

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11372 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

AKAR PACHERS PRIVATE LTD

Versus

G E B

Appearance:

1. Special Civil Application No. 11372 of 1993
MR SV RAJU for Petitioner No. 1
Mr. LR Poojari, AGP for Respondent No. 1
RULE SERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 31/03/2004

ORAL JUDGEMENT

The present petition is filed under Article 226 of the Constitution of India for an appropriate writ, direction or order directing the respondent G.E.B., not to disconnect electric supply given to the petitioner's factory on account of non-payment of balance of 70% of

disputed bill.

2. The petitioner, who was running factory was having electricity connection from the GEB. That a supplementary bill was issued to the petitioner for an amount approximately of Rs. 1,40,000. Being dissatisfied with the said supplementary bill, the petitioner had preferred appeal before the appellate committee constituted by the GEB. That during the pendency of the said appeal as the GEB was trying to disconnect the electric supply to the factory of the petitioner, the petitioner preferred Special Civil Application No. 8328 of 1993 before this Court, which came up for hearing before Hon'ble Mr. Justice C.K. Thakkar (As he then was) and this Court passed the following order on 20th August 1993;

"Mr. Tushar Mehta, the learned counsel for the Respondent-Board states that if the petitioner will pay 30% of the bill issued to the petitioner plus reconnection charges, the respondent-Board will re-connect the electricity supply. In view of the above statement, it is clarified that if the petitioner so chooses, he may take appropriate remedy by filing an appeal before the Appellate Committee. The petitioner will pay such amount of 30% on or before 21.8.1993. As and when such amount with reconnection charges is paid the respondent-Board will immediately supply electric connection. It is also clarified that the above payment will be without prejudice to the rights and contentions of both the parties. The xeroxed bill is taken on record. In view of the above order, the learned counsel for the petitioner seeks permission to withdraw this petition. Permission granted. Petition disposed of as withdrawn. Notice discharged. No order as to costs. Liberty to apply. D.S."

3. That thereafter the petitioner had deposited 30% of the bill amount as directed by this Court, i.e., Rs. 57,800 and reconnection charges of Rs.225 also and power supply was restored to the factory of the petitioner on 21.8.1993.

4. It is the case of petitioner that thereafter the petitioner had preferred an appeal to the appellate committee of the Gujarat Electricity Board on 6.9.1993 and the petitioner received a letter dated 23.9.1993 from

GEB, Sanand requiring the petitioner to submit particulars as stated in the said letter dated 23.9.1993 and the petitioner replied to the same vide reply dated 7.10.1993. That during the pendency of the hearing before the appellate committee, the petitioner was called upon by letter dated 15.10.1993 written by the Deputy Engineer asking the petitioner to furnish particulars certified by the Mamlatdar and also to give an undertaking in a Rs. 40 stamp paper to the effect that if the petitioner loses in the appeal the same will be binding on him and the same would be final and that the petitioner would not take any further steps against the same.

5. The petitioner, being aggrieved by the said communication dated 15.10.1993 written by the Deputy Engineer asking the petitioner to furnish an undertaking to the effect as stated above has preferred the present Special Civil Application. It is the contention of the petitioner that when the appeal is pending before the appellate committee, the respondent GEB cannot disconnect the electric supply and that the respondents cannot insist for undertaking which is asked for by communicated dated 15.10.1993 to the effect that the decision of the appellate committee would be binding on the petitioner and that the same would be final, and that the petitioner would not take any further steps against the same. This Court, while issuing the notice in the present Special Civil Application, granted ad-interim stay against the disconnection of the power supply to the petitioner which has been continued till the appeal is heard and decided.

6. Today, when the matter is called out for final hearing, learned advocate appearing for the petitioner is not in a position to make statement whether the appeal preferred by the petitioner before the appellate committee is disposed of or not. Be that as it may, on going through the communication dated 15.10.1993 by which the petitioner was called upon to furnish undertaking to the effect that the decision that may be taken by the appellate committee would be binding on the petitioner and would not take any further steps against the same, is absolutely illegal and most arbitrary. The respondent authorities cannot insist for the undertaking to the effect that the petitioner will not take any further steps challenging the order passed by the appellate committee. It is the right of the petitioner to challenge any decision that may be taken by the appellate committee, if the same is against him, but the said right cannot be taken away by the G.E.B. Under the circumstances, the insistence on the part of the GEB to

furnish an undertaking, to the effect that the decision of the appellate committee is binding on the petitioner and that the same would be final and the petitioner would not take any further steps, is required to be quashed and set aside, and the appellate committee is directed to decide and dispose of the appeal preferred by the petitioner (if not decided till date) without insisting for the undertaking which is asked for by the Deputy Engineer in his letter dated 15.10.1993, and till then the interim relief, which is granted by this Court in the present Special Civil Application, is continued. If the appeal is already decided by the appellate committee, then the interim relief, which is granted by this Court, would not be in operation. The petition is allowed accordingly. Rule is made absolute accordingly to the aforesaid extent with no order as to costs.

rmr. [M.R. Shah, J.]