

(2009) 05 GUJ CK 0025

In the Gujarat High Court

Case No : Letters Patent Appeal No. 399 of 2009 in Special Civil Application No. 12742 of 2008 and Civil Application No. 4558 of 2009 in Letters Patent Appeal No. 399 of 2009

Sanjay Ispat Pvt. Ltd. and Another

APPELLANT

Vs

Chairman and Another

RESPONDENT

Date of Decision : 02-05-2009

Acts Referred:

Constitution of India, 1950 — Article 226
Electricity Act, 2003 — Section 135, 153, 154

Citation : (2009) 05 GUJ CK 0025

Hon'ble Judges : M.S. Shah, J; Harsha Devani, J

Bench : Division Bench

Advocate : Mihir Joshi and Bharat T. Rao, s 1 - 2, for the Appellant; Lilu K. Bhaya, for Respondent 1 - 2, for the Respondent

Judgement

Mohit S. Shah, J.—Heard Mr. Mihir Joshi with Mr. B.T. Rao for the appellants and Ms. Lilu Bhaya, learned advocate for the respondents.

2. This appeal is directed against the judgment and order dated 29th December, 2008 of the learned Single Judge rejecting Special Civil Application No. 12742 of 2008 in which the petitioners had challenged the supplementary bill issued by the respondents for theft and had also prayed for a direction to the respondents to prepare the bill after considering the M.R.I. data and keeping in mind the GERC Notification dated 14th December, 2005. The appellants had also prayed for a relief to direct the respondents to refer the matter to the Chief Commissioner of Electricity, Gujarat State for his independent opinion with regard to recording of consumption of electricity in the meter if a small pin is found in the cable which connects the C.T.P.T. to the meter. In view of the order we propose to pass, it is not necessary to set out all the facts in detail.

3. The appellants are running the industrial unit in Veraval Industrial Area for manufacturing of 6 mm M.S. Bars. The appellants' rolling mills had electric

connection of 400 KVA. According to the appellants, since the meter was showing excessive reading on 28th June, 2008, 02nd August, 2008 and 03rd August, 2008, the appellants had preferred a complaint in writing before the respondents. Similarly, excessive recording of units took place on 09th, 10th and 11th August, 2008. On 12th August, 2008, the officers of Electricity Company visited the premises of the appellants and tested the meter and the entire installation including the cables etc. The old meter was replaced on 12th August, 2008. However, after replacing the meter also, the recording of units remained on the higher side. On 18th August, 2008, the respondents sent the meter to the laboratory and the meter was found to be O.K. including the seals. However, the officers of the respondents alleged that by cutting the wire shown, one pin was found in the armor wire connecting the C.T.P.T. unit to the meter. The respondents prepared supplementary bill on the basis that the appellants had committed theft of electricity and on 09th September, 2008, the respondents disconnected electricity supply to the appellants' unit and issued bill dated 10th September, 2008 for an amount of Rs. 1,12,47,099.52 ps. The appellants challenged the above supplementary bill by contending that the appellants had not committed any theft of electricity and that even otherwise, the supplementary bill was not in accordance with the relevant and applicable regulations and the Gujarat State Electricity Regulatory Commission's Notification dated 31st March, 2005, as amended by Notification dated 14th December, 2005. The appellants contended that the relevant factors required to be considered by the respondents for preparing such supplementary bill were not taken into consideration and the respondents had, thus, exercised their powers contrary to the provisions of the Act, the regulations made thereunder and had not prepared the supplementary bill on the basis of availability of M.R.I. data.

4. After hearing the learned advocates for the parties, the learned Single Judge held that prima facie, it was revealed from the record that tampering with the meter had substantially affected the consumption of electricity and attracted the provisions of Section 135 and, therefore, no case was made out to exercise discretion of the powers of this Court under Article 226 of the Constitution. The learned Single Judge also observed that there is no reason to disbelieve the respondents' case that there was tampering by the appellant Company. The learned Single Judge also observed that prima facie a case of theft was made out and, therefore, exercise of powers u/s 135 by the respondents cannot be said to be illegal, arbitrary or unreasonable or in violation of the appellants' rights.

5. In the penultimate paragraph, the learned Single Judge observed that the Court cannot examine such issue in case of theft of electricity where evidence has to be examined by the Special Court under Sections 153 and 154 of the Electricity Act, 2003. The learned Single Judge held that all the defences raised by the appellants in support of not tampering, if true, can be raised by the appellants before the Special Court and the factual disputes with regard to M.R.I. Data, whether correctly relied on in preparation of the supplementary bill, is to be looked into by the Special Court alongwith other relevant materials on which

the respondents" case recording theft of electricity is based. The learned Single Judge accordingly held that the Court exercising writ jurisdiction under Article 226 will not examine such issues. The learned Single Judge accordingly dismissed the petition with costs quantified at Rs. 10,000/-.

6. Mr. Mihir Joshi with Mr. B.T. Rao, learned advocates for the appellants have submitted that when the learned Single Judge dismissed the petition on the ground that such factual disputes can be examined by the Special Court under Sections 153 and 154 of the Electricity Act, 2003, it was not necessary for the learned Single Judge to express any opinion on merits of the controversy between the parties otherwise the Special Court will be bound by such observations and even if the observations are prima facie, the Special Court will not be able to give any finding to the contrary even after evidence is led by the parties and the respondents are not able to support their case of alleged theft and the payment of the amount as per the impugned supplementary bill.

7. Ms. Lilu Bhaya, learned advocate for the respondents has submitted that the appellants could have very well approached the Special Court without moving this Court and that once the appellants argued the matter before the learned Single Judge, there was nothing wrong in the learned Single Judge making observations on the merits of the controversy between the parties. Ms. Bhaya also reiterated the respondents" case which was urged before the learned Single Judge as reflected in paragraph 5 of the order under challenge.

8. Having heard the learned advocates for the parties, we find that the disputes between the parties are of a highly technical nature and cannot be decided without examining all the evidence which will have to be led by both the sides. The question whether the appellants had committed theft of electricity would be a pure question of fact on which no finding or even prima facie opinion can be expressed without evidence being led before the concerned forum. As regards the correctness and legality of the impugned supplementary bill, the same would be a mixed question of law and fact and for deciding such question also, appropriate evidence may have to be led by the parties and upon examining such evidence in light of the relevant statutory provisions and other relevant material, the concerned forum can decide the question about legality and correctness of the supplementary bill.

9. In the facts and circumstances of the case, therefore, we are of the view that when the petition was not being entertained on the ground that the defences raised by the appellants can be raised before the Special Court and all the factual disputes can be looked into by the Special Court, it would not be necessary for the writ Court to invest so much time and energy even for the purpose of expressing any prima facie opinion. Such matters require to be examined by the Special Court and the Special Court can decide all the factual as well as legal controversies between the parties.

10. In view of the above discussion, while confirming the order of the learned

Single Judge dismissing the petition, we make it clear that the petition is dismissed only on the ground of availability of equally efficacious alternative remedy under the provisions of the Electricity Act, 2003. All the observations made by the learned Single Judge on the merits of the controversy between the parties are set aside and the Special Court shall examine the matter in accordance with law.

It is clarified that this Court may not be treated to have expressed any opinion on factual or legal controversies between the parties either way, because setting aside the observations of the learned Single Judge is only for the reason that the factual controversies about allegations of theft can only be examined by the Special Court under the Electricity Act, 2003.

The appeal is accordingly disposed of in the above terms.

11. At this stage, the learned advocate for the appellants submits that the electricity supply to the appellants' unit had been disconnected as far back as on 10th September, 2008 and that therefore, if the matter is not heard and decided by the Special Court expeditiously, the appellants will never be able to revive the unit even if the appellants succeed before the Special Court. Mr. Rao states that the appellant shall file the case before the Special Court within 15 days from today.

12. In the facts and circumstances of the case and particularly having regard to the fact that the electric supply to the appellant unit was disconnected on 10th September, 2008, if the appellants move the Special Court within three weeks from today, the Special Court shall endeavour to hear and decide the case as expeditiously as possible and preferably within four months from the date of filing the case by the appellants.

13. The learned advocate for the appellants requests that the deposit of the amount of Rs. 50 lakhs, pursuant to the order dated 22nd October, 2008 of this Court in Criminal Miscellaneous Application No. 13730 of 2008, may be renewed.

Ms. Bhaya, learned advocate for the respondents submits that the amount be paid over to the respondents.

14. Since the order for deposit and investment of Rs. 50 lakhs was passed in the Criminal Miscellaneous Application, we do not propose to decide the above controversy but in order to ensure that the amount does not remain idle, only for that reason, we direct that the investment in Fixed Deposit shall be renewed for a further period of six months.

Civil Application No. 4558 of 2009

Since the appeal is disposed of, the Civil Application also stands disposed of.