(1) above. (2)If it is found that energy supplied is used for a purpose other than for which usage of electricity was authorized and/or energy is utilized for the premises/areas other than the premises/area for which the supply of electricity was authorized, assessment should be made as under;

(i) Quantum of unauthorised use of energy, U = a x(b / c) kWh Where a –Total consumption recorded during the preceding period of existence of such violations limited to a specified period of assessment as referred in Clause

7.41 (1) b –Unauthorised load found at the time of inspection c –Total connected load found at the time of inspection (ii) Penal charges on account of unauthorized use of energy= (2 x U x d) –(U x e) Where U –Quantum of unauthorized use of energy, kWh d –Tariff of unauthorized use e –Tariff of authorized use (iii)The period for computation in all such cases shall be as stated in Clause 7.41(1) above.

Provided that if it is found at any time that the energy supplied is used for a purpose, on which lower tariff is applicable, it shall not be considered as unauthorized use of electricity and no penal action will be taken.

(3)The calculations above are subject to the condition that meter is working satisfactorily; else, the energy will be calculated on the basis of formula as per Annexure IV."

9. It is true that as per Clause7.30, the provisional bill is required to be issued within 3 working days from the date of inspection, and thereafter, the provisional bill is required to be served upon the consumer as per Clause-

7.40 and 7.41 to raise objections. From the material available on record, it appears that the respondent no.1 did not raise any objection, pursuant to the notice issued along with the provisional assessment order served by the petitioner. It is also not in dispute that the respondent no.1 has signed the checking sheet for the inspection carried out on 30.09.2015 for the alleged irregularities. The Appellate Authority,therefore, could not have allowed the appeals filed by the respondent no.1 on technical grounds by invoking the provisions of Clauses7.30 and 7.36 of the Code.

10. In such circumstances, the impugned orders are required to be quashed and set aside and the matter is required to be remanded back to the Appellate Authority to decide the same on merits in accordance with the provisions of the Act and Electricity Supply Code applicable to the facts of the case.

11. These petitions are therefore, partly allowed. The impugned orders passed by the Appellate Authority are hereby quashed and set aside. The matter is remanded back to the respondent no.2Appellate Authority to pass a fresh denovo order, after giving opportunity of hearing to both the sides in accordance with law. Such exercise shall be completed within 6 months from the date of the receipt of this order.

12. The petitions are accordingly disposed of with the aforesaid directions. Notices are discharged with no order as to costs."

5.1 The Court has clearly observed as is evident that it accepted the stand of the Electricity Company that the Electricity Code which came into effect from 24.09.2015 was published by the Commission on 06.11.2015 and therefore, the Company had acted in accordance with Clause 4.1.11 of the earlier Code. The Court therefore after reproducing the clauses of the Electricity Code decided the same in accordance with the provisions of the Act and the Supply Code applicable to the facts of the case.

6 In light of this, the Appellate Authority in tune with the directions of this Court opined that there was violation of the provisions of 7.30 and 7.33 and 7.36 of the Code, and therefore, the bill could be set aside. However, reading Sec.126 (6) (b) (v) Of the Act, in light of the admitted facts that the petitioners had requested for extension of power boundary and they were called upon to produce documents for merger of plots and extension of power boundaries, it was definitely a resale of energy as defined under Clause 4.111 of the Supply Code which reads as under:

"Resale of Energy

4.111 The consumer shall not supply any energy supplied to him by the licensee to other premises unless he holds a suitable sanction or license for distribution and sale of energy granted by the Commission/State Government or has been exempted from obtaining the license or has been appointed as franchisee."

7 Even otherwise, in absence of authorization of merging of plots, it was therefore a case of use of electricity for premises other than those for which the electricity was authorized and therefore the authority in its discretion has imposed a penalty at the prescribed rate. No fault can be found with the orders impugned in these petitions.

8 Accordingly, the orders dated 09.08.2021 passed in Special Civil Applications Nos. 15575 and 15578 of 2021 and orders passed in SCA Nos. 5969, 5968, 5994, 5958, 6016, 5961, 5996 and 5950 of 2022 dated 24.02.2022 and the orders dated 17.05.20200 passed in SCA Nos. 15312 and 16333 of 2022 are not interfered with and the petitions are accordingly dismissed.

(BIREN VAISHNAV, J)

FURTHER ORDER

After pronouncement of the judgement, Mr.Jigar Raval, learned counsel for the petitioners, requests that the interim relief, that was granted by this Court earlier, may be continued till 01.03.2023. Request is acceded to. Iterim relief granted earlier shall continue till 01.03.2023.

