

(2013) 11 GUJ CK 0054
In the Gujarat High Court

Case No : Special Civil Application No. 16225 of 2003

Ramniklal M. Makwana

APPELLANT

Vs

Paschim Gujarat VIJ Co. Ltd. Deputy Engineer and 1

RESPONDENT

Date of Decision : 13-11-2013

Acts Referred:

Citation : (2013) 11 GUJ CK 0054

Hon'ble Judges : S.R. Brahmbhatt, J

Bench : Single Bench

Advocate : Bharat T. Rao, for the Appellant; Dipak R. Dave, Advocate for Respondents No. 1-2, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Brahmbhatt, J.—The petitioner, a consumer of electricity energy from the respondent licensee having Service No. 30101/55797/3, has approached this Court by way of this petition preferred under Article 226 of the Constitution of India with the following prayers:

(a) Quashing and setting aside the order dated 18.8.2003 passed by the Appellate Committee in Appeal No. B/291/03 in so far it does not grant the benefit of exclusion of number of days on which the petitioner's unit remained closed completely from the disputed bill and be further pleased to remand the matter to the appellate committee for considering the matter afresh after taking into account all the documentary evidences produced by the petitioner along with detailed submissions; in view of the facts stated herein before; and further be pleased to order the respondent not to effect any further recovery of the disputed bill and also order them not to disconnect the electricity supply of the petitioner on service no. 30101/55797/3.

(b) Pending The Admission, Hearing And Final Disposal of This Petition, be pleased to remand the matter to the appellate committee for considering the matter afresh after taking into account all the documentary evidences produced

by the petitioner along with detailed submissions; in view of the facts stated herein before; and further be pleased to order the respondent not to effect any further recovery of the disputed bill and also order them not to disconnect the electricity supply of the petitioner on service no. 30101/55797/3.

(c) To grant any other appropriate and just reliefs; and also to grant the cost of this petition.

It is also required to be noted that the petitioner has made an unequivocal averment on oath in the memo of the petition in para-11 on page-9 which deserve to be set out as under:

11. The petitioner in the present petition is challenging the decision of the appellate committee for the limited purpose of not granting benefit of exclusion of 46 days on account of close of factory and granting only benefit for 24 days as illegal, arbitrary and unlawful, and against its own judgment rendered in various cases. The petitioner's grievance for considering the load factor is also not examined by the appellate committee.

Thus, in short the challenge is qua appellate committee's finding recorded in its order dated 18/8/2003 of chargeable days of 153 whereby petitioner's claim of deduction of close days of 46 was not accepted and the close days were treated to be 24 only.

2. The facts in brief leading to filing this petition as could be culled out from memo of the petition deserve to be set out as under.

The petitioner is running a small manufacturing unit of plastic strings at the address given and has electricity connection from the respondent of 19 H.P., bearing Service No. 30101/55797/3. Petitioner has claimed that on average the unit was consumed energy to the tune of 2,000 to 3,000 units per month and he was regularly making payment of the electricity consumption charges. Petitioner's unit was visited by the staff of respondent and it was inspected on 22/1/2003. After the checking petitioner was saddled with bill for an amount of Rs. 5,24,777/- and the allegation is that the screw in the meter box (meter petty) was not tight, there was electricity theft and on account of the excess load mentioned there under petitioner filed appeal to the appellate committee after making part payment of Rs. 1,62,835/- on 23/1/2003. Appellate committee did not appreciate the contention of the petitioner that the petitioner unit had remained closed for large number of days and therefore those days should have been deducted from the net chargeable days. There was an error in calculating net chargeable days which were even less than 153 as observed by the committee and hence being aggrieved and dissatisfied by the order of the appellate committee dated 18/8/2003 he preferred this petition invoking Article 226 of the Constitution of India.

3. Learned advocate for the petitioner has taken up contentions as could be seen from the memo of the petition that the appellate committee ought to have

appreciated the documentary evidences qua his claim for seeking deduction of 46 days from the chargeable days. The committee committed serious error in not appreciating this aspect and therefore the order impugned is required to be quashed and set aside and the matter is required to be remanded back to the committee for its fresh consideration on the basis of the say of the petitioner.

4. Learned advocate for the petitioner invited this Court's attention to the checking sheet at page-15 and column no. 8 and contended that the entire version in respect of tampering with the meter as recorded would not get substantiated by even a glance at the laboratory report and therefore the story should fall to ground.

5. Learned advocate for the petitioner thereafter invited this Court's attention to page-17 and contended that the story with regard to connecting load and drawing of energy is also bereft of any substance as the factual position as could be culled out from the narration on para-17 would indicate that there existed no such plausibility of drawing such an inference.

6. Learned advocate for the petitioner further contended that horse power connection as could be seen from narration on para-5 on page-17 is not that of the petitioner's factory and therefore there is an attempt to surreptitiously add other factory's horse power.

7. Learned advocate for the petitioner contended that the appellate committee has not considered these factors and has blindly gone by the checking sheet and therefore the order of appellate committee deserve to be quashed and set aside.

8. Learned advocate thereafter invited this Court's attention on para-19 to indicate that the 46 days claimed therein should have been considered for deduction from the chargeable days.

9. The petitioner has though contended in the memo of the petition that the story of passing upon energy to other unit could not have been accepted on account of the facts available on the record which would show that the distance between petitioner's unit and cable found did not substantiate the theory of passing of energy to another unit. However as could be seen from the averment of the petitioner made in para-11 of the petition, it can well be said that the petitioner intended to confine this petition qua challenge to the committee's finding of chargeable days of 153 and not giving him deduction of 46 days as claimed by the petitioner.

10. Learned advocate appearing for the respondent licensee contended that the entire reading of appellate committee's order would persuade this Court qua petitioner not being a bonafide consumer who can invoke equitable jurisdiction of this Court. The theft on the part of the petitioner is established and unfortunately petitioner has not chosen to challenge that aspect, as his prayer is qua not granting deduction of 46 days only. Therefore when the entire order of the appellate committee is squarely clear qua petitioner's indulgence in theft and

thereby causing loss to respondent may disqualify him from seeking any relief much less equitable relief from this Court.

11. Learned advocate for the respondent thereafter contended that though petitioner is claimed to be a small unit and remaining closed on certain number of days, petitioner has not produced any documentary evidence in support of his claim for deduction of 46 days. Petitioner has not chosen to adduce any evidence qua his unit had not been working on some days and has argued the matter as if it was a subject matter of knowledge by everyone. Therefore, when the appellate committee has clearly observed in the paragraph discussing this aspect that the weekly off and public holidays were deducted, then, there remains nothing to support the claim of the petitioner for deduction of 46 days. Therefore, on this ground also the petition may be dismissed and the order impugned may not be interfered with in any other manner.

12. Heard learned advocates for the parties. This Court is of the view that the petition is required to be dismissed for the following reasons:

(a) The fact remains to be noted that the case of the petitioner is only qua appellate committee's calculation of chargeable days. The averments reproduced herein above occurring in para-11 of the petition indicate that petitioner has confined this petition qua findings of appellate committee's chargeable days only. Therefore, this Court need not go into the aspect of length of the cable and distance of the adjoining unit. Suffice it to say that the factum of theft is subject matter of finding which has remained unchallenged. Therefore, this Court need not elaborately dwell upon this aspect at this stage.

(b) This brings this Court to consider the challenge to not granting of deduction of 46 days as claimed by the petitioner by the appellate committee. Appellate committee has made observation in the impugned order on this aspect too, as submitted by learned advocate for the respondent, which unequivocally indicate that the petitioner was granted benefit of those weekly off as well as public holidays occurring during the period. The original period chargeable was coming to 184 days out of which Board on its own accord deduced and considered 165 days to be chargeable days, as against this, by giving due deference of all the concerned relevant factors appellate committee came to the conclusion that chargeable days are 153 only. Now, therefore, appellate committee did reduce the chargeable days calculated by the Board and to that extent granted benefit to the petitioner. Therefore, when petitioner has not produced any evidence in form of documentary evidence to indicate that the unit had remained closed apart from the days mentioned in the impugned order, then, there cannot be any lacuna in the calculation arrived at by the appellate committee.

This Court is of the considered view that the order impugned in my view does not suffer from any infirmity or illegality so as to call for any interference. Therefore, the petition being bereft of merits deserves dismissal and is accordingly dismissed. Rule discharged. Interim relief, if any granted earlier, shall stand

vacated. However there shall be no order as to costs.