IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 20013 of 2022

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MITULBHAI RANCHODBHAI LAKHANI

Versus

GUJARAT ELECTRICITY REGULATORY COMMISSION

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Appearance:
DHRUVIK K PATEL(7769) for the Petitioner(s) No. 1
for the Respondent(s) No. 1,2,3

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CORAM:**HONOURABLE MR. JUSTICE NIRZAR S. DESAI**

Date : 10/10/2022

ORAL ORDER

1. By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for following reliefs:

> "A. YOUR Lordships may be pleased to quash and set aside order dated 10/08/2022 in petition no.1951/2021 passed by Gujarat Electricity Regulatory Commission;
>
> B. Your LORDSHIPS may be pleased to direct the Gujarat Electricity Regulatory Commission to decide the petition no.1951/2021 of petitioner on merits and in accordance with law;
>
> C. Pending hearing, admission and final hearing of the matter, YOUR LORDSHIPS stay the execution and implementation of an further be pleased;
>
> D. Be pleased to pass any other other in the interest of justice;

2.1 It is the case of the petitioner that the petitioner is a consumer of the licensee Daksin Gujarat Vij Co.Ltd. having consumer number 06401 / 08776 / 5 and the rate tariff applicable is LTMD and sanctioned load is 74 KW.

2.2 On 17.07.2020, the respondent No.2 had carried out the inspection of the electric meter installed in premises and the petitioner and during the inspection, it was found that the meter was defective meter as the display of the meter was not indicating any parameters. Ultimately, the aforesaid meter was seized by the checking officer and was sent to laboratory for further testing.

2.3 Ultimately, respondent company issued bill dated 03.12.2020 for an amount of Rs.52,22,762.16 (Rupees Fifty Two Lakhs Twenty Two Thousand Seven Hundred Sixty Two and Sixteen Paise Only) as supplementary bill and Rs.7,93,566.00 towards compounding charges and the total amount to be paid by the petitioner is Rs.60,16,328.16 (Rupees Sixty Lakhs Sixteen Thousand Three Hundred Twenty Eight and Sixteen Paise Only)

as the case of the petitioner was considered to be a case of 'direct theft'.

2.4 Since the aforesaid order was passed without giving opportunity to the petitioner, petitioner preferred writ petition being Special Civil Application No.5026 of 2021 which was disposed of *vide* order dtd.19.03.2021 directing the Respondent No.2 to reconnect the electricity of the petitioner upon making payment of entire amount in 22 equal installments and ultimately electricity supply was reconnected in favour of the petitioner.

2.5 The aforesaid order of reconnection was passed by the coordinate Bench of this Court *vide* order dated 19.03.2021 in Special Civil Application No.5026 of 2021.

2.6 In the meantime, during the course of arguments, it was submitted by learned advocate Mr.Patel that the petitioner has already exhausted civil remedy by preferring civil suit challenging the action of the respondent authorities whereby electricity theft is

lodged against the present petitioner.

2.7 The petitioner also preferred an application being No.1951 of 2021 before the Gujarat Electricity State Regulatory Commission, Gandhinagar ('the Commission', for short) on 03.02.2021.

2.8 In that petition before the Commission, in para:16, the petitioner prayed for following reliefs:

> "A. That this Hon'ble Commission may be pleased to admit and allow this petition.
> B. That this Honourable Commission may be pleased to institute an inquiry into the making out of false theft case on basis of mere imaginations and issuing of huge supplementary bills ignoring the provisions of the prevailing rules, regulations and the law.
> C. Pending admission and or final disposal of this petition this Honourable Commission be pleased to recalculate the supplementary bill as a case of the defective meter. The license must be prevented from exploiting the consumers at large misusing the sections of the Electricity Act, 2003 and Honourable Commission may keep watch on the malicious activities of the respondent licensee that put consumers in grave trouble.
> D. Pending admission and or final disposal of this petition this Honourable Commission be pleased to direct the respondent licensee to

restore the connection on such terms and conditions that may be deemed fit and proper in the facts and circumstances fo the case.

E. That this Hon'ble Commission may be pleased to grant such other and further relief as may be deemed fit and proper in the facts and circumstances of the case.

F. That this Hon'ble Commission may be pleased to award the cost of this petition."

2.9 The aforesaid petition preferred by the petitioner was dismissed by the Commission *vide* order dated 10.08.2022 by making following observations in the order in para:9.38 t0 11.

"9.38 It clearly appears that the Petitioner is facing a serious charge of theft of electricity of huge amount.

9.39 From the above, it is clear that the Petitioner has been issued supplementary bill for alleged theft of electricity. A complete mechanism has been provided under sections 135, 153 and 154 of the Act. It is a case where an alternate remedy available to the Petitioner to approach to Special Court constituted under the Act which decide about civil and criminal liability.

9.40 Keeping in mind the aforesaid observations and on careful scrutiny of the materials placed before the Commission and also in the light of the aforesaid discussions, the Commission is of the considered opinion that

whether the act of the Petitioner would amount to "theft of energy" or not, cannot be adjudicated by this Commission in exercise of the powers under, the Electricity Act, 2003 and it is for the Special Court constituted under the Electricity Act, 2003 to look into the same and pass appropriate order either to entertain or reject the case of the Petitioner.

9.41 Therefore, this Petition can and shall be disposed on the preliminary issue of maintainability, and we hold that it is not maintainable and the Commission has no jurisdiction to entertain this Petition. We accordingly hold the issue in negative.

9.42 We note that the Petitioner has argued that the Respondents have violated certain provisions of the GERC (Electricity Supply Code and Related Matters) Regulations, 2015. In the absence of any evidence / material regarding any breach of the Regulations, we find that this Petition is without any substance. On this ground also the Petition does not sustain. In regard to the Supplementary bill against theft of electricity, it is clear as narrated above, that the matter falls within the jurisdiction of the Special Court and the Commission does not have any powers to deal with the same. The Petitioner has failed to *prima faciely* show breach or violation of any Regulations and therefore, this Petition is required to be dismissed *inlimine.*

10. While parting with this order, it is necessary to note here that the theft of electricity causes loss of revenue not only to the licensee

> but the entire class of rest of consumers who also have to bear the expenses of electricity. The Commission is of the clear view that the Petitioner has failed to substantiate this Petition including jurisdiction to entertain this Petition. Thus, following order is passed.
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> ORDER
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> 11. The Petition is dismissed being inadmissible and not maintainable."

2.10 Being aggrieved by the aforesaid order passed by the Commission the petitioner preferred the present petition.

3. Since the petition preferred by the petitioner was dismissed by the Commission on the ground of availability of alternative remedy as well as on the ground that issue related to theft of electricity cannot be adjudicated by the Commission in exercise of powers under the Electricity Act, 2003, this Court called upon learned advocate Mr.Dhruvik Patel and asked him under which provisions of the Electricity Act, 2003 the Commission is permitted to adjudicate the issue of electricity theft or to entertain the petition in respect of prayers made by the petitioner which are

already produced in forgoing paras.

4. Learned advocate Mr.Dhruvik Patel could not point out anything from the Act except for Section 86 of the Act which reads as under:

> "86. Functions of State Commission.- (1) The State Commission shall discharge the following functions, namely:-
> (a) determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the State:
> Provided that where open access has been permitted to a category of consumers under section 42, the State Commission shall determine only the wheeling charges and surcharge thereon, if any, for the said category of consumers;
> (b) regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State;
> (c) facilitate intra-State transmission and wheeling of electricity;
> (d) issue licences to person seeking to act as transmission licensees, distribution licensees and electricity traders with respect to their operations within the State;
> (e) promote cogeneration and generation of electricity from renewable sources of energy by

providing suitable measures for connectivitiy with the grid and sale of electricity to any person, and also specify for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee;

(f) adjudicate upon the disputes between the licensees and generating companies and to refer any dispute for arbitration;

(g) levy fee for the purposes of this Act;

(h) specify State Grid Code consistent with the Grid Code specified under clause (h) of sub-section (1) of section 79;

(i) specify or enforce standards with respect to quality, continuity and reliability of service by licensees;

(j) fix the trading margin in the intra-State trading of electricity, if considered, necessary;

(k) discharge such other functions as may be assigned to it under this Act.

(2) The State Commission shall advise the State Government on all or any of the following matters, namely:-

(i) promotion of competition, efficiency and economy in activities of the electricity industry;

(ii) promotion of investment in electricity industry;

(iii) reorganisation and restructuring of electricity industry in the State;

(iv) matters concerning generation, transmission, distribution and trading of electricity or any other matter referred to the State Commission by that Government;

(3) The State Commission shall ensure transparency while exercising its powers and discharging its functions.

(4) In discharge of its functions, the State Commission shall be guided by the National Electricity Policy, National Electricity Plan and Tariff Policy published under section 3."

The aforesaid Section 86 of the Act deals with the functioning of the State Commission.

5.1 Considering the fact that the prayer made in this petition cannot be said to be amongst the functions of the Commission, as rightly pointed out by the Commission, as the petitioner has already challenged the action of the respondent authority of issuance of supplementary bill before the Special Court by filing civil suit.

5.2 The petitioner's prayer for initiation of the inquiry can also be made before the aforesaid Special Court and, therefore, considering the clear and unambiguous language of section 86 of the Act, the Commission has rightly observed that Commission is not vested with the jurisdiction to consider the prayer of petitioner and

hence aforesaid prayer of the petitioner cannot be adjudicated by the Commission in exercise of powers conferred to the Commission under the Electricity Act, 2003. The Commission has also taken note of the fact that for the prayer made by the petitioner, a complete mechanism has been provided by the Electricity Act itself under Sections 135, 153 and 154 of the Act and the petitioner was required to approach Civil Court constituted under the Act which can decide the civil and criminal law.

5.3 Therefore, the Commission has rightly not entertained the petitioner preferred by the petitioner on the ground of maintainability and dismissed the same.

5.4 Except for the powers available to Commission under Section 86 of the Act, learned advocate Mr.Dhruivk Patel could not point out any other language nor he made any other submissions or cited any decision in support of powers or Commission to adjudicate such issues.

6. In view of above, the order dated 10.08.2022 by the Gujarat Electricity State Regulatory Commission in

petition No.1951 of 2021 cannot be said to be an illegal or erroneous order and, therefore, the same does not warrant any interference of this Court.

7. In view of above, the present petition requires to be dismissed and the same is dismissed.

8. It is clarified that the Commission as well as this Court have not entertained the petition of the petitioner only on the ground of maintainability and not by considering merits of the matter and, therefore, any authority / forum before which the grievance of the petitioner is pending in the form of suit or petition may not be influenced by dismissal of present petition or by that order dated 10.08.2022 passed by the Commission and is directed to consider the grievance of the petitioner by considering the merits of the matter in accordance with law and to pass a reasoned order.

Direct service is permitted.

(NIRZAR S. DESAI,J)

MISHRA AMIT V.