

**HIGH COURT OF GUJARAT**

**PANKAJKUMAR MANHARLAL BAKHHASWALA**

*Versus*

**DAKSHIN GUJARAT VIJ COMPANY LTD & 1**

**Date of Decision:** 10 September 2015

**Citation:** 2015 LawSuit(Guj) 1692

**Hon'ble Judges:** [S G Shah](#)

**Case Type:** Special Civil Application

**Case No:** 2034 of 2015

**Subject:** Constitution

**Acts Referred:**

[Constitution Of India Art 227](#), [Art 226](#)

**Final Decision:** Petition disposed

**Advocates:** [R C Jani & Associate](#), [Dipak R Dave](#)

**S G Shah, J.**

**[1]** Heard learned counsel for the respective parties at length and perused the record.

**[2]** Petitioner has preferred this petition under Articles 226 and 227 of the Constitution of India seeking relief in the memo of application, more particularly, in Paragraph 18.

**[3]** Petitioner herein is original defendant, whereas, respondent is original plaintiff in Special Civil Suit No.65 of 2000 pending before the Civil Judge (Senior Division) Court of Bardoli. The record shows that several orders were passed by the Civil Court at interim stage and some of them were challenged before the District Court. At present, we are concerned with the order dated 6.8.2014 by the 4th Additional District Judge, Surat in Misc. Civil Appeal No.52 of 2012 (Old Misc. Civil Appeal No.158 of 2008). By such order, the first Appellate Court has directed the respondent Electricity Company, while allowing the appeal, by imposing certain conditions for payment of certain amount by the present petitioner before getting electricity connection reinstalled, with further specific direction that if petitioner fails to pay any amount of further usage of electricity, then his connection would be liable to get cut off.

**[4]** It seems that even after such order and even though petitioner has deposited the amount as per such order dated 6.8.2014, respondent Electricity Company has failed to connect the electricity line at the petitioner's premises and, therefore, petitioner has to rush to this Court for getting electricity connection in furtherance of order dated 6.8.2014 in Misc. Civil Appeal No.52 of 2012.

**[5]** When issue is relating to connection of electricity and that too after making payment as per Court's order, it would be appropriate to consider such prayer so as to put an end to unhealthy situation wherein practically respondent Electricity Company is trying to play smartly and wants to take undue advantage of their position being sole supplier of electricity in the area. It is settled legal position that when there is only one service provider of electricity in the area, then they should not act and behave so as to result into their monopoly for providing the electricity and, thereby, to get undue advantage of their situation. Though, it is obvious and clear that because of amendment of the Electricity Act, now recovery of the electricity dues is must before providing further power in form of electricity, the fact remains that in a given case, if there is dispute of accounts, as it is prevailing in the present case for the amount to be recovered by the Company and to be paid by the consumer and, more particularly, when such dispute is subjudice and when competent Court has passed a judicial order directing the consumer petitioner to deposit certain amount with a direction to the Electricity Company to connect the electricity power on receipt of such amount and, thereafter, when petitioner consumer has deposited such amount, it is not permissible for the Electricity Company to put forward a technical ground that pursuant to Notification No.6 of 2010 dated 20.8.2010 by the Government amending clause No.4.1.111 of the GERC (Electricity Supply Code and Related Matters) Regulations 2005, they are not supposed to extend the supply of electricity irrespective of Court's order. This is nothing but the highhandedness and disobedience of the Court's direction by the officials of the Electricity Company which certainly needs to be strictly dealt with.

**[6]** If we peruse the factual details, one of the disputes is regarding charging of interest on due amount by the Electricity Company, more particularly, its rate i.e. Whether 24% rate of interest is legal and permissible or it should be either 15% or even less than that. To that extent, by order dated 6.8.2014, the District Court has specifically directed that question of interest would be decided by the trial Court, certainly after adducing evidence by both the sides. To avoid the delay in recovery of such amount, District Court has even directed the trial Court to decide such issue within 6 months.

**[7]** However, respondent Electricity Company is relying upon the pendency of Special Leave to Appeal (Civil) before Hon'ble Supreme Court being SLP (Civil) No.37871 of

2012 contending that when matter is pending before the Supreme Court against the judgment of Division Bench of this High Court on issue of liability of new consumer, the trial Court and this Court should not pass an order of reconnection of electricity without directing the consumer to deposit the full amount of disputed bill. Suffice to say that in absence of details of such SLP, it cannot be held that in all cases, without considering the facts and circumstances and evidence on record, the Court cannot pass any appropriate order, if the facts, circumstances and evidence on record so warranted to direct the Electricity Company to extend the electricity power by joining the connection. Even at the cost of repetition, it is to be recollected here that in the present case, one of the main dispute, is regarding calculation and accounts also, so also the rate of interest on due amount. Therefore, when trial Court has already directed to deposit substantial amount keeping the issue of rate of interest to be decided within 6 months by the trial Court based upon the evidence, if at all, Electricity Company is not satisfied with the order dated 6.8.2014, then they should have challenged it in appropriate proceedings and may get it stayed but not connecting the electricity supply after accepting the amount as per order dated 6.8.2014 is certainly improper and illegal act on the part of the respondent.

**[8]** Since it amounts to disobedience of Court's order, for which petitioner has filed an application before the trial Court, trial Court could not proceed further in such application, for the reasons best known to them. Trial Court shall decide such application at the earliest.

**[9]** It cannot be ignored that infact in first round of litigation, when petitioner consumer has challenged the inappropriate order by the Civil Court, before this High Court, in judgment and order dated 21.1.2011 in Special Civil Application No.5861 of 2010, the coordinate bench of this High Court has observed in so many words that it would be appropriate for the Electricity Company to settle such dispute. Considering the fact that pursuant to Commercial Circular No.739 dated 15.4.2002 by the Electricity Company, rate of interest needs to be reduced and, therefore, such relaxation is to be extended to the petitioner consumer also.

Unfortunately, even after such an observation in the year 2011, the Electricity Company has not bothered to give relaxation as per their own circular to their consumer and for the reasons best known to them, they are dragging the matter from one Court to another Court for no valid reasons at all.

**[10]** During the arguments, learned advocate Mr.Dave for the respondent Electricity Company has vehemently submitted that irrespective of Court's direction, the Electricity Company may not extend the Electricity power to the consumer pursuant to Notification No.6 of 2010 dated 20.8.2010 as referred hereinabove and that, if at all,

petitioner wants the Electricity connection, then, he should immediately agree to pay the interest @ 15% and should pay such amount and that, thereafter, the Civil Court should decide the permissible rate of interest. Learned advocate is called upon to make such submission on oath by the officer of the Electricity Company, because it would certainly amount to not only disobedience of Court's order but contempt of Court in the given set of circumstances.

**[11]** Therefore, at present, let trial Court is directed to decide the application for contempt since there is no compliance of order dated 6.8.2014 by the 4th Additional District Judge, Surat in Misc. Civil Appeal No.52 of 2012 (Old Misc. Civil Appeal No.158 of 2008) with further direction that the respondent Electricity Company shall connect the electricity power to the petitioner's premises within 4 days from the date of receipt of Writ of this order, without fail.

**[12]** However, it is made clear that such power is to be connected only and only if petitioner has complied with the direction of payment as per order dated 6.8.2014 in Misc. Civil Appeal No.52 of 2012 (Old Misc. Civil Appeal No.158 of 2008).

**[13]** In view of above, this petition is disposed of in aforesaid terms.

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