

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/LETTERS PATENT APPEAL NO. 518 of 2020****In R/SPECIAL CIVIL APPLICATION NO. 9340 of 2020**

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MS MOUSUMI MUKHERJEE D.O SHRI MANAB KUMAR MUKHERJEE
Versus
DAKSHIN GUJARAT VIJ COMPANY LIMITED(BHARUCH DIVISION) &
ANR.

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Appearance:

KAUSHAL H PATEL(9328) for the Appellant(s) No. 1
MR DIPAK R DAVE(1232) for the Respondent(s) No. 1,2

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CORAM:HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA
AGARWAL
and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Date : 13/08/2024

ORAL ORDER
(PER : HONOURABLE THE CHIEF JUSTICE
MRS. JUSTICE SUNITA AGARWAL)

1. The instant appeal is directed against the judgment and order dated 13.08.2020, whereby the learned Single Judge has disposed of the writ petition without entering into the merits of the case of the appellant-original petitioner, holding that for any issue pertaining to discrepancies in the computation of the assessed amount, the remedy before the petitioner is to approach the appellate authority under Section 127 of the Electricity Act, 2003. It is further provided that in case the petitioner complies with Section 127(2) of the Electricity Act,



the appellate authority may consider the restoration of the electricity supply to the petitioner in the interregnum, i.e. during the pendency of the appeal. It is also provided that in case the petitioner seeks condonation of delay in preferring the appeal, the appellate authority shall also consider the said issue in accordance with law.

2. This appeal has been presented on 19.8.2020 and registered on 08.09.2020 with the prayer for setting aside the order dated 13.08.2020 passed by the learned Single Judge with the assertion that the learned Single Judge has ignored that the computation in the matter of assessment of usage of electricity was behind the back of the petitioner. It is sought to be argued by the learned counsel for the appellant that no opportunity of hearing has been granted at the stage of making assessment for unauthorised use of electricity and the final bills were straightway drawn by the competent authority.
3. In the affidavit-in-reply filed on behalf of the respondents no. 1 and 2, it is stated that in the checking report dated 07.07.2020, drawn in the presence of the representative of the petitioner, it came into light that the petitioner was engaged in the theft of electricity. The petitioner had initially demanded electricity connection for residential purpose and, therefore, under RGPU Tariff, the electricity connection was released. However, after some time, the petitioner demanded change of tariff to convert the place to hotel, which was accepted and the demand of LTMD and the enhanced load of 55 KV was accepted. In the checking report dated 07.07.2020, it was noted that the part of the seal of the



meter was in torn condition and the internal part of the seal was stitched with external substance. Scratches were found on the male and female parts of the seal and it was found to be a definite case of tampering of meter, which report was further approved with the findings of the laboratory. In view of the definite case of theft of electricity, bill was issued on 08.07.2020 after disconnection of electricity, for computation for the usage of the electricity unauthorisedly. A First Information Report under Section 135 of the Electricity Act, 2003 came to be lodged at the concerned police station, copy whereof is appended alongwith the said affidavit.

4. With these averments, it is categorically submitted that it was a case of theft of electricity and at no stage of the proceedings, the petitioner could challenge the report of the finding of the laboratory, which was prepared in the presence of the petitioner. As sufficient evidence substantiating the theft of energy was found, the assessing officer cannot be said to have erred in applying the energy consumption assessment formula as given in the Gujarat Regulatory Commission (Electricity Supply Code and Related Matters) Regulations, 2015 (in short as the "Electricity Code, 2015").
5. It is further submitted that the petitioner has played a trick for getting the re-connection of electricity, by moving an application in the relevant format on 21.08.2020, after dismissal of the Writ petition by the learned Single Judge stating that he was ready and willing to pay the entire assessed amount towards unauthorised consumption of electricity. 50% of the assessed amount has been deposited



by the petitioner and for the remaining 50%, on the request made by the petitioner as is evident from page '114' of the paper book, three installments were accepted. However, instead of complying with the undertaking given by the petitioner in writing at page '114' of the paper book, the petitioner has approached this Court by filing the instant appeal raising a grievance with regard to the computation of the charges for unauthorised usage of electricity. With the deposit of 50% of the total amount on the assurance given by the petitioner, the re-connection of electricity has also been granted. Attention of the court is invited to the interim order dated 16.09.2020, wherein this Court has stayed the recovery of the remaining demand as per the impugned bill, noticing that the electricity connection has been restored.

6. Taking note of the above, we may record that Section 135 (1A) of the Electricity Act, 2003 clearly provides that the licensee or the supplier, as the case may, upon detection of such theft of electricity, immediately disconnect the supply of electricity. Third proviso to Sub-section (1A) of Section 135 of the Act further reads as under :-

"(1A) Without prejudice to the provisions of this Act, the licensee or supplier, as the case may be, may, upon detection of such theft of electricity, immediately disconnect the supply of electricity:

Provided that only such officer of the licensee or supplier, as authorized for the purpose by the Appropriate Commission or any other officer of the licensee or supplier, as the case may be, of the rank higher than the rank so authorised shall disconnect the



supply line of electricity:

Provided further that such officer of the licensee or supplier, as the case may be, shall lodge a complaint in writing relating to the commission of such offence in police station having jurisdiction within twenty four hours from the time of such disconnection:

Provided also that the licensee or supplier, as the case may be, on deposit or payment of the assessed amount or electricity charges in accordance with the provisions of this Act, shall, without prejudice to the obligation to lodge the complaint as referred to in the second proviso to this clause, restore the supply line of electricity within forty-eight hours of such deposit or payment."

7. A bare reading of the third proviso to Sub-section (1A) of Section 135 indicates that the restoration of supply line of electricity shall be only on the deposit or payment of the assessed amount or the electricity charges, in accordance with the provisions of the Act. We may further record that the petitioner has not availed the remedy of filing appeal under Section 127 of the Electricity Act, 2003 to challenge the computation, inasmuch as, on the presentation of the appeal, as per Section 127(2), the petitioner would be required to deposit half of the assessed amount. The challenge to the assessment made by the Electricity Department as per the formula prescribed in clause 7.7 as contained in Section 7 of the Electricity Code, 2015 therefore, cannot be entertained in the instant appeal. The plea taken by the learned counsel for the petitioner that no opportunity of hearing has been granted to the petitioner at the time of of making assessment in accordance with the provisions of clause 7.7 of the Section 7



of the Electricity Code, 2015 is, therefore, liable to be turned down.

8. It is evident from the facts brought on record that the petitioner, by playing trick with the department, has succeeded in getting restoration of electricity supply without making deposit of the entire assessed amount or electricity charges in accordance with the provisions of the Act. As brought before us, as per the undertaking given by the petitioner in a duly notarised format, on 21.08.2020, the total assessed amount was to be paid in four installments, the first 50% was paid by a Demand Draft dated 21.08.2020 itself. For the remaining amount, three cheques dated 21.09.2020, 21.10.2020 and 21.11.2020 were submitted by the petitioner. However, before the second cheque could be deposited, the petitioner has approached this Court by filing the instant appeal concealing the said fact. Though in the order dated 16.09.2020, it is recorded that the electricity supply has been restored with the petitioner, but the factual statements in this regard are missing from the memo of the appeal.
9. In the above scenario, we do not find any good ground to accept the arguments of the learned advocate for the petitioner that opportunity of hearing was not granted to the petitioner while making assessment of the energy consumption by unauthorized means. It is more than evident that the petitioner has adopted ways and means to get away from making deposits of the assessed amount towards unauthorised consumption of electricity and has succeeded in getting restoration of electricity by playing tricks.



10. No interference is, therefore, called for. The Letters Patent Appeal is, thus, dismissed being misconceived.

(SUNITA AGARWAL, CJ)

(PRANAV TRIVEDI,J)

BIJOY B. PILLAI