

(2013) 12 GUJ CK 0140
In the Gujarat High Court

Case No : Special Civil Application No. 8520 of 2004

Shree Vardhaman Salt Works

APPELLANT

Vs

Dakshin Gujarat Vij Co. Ltd. and Another

RESPONDENT

Date of Decision : 12-12-2013

Acts Referred:

Citation : (2013) 12 GUJ CK 0140

Hon'ble Judges : K.J. Thaker, J

Bench : Single Bench

Advocate : Bharat T. Rao, for the Appellant; Lilu K. Bhaya, Advocate for the Respondent(s) Nos. 1-2, for the Respondent

Final Decision : Partly Allowed

Judgement

K.J. Thaker, J.—This is a petition by the petitioner, a registered partnership Firm, challenging the order of the Appellate Committee, GEB, Dated : 03.05.2004, whereby, it maintained the action of respondent of issuing supplementary bill to the petitioner to the extent of Rs. 7,70,000/-, after deducting the units counted for non-working period, i.e. the off-season period. The brief facts of the case are that the petitioner is a Partnership-Firm engaged in manufacturing salt and for the aforesaid purpose, the petitioner-Firm has obtained an electricity connection from the respondent-Company with consumer No. 00816/0228/0. It is the case of the petitioner-Firm that the officials of the respondent-Company visited its premises on 15.10.2013 and carried out the inspection of meter, but, nothing objectionable was found. Then, on 10.12.2003, again an inspection of the meter of the petitioner-Firm came to be made by the officials of the respondent-Company and this time they found that the petitioner-Firm was indulging in theft of electricity. Therefore, a Checking-Sheet was prepared. On the basis of the said checking sheet, the petitioner-Firm was issued a supplementary bill to the tune of Rs. 11,25,784/-. The petitioner-Firm, then, carried the matter into appeal before the Appellate committee, GEB, after depositing 50 percent amount of the supplementary bill. The Appellate Committee, after hearing the parties, passed

the impugned order. Hence, the present petition.

2. Mr. Rao, learned Advocate for the petitioner-Firm, submitted that the order of the Appellate Committee is illegal, unjust and arbitrary. He, further, submitted that the Appellate Committee failed to appreciate that the allegations of theft made against the petitioner-Firm are baseless and based on mere assumptions and presumptions. The Appellate Committee ought to have drawn adverse inference against the respondent for non-furnishing of MRI data to the petitioner-Firm. He also submitted that in view of the fact that the unit of the petitioner-Firm functions seasonally, the Appellate Committee ought to have ordered appropriate reduction in the period of supplementary bill prepared by the respondent, and therefore, the petition be allowed.

3. In support of his submissions, Mr. Rao has placed reliance on a decision of this Court rendered in Special Civil Application No. 16975 of 2003, Dated : 29.01.2013, wherein, this Court, under almost similar circumstances, quashed and set aside the order of the Appellate Committee, GEB, whereby, the Appellate Committee had mechanically confirmed the action of the Respondent-Electrical Company of charging amount for six months for the alleged electricity theft by the petitioner, therein, and observed that when there is cogent and convincing evidence available on record, which indicate that the period of alleged electricity theft could not have been beyond a particular date, the petitioner cannot be saddled with the liability to pay charges for six months.

4. On the other hand, Ms. Bhaya, learned Counsel for the respondent-Company, supported the order of the Appellate Committee and submitted that the same was passed after perusing the material on record, and hence, no interference is called for with the same at the hands of this Court and the petition be dismissed. Ms. Bhaya in support of her case placed reliance on the following decisions of the Apex Court;

(1) M/s. Hyderabad Vanaspathi Limited Vs. Andhra Pradesh State Electricity Board and Others,

(2) J.M.D. Alloys Ltd. Vs. Bihar State Electricity Board and Others,

5. Ms. Bhaya also placed reliance on a decision of this Court in Special Civil Application No. 6053 of 2004, Dated : 27.09.2013 in the case of "Parasamani Proteins v. Paschim Gujarat Vij Co. Ltd."

6. Heard learned Counsel for the parties and perused the material on record with their assistance.

7. Insofar as the aspect of theft of electricity on the part of petitioner-Firm is concerned, in the Checking Sheet, which was prepared by the Checking Squad, it is specifically stated that there were 10 motors of 7.5 HP each. Therefore, it is rightly observed by the Appellate Committee that, since, the ROMD was recorded at 90.226 KW at the time of checking, the HP would come to 120. This Court is, hence, of the opinion that the Appellate Court, in view of the above, rightly come

to the conclusion that there is no need to revise the connected load, which is taken at 75 HP in the Supplementary Bill. Besides that it is clearly stated in the Checking Sheet that the M-Seal provided on the LT side bushing of the transformer was found broken and the metal part of the stud appeared to be visible and that on the said visible part of the stud a hook of the cable wire can be provided and thereby an arrangement could be made to consume electricity by bypassing the meter. There is no reason to disbelieve the contents of the said Checking Sheet, since, same was prepared in the presence of the representative of the petitioner-Firm and the same is counter-signed by him, though, with objection. The petitioner-Firm failed to controvert the contents of the Checking Sheet by leading cogent and convincing evidence. Hence, the findings recorded by the Appellate Committee requires to be confirmed to that extent.

8. As regards the aspect of chargeability period is concerned, it is an admitted position that when the meter of the petitioner-Firm came to be inspected by the officials of the respondent-Company on 15.10.2003, no irregularity whatsoever was found with the same and it is only on 10.12.2003, when the alleged theft of electricity by the petitioner-Firm was discovered by the respondent-Company. In other words, it is neither the case of the respondent-Company nor does it led any evidence to show that the petitioner-Firm had been indulging into theft of electricity, even prior to 15.10.2003, i.e. even before the first inspection of the meter of the petitioner-Firm by the officials of the respondent-Company. Hence, this Court is of the opinion that the Appellate Committee is not justified in upholding the action of respondent-Company in counting the chargeability period as six months in a mechanical manner, and hence, in view of the decision of this Court in Special Civil Application No. 16975 of 2003, as stated above, the order of the Appellate Committee requires to be quashed and set aside to the extent, it orders the petitioner-Firm to pay the amount towards electricity theft for a period of six months and the ends of justice would met, if, the respondent-Company is directed to recalculate the electricity charges from 15.10.2003 to 10.12.2003 and to issue a fresh supplementary bill to the petitioner-Firm. In the result, this petition is allowed in part. The impugned order of the Appellate Committee, GEB, Dated : 06.04.2004, is QUASHED and set aside to the extent it directs the petitioner-Firm to pay the amount towards electricity theft for a period of six months and that the respondent-Company is directed to issue a fresh supplementary bill to the petitioner-Firm towards electricity theft for the period from 15.10.2003 to 10.12.2003. The respondent-Company will recalculate the amount to be paid by the petitioner-Firm, as stated above, and shall refund the excess amount, if any, paid by the petitioner-Firm. Rest of the order of the Appellate Committee stands CONFIRMED. Rule is made absolute to the aforesaid extent.