

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 30 of 2006****For Approval and Signature:****HONOURABLE MR.JUSTICE M.R. SHAH**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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BALVANTBHAI B AMIN - Petitioner(s)
Versus
DY. EXE. ENGINEER - Respondent(s)

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Appearance :

MR GHANSHYAM THURIA for Petitioner(s) : 1,
MS RV ACHARYA for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**Date : 31/01/2006****ORAL JUDGMENT**

1. Rule. Ms.R.V.Acharya, learned advocate waives service of rule on behalf of the respondent-electricity company. With the consent of the learned

advocates for the parties, the matter is heard finally today.

2. By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for an appropriate writ, direction and / or order quashing and setting aside the provisional supplementary bill dated 27.9.2005 and also the action of the respondent company in disconnecting the power supply of the petitioner on 30.12.2005 on the basis of the said bill.

3. It is the contention on behalf of the petitioner that electricity supply of the petitioner has been disconnected by the respondent company without following procedures as required under Section-126 of the Electricity Act, 2003 and Supply Code and no final assessment order has been passed as required under Section-126 of the Electricity Act, 2003.

4. In response to the notice issued by this Court, Ms.R.V.Acharya, learned advocate appears on behalf of

the respondent company and affidavit-in-reply is also filed on behalf of the respondents. On going through the same and even it is not disputed by the learned advocate appearing on behalf of the respondent company that no assessment order has been passed as required under Section-126 of the Electricity Act, 2003 and bill dated 27.9.2005 is a provisional assessment. It is also the contention on behalf of the respondent that after the provisional assessment order dated 27.9.2005, the petitioner has not made any representation objecting to the same. It is required to be noted that may be the petitioner might have not objected to the provisional assessment. However, the respondents are required to pass final assessment order. It is also contention on behalf of the petitioner that the petitioner was never served with the provisional assessment order. Therefore, there was no occasion for the petitioner to object to the provisional assessment order. Without entering into the larger question whether the petitioner was earlier served with the provisional assessment order or not, now since the petitioner is already served

with the provisional assessment order along with the affidavit-in-reply in the proceedings of the present special civil application, the same be treated as service of the provisional assessment order by the respondent upon the petitioner and if the petitioner so desires, it will be open for the petitioner to raise objections against the same within two weeks from today. If any objections are raised, the respondents are directed to consider the same and pass final assessment order. If within a period of two weeks no objections are raised, then the respondents are required to take appropriate actions in accordance with Section-126 of the Electricity Act, 2003. If the objections are raised by the petitioner, then, after considering the same, the respondent company is required to pass final assessment order and if aggrieved, the petitioner can prefer an appeal under Section-127 of the Electricity Act, 2003. Until then, the electricity supply of the petitioner is required to be reconnected immediately as unless and until the proceedings under Section-126 of the Electricity

Act, 2003 are completed, the respondent can not disconnect the electricity supply of the petitioner, and the same shall be without prejudice to their rights and contentions of the respondent and taking an appropriate proceedings and completing the proceedings under Section-126 of the Electricity Act, 2003 as stated hereinabove and it will be open for the respondent to take an appropriate action inclusive of disconnecting the electricity supply after completing the proceedings as stated hereinabove, more particularly, taking action under Section-126 of the Electricity Act, 2003. By this order it will not be construed that this Court has passed any order on merits with regard to the assessment and the provisional supplementary bill. But this Court has only directed the respondents to complete the proceedings under Section-126 of the Electricity Act, 2003 in light of the observations made hereinabove. The respondents are directed to reconnect supply immediately but not later than three days from the date of receipt of this order.

5. Rule is made absolute to the aforesaid extent, however, there shall be no order as to costs.

Direct Service is permitted.

[M.R.Shah, J.]

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