

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION NO. 17153 of 2005****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE RAJESH H.SHUKLA**

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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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JITENDRA VITTHALDAS BHATIA....Petitioner(s)

Versus

GUJARAT URJA VIKAS NIGAM LTD.,NOTICE TO BE SERVED THROUGH-
& 1....Respondent(s)

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Appearance:

MR YH VYAS, ADVOCATE for the Petitioner(s) No. 1

MR PREMAL R JOSHI, ADVOCATE for the Respondent(s) No. 2

RULE SERVED for the Respondent(s) No. 1 - 2

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CORAM: **HONOURABLE MR.JUSTICE RAJESH H.SHUKLA****Date : 31/07/2013****ORAL JUDGMENT**

1. The present petition has been filed by the petitioner under Articles 14 and 226 of the Constitution of India as well as under

the provisions of the Electricity Act, 2003 and Electricity Regulatory Commissions Act 1998 for the prayers:

“(A) Your Lordships may be pleased to issue a writ of Mandamus or a writ in the nature of Mandamus or any other appropriate writ, order or direction quashing and setting aside the order dated 7.6.2004 passed by the appellate authority, revised supplementary bill dated 4.4.2005 and communication dated 8.8.2005, to the extent to which, the petitioner is directed to pay the amount of Rs.1,96,834.24 ps. at Annexure ‘A’ collectively.

(B) Pending admission, hearing and final disposal of this petition, Your Lordships may be pleased to stay the enforcement and implementation of the communication dated 8.8.2005 and revised supplementary of Rs.1,96,834.24 ps.

(C)”

2. Heard learned Advocate Shri Y.H.Vyas for the petitioner and learned Advocate Shri Premal Joshi for Respondent Nos. 1 and 2.
3. Learned Advocate Shri Y.H.Vyas submitted that the petitioner is a consumer having the power connection from the Respondent Electricity Board for more than 10 years. He submitted that on 26.9.2002, a checking squad came to the premises of the petitioner and carried out the inspection, for which the rozkam has been made. The checking squad has submitted a report and has taken the meter and other installation for the laboratory test. He submitted that on the basis of the

laboratory test, they have given the finding with regard to the tampering of the meter and unauthorised abstract of the electricity. However, learned Advocate Shri Vyas referred to the papers and submitted that, as could be seen from the rozkam as well as the inspection report, the MMB seal are intact and seal on the meter body were also found to be intact. Learned Advocate Shri Vyas therefore submitted that, if the meter is sought to be removed after long period, screw / nut may be broken, which would justify the presumption about any malpractice or theft of energy. Learned Advocate Shri Vyas has also stated that there is no foreign body or material found, nor there is any device, by which, it could be said that there was tampering of the meter so that the consumption of the electricity is not properly recorded. He has also stated that the internal parts of the meter were also intact, and therefore, the laboratory test report is only on the basis of the inference. He pointedly referred to the laboratory test report and submitted that it is only because the two nuts / screws have been found loose, the presumption has been made. However, he referred to the meter testing report and submitted that everything was found in order, and therefore, the impugned notice as well as the supplementary bill are erroneous, which is a subject matter of the litigation. Learned Advocate Shri Vyas submitted that the appellate committee has also passed an order partly allowing the appeal qua the load factor or the number of days,

but has accepted the report about the irregularity. He submitted that it is also based on presumption, and the appellate committee has also failed to consider the laboratory report as it is. He therefore submitted that the present petition may be allowed. Learned Advocate Shri Vyas has also referred to and relied upon the judgment reported in **2003(4) GLR 3122 – Modern Terry Towels Ltd. v. Gujarat Electricity Board & Ors.**

4. Learned Advocate Shri Premal Joshi for the Respondents has submitted that in fact the laboratory test report states that the terminal cover and MMB seal are there, but there is some space created, which would allow insertion of the foreign material. He therefore submitted that, therefore the findings given by the appellate committee cannot be said to be based on presumption that it has not considered the laboratory test report. Learned Advocate Shri Premal Joshi submitted that the conduct of the petitioner is also required to be considered that after the inspection and the laboratory test report, he has also accepted by executing an undertaking produced at Annexure-D collectively that he accepts the irregularity and had agreed to make the payment, and on that basis the connection has been restored. He submitted that in view of the affidavit in reply, which has been filed in detail, the present petition may not be entertained.

5. Learned Advocate Shri Vyas has referred to the rejoinder to

support his submission.

6. In view of the rival submissions and having regard to the papers as well as the laboratory test report and also the finding of the appellate committee, it cannot be said that the findings are based only on presumption without any basis. From the laboratory test report read with the inspection report, it is evident that a gap was found in upper part of the meter body glass through which a plastic strip could be inserted. There are some scratches found on the dial and disc of the meter. Therefore, without any further elaboration, when the findings about the theft of energy have been accepted by the appellate committee, and in fact the petitioner also having accepted the same by filing the undertaking to pay the amount, now it is too late to raise any such issue. Further, as could be seen from the order of the appellate committee produced on record at Annexure-A, the appeal is partly allowed and the Respondent Board is directed to revise the bill taking the ratio of the load factor and diversity factor considering the statement made by the petitioner with regard to use of power.
7. Therefore, in the facts and circumstances and having regard to the aforesaid finding given by the appellate committee, it does not call for any interference and the present petition deserves to be dismissed and accordingly stands dismissed. Rule is discharged. Interim relief, if any, shall stand vacated. No order as to costs.

(RAJESH H.SHUKLA, J.)

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