

Gujarat High Court

Anilaba Mangalsinh Rana vs The Paschim Gujarat Vij Company ... on 3 May, 2023

Bench: Vaibhavi D. Nanavati

C/SCA/6198/2022

ORDER DATED: 03/05/2023

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 6198 of 2022

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ANILABA MANGALSINH RANA

Versus

THE PASCHIM GUJARAT VIJ COMPANY LIMITED

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Appearance:

MR VIJAY H NANGESH(3981) for the Petitioner(s) No. 1

MR MITESH L RANGRAS(3324) for the Respondent(s) No. 2

NOTICE SERVED BY DS for the Respondent(s) No. 1

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CORAM:HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

Date : 03/05/2023

ORAL ORDER

1. Rule returnable forthwith. Mr. Trupesh Kathiriya, learned AGP and Mr. Mitesh Rangras, learned advocate waives service of notice of Rule on behalf of the respondent nos. 1 and 2 respectively.

2. By way of the present petition, the petitioner herein has prayed for a direction for quashing and setting aside the supplementary bill dated 27.1.2022 of Rs. 92,117.20 issued by the respondent No.2 under Section 135 of the Electricity Act, 2003 without affording an opportunity of hearing to the petitioner, duly produced at Annexure-A being in violation of principles of natural justice and the provisions of the Act.

3. The brief facts for the adjudication of the present dispute in question reads thus:

3.1. The petitioner is house-wife and residing in the aforesaid C/SCA/6198/2022 ORDER DATED: 03/05/2023 premises. The Respondent Company granted electricity connection in the name of the petitioner being Consumer No. 25401217692 for residential purpose as RGPU and the petitioner is regularly making the payment of electricity bills issued by the respondents. On 27.1.2022, the Officer of the respondent No.2 came to the residential premises of the petitioner and inspected the house of the petitioner. Thereafter, respondent No.2 issued supplementary bill under Section 135 of the Indian Electricity Act by respondent No.2. On 27.2.2022, on checking there is irregularity is found for the offence under Section 135 of the Act, the respondent authority issued Rs.88,117.20 supplementary bill plus compounding charge of Rs.4000/- totaling to Rs.92,117.20. The petitioner

herein made representation to respondent No.2 on 8.2.2022 stating that the supplementary bill of Rs.92,117.20 is without following due process of law and illegal. However, the same is not replied by the respondent authority. Consequently, legal notice came to be issued by respondent No.2 on 13.2.2022 however, it was of no avail, which resulted into filing of the present petition, for the reliefs as prayed for in the petition.

4. Mr. Vijay Nangesh, learned advocate appearing for the petitioner submitted that the issuance of the impugned supplementary bill dated 27.1.2022 for the amount of Rs.92,117.20 is against the principles of natural justice and the position of law as held in the case of Bhavani Oil Industries v/s. Paschim Gujarat Vij Company Limited, reported in 2021 (2) GLH C/SCA/6198/2022 ORDER DATED: 03/05/2023

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5. Mr. Rangras, learned advocate appearing for the respondent no.2 authority is not in a position to controvert the submission made by Mr. Vijay Nangesh, learned advocate appearing for the petitioner that issuance of the impugned supplementary bill is without following the principles of natural justice and against the provisions of Regulation No. 7.6.5 of the Regulations of 2005.

6. Heard Mr. Vijay Nangesh, learned advocate for the petitioner, Ms. Trupesh Kathiriya, learned Assistant Government Pleader and Mr. Mitesh Rangras, learned advocate appearing for and on behalf of the respondent nos. 1 and 2 respectively.

7. At this stage, it is apposite to refer to the position of law in the case of Jayshree Talkies v/s. PGVCL, reported in 2018 (3) GCD 2193, wherein the Court has held as under:

"6. The facts, as narrated hereinabove, are not in dispute that the petitioner has been issued a supplementary bill under the provisions of Section 135 of the Act, for the reason that he has committed theft. The Division Bench of this Court in the judgment dated 26.07.2018 passed in Letters Patent Appeal No.616 of 2018, while examining the analogous issue and the provisions of Sections 126 and 135 of the Act, has held thus:-

"[23] As much as Section 126 of the Electricity Act of 2003 deals with malpractice other than the cases falling in the category under Section 135, procedure is prescribed under Section 126 of the Electricity Act of 2003. Section 135 of the Electricity Act deals with offences and penalties, as such, it has not indicated the manner and method of assessment of civil liability in cases of theft of energy. Electricity Supply Code is notified by the statutory functionary under Section 50 of the Electricity Act of 2003. It is expected that the respondent authorities to follow such Code before making the assessment. It C/SCA/6198/2022 ORDER DATED: 03/05/2023 is true that there is no express provision for granting opportunity, but from a reading of Regulation 7.6.5 issued by the Gujarat Electricity Regulatory Commission, it is clear that at the stage of assessment of civil liability, notice is required to be given for the consumer to give opportunity to produce evidence by the consumer to show cause why liability is not fastened for a period of 12 months preceding date of detection of

theft. As much as, said Regulation empowers the assessment to be made for a period of 12 months preceding the date of detection of theft or exact period of theft whichever is less. In the Regulation 7.6.5(a), it is specifically prescribed that exact period can be arrived at by following guidelines or any other evidence which may be provided by the consumer. When the consumer is given opportunity to produce evidence to show that theft period cannot be extended to 12 months, he can produce such evidence which is with him to plead for lesser period. Such production of evidence will arise only if the consumer is given opportunity but not otherwise.

(24) From a reading of Regulation 7.6.5 of the Regulations of 2005, it is clear that it is inbuilt, in the regulation itself to provide opportunity to the consumer before supplementary bill is raised. In case of theft of energy, respondent authorities cannot unilaterally assess loss of energy for a maximum period of 12 months in all cases without giving any opportunity. Further it is clear that civil liability determined is subject to orders of the Special Court under Section 154(5) of the Electricity Act. If any amount is deposited by the consumer which is excess of civil liability to be determined by the Special Court, such amount is required to be refunded to the consumer under Section 154(6) of the Electricity Act of 2003.

(25) In view of aforesaid provision of Regulation 7.6.5 of the Regulation of 2005 which is issued in exercise of section 50 of the Electricity Act of 2003 read with Section 154(5) and 154(6) of the Electricity Act of 2003, it makes clear that in cases of theft of energy, initial assessment power is conferred on the authorities subject to provision under Section 154(5) and 154(6) of the Electricity Act of 2003. Initial assessment is to be made by the authorities by following Regulation 7.6.5 of the Regulations of 2005 notified by the Gujarat Electricity Regulatory Commission. In that view of the matter, we are of the view that aforesaid two judgments relied by the learned Counsel for the respondent would not render any assistance in C/SCA/6198/2022 ORDER DATED: 03/05/2023 support of their plea that in the cases of theft of energy, for assessing civil liability, no opportunity need be given to the consumer. Said contention of learned Counsel for the respondent is required to be rejected and accordingly, it is rejected.

[26] As much as, we are of the view that before issuing supplementary bill, no procedure is followed in this case as referred above, the appeal is required to be allowed by setting aside the supplementary bill for an amount of Rs.17,18,384.43 ps.. Accordingly, supplementary bill for an amount of Rs.17,18,384.43 ps. (Annexure -- D in Special Civil Application No.10600 of 2008) is hereby quashed and set aside and the matter is remanded to competent authority to take fresh decision by giving opportunity to the appellant as contemplated under Regulation 7.6.5 of the Regulations of 2005.

7. The Division, has set aside the supplementary bill on the ground of hearing and the matter was remanded to the competent authority to take a fresh decision by giving an opportunity to the concerned appellants, as contemplated under regulations 7.6.5 of the Regulations of 2005.

8. In the case of *Orien Metal Pvt. Ltd. (supra)*, the Supreme Court also, while examining the analogous issue, has observed thus:-

"16. A perusal of the aforesaid provisions and on giving a conjoint reading of the same, it appears to us that after an inspection of any place or any premises of any consumer, when Assessing Officer comes to a conclusion that the consumer is indulging in unauthorized use of electricity, the provisional assessment to the best of his judgment is to be made in accordance with Section 126(1) of the Act and such provisional assessment shall be served upon the person in occupation of the premises. After giving an opportunity to file objections to the provisional assessment, the Assessing Officer is empowered to pass a final order of the assessment assessing the loss of energy, on account of unauthorized use of energy. The unauthorized use of electricity is defined under Section 126(6)(b) of the Act. It is clear from the aforesaid definition that unauthorized use of electricity means, the usage of electricity by any artificial means or by a means not authorized by the concerned person or authority or licensee; or through a tampered meter; or for the purpose other than for which the usage of electricity was C/SCA/6198/2022 ORDER DATED: 03/05/2023 authorized; or for the premises or areas other than those for which the supply of electricity was authorized.

17. It is clear from the reading of Section 126 (6)(b)(iii) of the Act that instances of use of energy through a tampered meter is included in the definition of unauthorized use of electricity. If that is so, there is no reason, for excluding the power of the authorities for making assessment under Section 126(1) of the Act to assess the loss of energy, where electricity is used through a tampered meter. All instances of unauthorized use of energy may not amount to theft of electricity within the meaning of Section 135 of the Act, but at the same time, the theft of electricity which is covered by Section 135 of the Act, will fall within the definition of unauthorized use of electricity. As per Section 135(1A) of the Act, without prejudice to the other provisions of the Act, the licensee or supplier, as the case may be, upon detection of theft of electricity, is empowered to disconnect the power supply immediately. Further, as per the third proviso to Section 135(1A) of the Act, the licensee or supplier, as the case may be, on deposit or payment of assessed amount or electricity charges, without prejudice to the obligation to lodge a complaint, can restore the power supply electricity within forty eight(48) hours of deposit /payment of such amount. Thus, it is clear that the authorities under the Act are empowered to make a provisional and final assessment by invoking power under Section 126(1) of the Act, even in cases where electricity is unauthorizedly used by way of theft. When a consumer deposits the assessed amount, the licensee or the supplier has to restore the power supply. The assessed amount referred to in the aforesaid proviso, relates to assessment which is contemplated under Section 126(1) of the Act only. There is apparent distinction between Section 126 and Section 135 of the Act. Section 126 forms part of the scheme which authorizes electricity supplier to ascertain loss in terms of revenue caused to it by the consumer by his act of "unauthorized use of electricity" whereas Section 135 deals with offence of theft if he is found to have indulged himself in the acts mentioned in clauses (a) to (e) of sub-section (1) of Section 135 of Electricity Act. Further, it is also clear from Section 154 of the Act, which prescribes procedure and power of Special Court, that the Special Court is empowered to convict the consumer and impose a sentence of imprisonment. The Special Court, in cases, where a criminal complaint is lodged, is also empowered to determine civil liability under Section 154(5) of the Act. As per Section C/SCA/6198/2022 ORDER DATED: 03/05/2023 154(6) of the Act, in case civil liability so determined by the Special Court is less than the amount deposited by the consumer or the person, the excess amount so deposited by the consumer or the person, shall be refunded by the licensee or the concerned person, as the case may be. Merely because the Special Court is empowered to

determine civil liability under Section 154(5) of the Act, in cases where a complaint is lodged, it cannot be said that there is no power conferred on authorities to make provisional assessment/final assessment under Section 126 of the Act.

9. The Apex Court has held that ultimately, merely because the Special Court is empowered to determine civil liability under Section 154(5) of the Act in cases where a complaint is lodged, it cannot be said that there is no power conferred on the authorities to make provisional assessment / final assessment under Section 126 of the Act. The Supreme Court has also observed that for the unauthorized use of electricity as defined in Section 126(6)(b) of the Act, and also reading the proviso of Section 135(1) of the Act, the Electricity Company has to initially arrive at a provisional assessment to the best of his judgment and thereafter giving an opportunity of filing objection such a provisional assessment, the Assessing officer is empowered to pass final order of the assessment assessing the loss of energy on account of unauthorized use of energy. The Supreme Court has encompassed the theft of electricity as envisaged under the provisions of Section 135 of the Act, within the meaning of unauthorized use of electricity."

7.1. This Court vide CAV Order dated 03.02.2023 in the case of Navghanbhai Govindbhai Zala v/s. Pashim Gujarat Vij. Company Ltd. in Special Civil Application No. 14520 of 2022 has followed the aforesaid decision.

8. Considering the position of law as referred above and considering the facts of the present case, impugned supplementary bill dated 27.1.2022 of Rs. 92,117.20 issued by the respondent No.2 under Section 135 of the Electricity Act, C/SCA/6198/2022 ORDER DATED: 03/05/2023 2003 duly produced at page.14 (Annexure-A) allegedly under Section 135 of the Act is undisputedly issued without following the due process of law and without following Regulation No. 7.6.5 of Regulations of 2005.

9. In view of the aforesaid, the impugned supplementary bill which is duly issued by the respondent authority dated 12.11.2022 duly produced at page.14 (Annexure-A) is quashed and set aside. The matter is remanded to the competent authority to reassess and finalize the said supplementary bill, after affording opportunity of hearing to the petitioner, in accordance with the Regulation No. 7.6.5 of Regulations of 2005. The entire exercise be undertaken and a final supplementary bill be issued within a period of one month from the date of writ of this order. It is needless to say that the petitioner shall fully cooperate with the competent authority.

10. The Court has considered the aforesaid for the limited purpose of reassessment of supplementary bill which was issued by the respondent authority dated 27.1.2022 (Annexure-A) and not opined on the merits of the matter.

11. With the aforesaid, the petition is allowed to the aforesaid extent. Rule is made absolute to the aforesaid extent.

Direct service is permitted.

(VAIBHAVI D. NANAVATI,J) SAJ GEORGE