

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/FIRST APPEAL NO. 4441 of 2009**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MR. JUSTICE DEVAN M. DESAI SD/-**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	NO
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

**GUJARAT ELECTRICITY BOARD (NOW PASHCHIM GUJARAT VIJ CO. & ORS.**

**Versus**

**INDRASINH NATUBHA JADEJA**

**Appearance:**

MS LILU K BHAYA(1705) for the Appellant(s) No. 1,2,3  
ADVOCATE NOTICE SERVED for the Defendant(s) No. 1

**CORAM:HONOURABLE MR. JUSTICE DEVAN M. DESAI**

**Date : 03/04/2024**

**ORAL JUDGMENT**

1. The present First Appeal is filed by the appellant under Section 96 of the Code of Civil Procedure, 1908 (for short, hereinafter referred to as 'the Code'). Being aggrieved by the judgment and decree dated 18.4.2009 passed by the learned Principle Senior

Civil Judge, Jamnagar in Special Civil Suit No.74 of 2004 and directing the appellant - original defendant to pay to the respondent original plaintiff Rs.15,21,800/- with running interest at the rate of 7.5% per annum from 27.4.2004 till realization.

2. Heard learned advocate Ms. Lilu Bhaya for the defendant - appellant. Though served, none appeared for the respondent/s - original plaintiffs.
3. The brief facts of the case are as under:
4. The plaintiff has filed a suit for the recovery of Rs.15,21,800/- with running interest @ 7.5% p.a. from 27.4.2004 till realisation against defendants. The plaintiff is running a hotel in the name of `Hotel Arjun' at Moti Khavdi, Village Sikka Taluka Jamnagar and having a Customer No.82102-00725-1 of GEB. The electric meter was installed on 19/1/1999, form

No.15 was filled up and at that time, the terminal block was burned. A checking squad from Mehsana Division of the appellants visited the Hotel premises of respondents on 27/6/2003 and carried out the checking. It was found that the meter which was installed at the plaintiff's Hotel was running 36.48% slow. The said meter was sent on for laboratory testing. It was found that the PT link of wire and pressure coil of the meter were found tampered with on the upper portion of the screws instead of lower portion of the screws and PT wire was found broken near the link. It was reported that it was a case of theft of electricity, resultantly supplementary bill of Rs.52,91,728=24 Paisa was issued to the present respondent. The said supplementary bill was challenged before the Appellate Committee of the appellant. The Appellate Committee revised the supplementary bill and a revised supplementary bill for an amount of Rs.13,40,391=23 Paisa was raised against which the respondent filed a Special Civil Suit

for cancellation of the said supplementary bill. Pending suit, pursuant to the application for reconnection of the Electric Supply vide Exh.14, the order to restore the connection, on a condition to deposit the entire amount of revised supplementary bill was passed. Plaintiff deposited an amount of Rs.15,21,800/- with the appellant and the Electric Supply was restored.

5. The appellant appeared and filed Written Statement vide Exh.10 and contended that at the time of checking of installation as well as at the time of checking of the meter in laboratory, the position of burnt terminal block was not found and meter seals were found to be tampered with. It was also found that the pressure coil was also tampered with. As the meter was tampered with, supplementary Bill was issued. It was also found at the time of checking by the Squad on 27.6.2003 that illegal load of Electricity was found of 111.66 HP and it was also found that

the meter was running 36.48% slow seal wires were replaced and seals were stucked by adhesive object. Body seals were tampered with and seals were found duplicate. Even the terminal block was found tampered with by way of touching screw.

6. Issues were framed at Exh.23 which are reproduced hereunder:

(i) *Whether the plaintiff proves that the terminal block was in burned position and defective right from the beginning at the time of installation of meter by the defendant ?*

(ii) *Whether the plaintiff proves that the Supplementary suit bill is against the Rules, Arbitrary and Illegal ?*

(iii) *Whether the defendants prove that the factum of burned position of terminal block has no connection with theft of electricity ?*

(iv) *Whether defendants prove that the Court has no jurisdiction to entertain this suit against the order of the Appellate Authority of GEB ?*

(v) *Whether the plaintiff proves that he is entitled to get refund of Rs.15,21,800/- which is deposited by him on dated 27.4.2004 from the defendants ?*

(vi) *Whether the plaintiff is entitled to recover Rs.15,21,800/- with interest from the defendants ? If yes, what rate of interest ?*

(vii) *What order and decree ?"*

7. Plaintiff has examined himself at Exh.24 and has also produced documentary evidences vide Exhs.26 to 37.
8. On behalf of defendant, witness Pratapbhai Babaldas Chaudhary has been examined at Exh.46 and another witness namely; Daulatsinh Dhansinh was also examined at Exh.51.
9. Learned advocate Ms.Lilu Bhaya for the appellant submitted that the checking was carried out in the premises of respondent's Hotel Arjun in the presence

of respondent. It was found that the seals were tampered with. The metal meter box seal No.MMB.2-C-945594 was fixed with some adhesive material and resealing was done. The seal wire was found to be duplicate. Meter bodies seal wires were changed and seals were resealed. The Terminal block was having touching with this screw and there were marks of sparks. All these irregularities were sufficient to prove theft of electricity. The meter was removed and sent to laboratory in presence of the respondent and representatives of the respondent. The irregularities found at the time of checking were mentioned in the checking sheet. The checking sheet dated 27/6/2003 was counter signed by the representative of the respondent. It is further submitted that the meter was checked in the laboratory on 19/9/2003 in presence of the respondent, it was found that hooks of main parts of all seats were pressed and seal wire was of ordinary steel. The plastic seals were found to be refixed with

some adhesive material. On opening the meter, it was seen that "R" phase PT wire was broken near the link and "Y" and "B" phase PT wires were fitted on the screws instead of below the screw. Tampering with pressure coil of the meter was clear. Thereafter, the respondent was booked for the theft of electricity and supplementary bill was issued. FIR was also lodged against the respondent. Against the supplementary bill of Rs.13,40,392/-, the respondent approached Appellate Committee by way of an appeal. The Appellate Committee considered the contentions of respondent and the Appellate Committee came to the conclusion that there was sufficient and reliable evidence to establish that there was a tampering with the Metal Meter Box (MMB) seals.

10. Vide order dated 24/12/2003 the Appellate Committee came to the conclusion that the theft was committed by the respondent and give benefit in the

duration factor and reduce the bill. The learned Trial Court has committed an error in interpreting the documents on record and evidence adduced by the Officers of appellant. Despite the finding of fact by the Appellate Committee regarding theft of electricity, learned Trial Court has committed an error of interpreting a fact that MMB and terminal block are two separate things / instrument / objects. The learned Trial Court has erred in not believing the case of theft of electricity. The decision of the Appellate Committee on fact of theft of electricity has attained finality.

11. The learned Trial Court has committed an error in not properly appreciating the oral evidence of Pratapbhai Chaudhary, Deputy Engineer - Exh.46 the said witness, who conducted the checking on 27/6/2003, stated that in the checking sheet, there is a reference of tampering with the seals and Seal wires being duplicate.

12. The learned Trial Court has also failed to appreciate the oral evidence of Shri Daulat Singh Exh.51, who was working as a Junior Engineer in the meter testing laboratory and has conducted the meter testing. He has explained in detail the conditions of seals, duplicate seal wire and tampering with pressure coils of meter. He also stated that terminal block was not found burnt at the time of checking of meter in the laboratory. It is submitted by learned advocate for the appellant that looking to the modus operandi of theft, it has no relevance with the terminal block which was found burnt. There was tampering with MMB seals and Meter Body Seals and tampering with the pressure coils of meter. It is submitted that the Terminal Block is separate from the metal meter box. It is further submitted that the finding that the meter was defective and it was in burnt position is contrary to record. It is not the case of defendants that the metal meter box was burnt.

13. It is further submitted that theft of electricity has been proved beyond any doubts before the Appellate Committee and the finding of fact on theft of electricity has been derived at by the Appellate Committee. The learned trial Court has committed an error in observing that the meter was defective.
14. Before the Appellate Committee of the appellant, it was not the case of respondent that the Metal Meter Box was defective.
15. The learned advocate for the appellant has relied upon a decision of the Honorable Apex Court in the case of **Madhya Pradesh Electricity Board v. Smt. Basantbai** reported in **AIR 1988 (1) Supreme Court Cases, 23** wherein, Supreme Court has held at only in the case of slowness of meter electrical Inspector will have jurisdiction but not in

the case where there is a fraud of tampering has been done by the party with the meter.

16. I have considered the submissions and the Record and Proceedings of the case. The electrical installation of the respondent was checked on 27/6/2003 by the Deputy Engineer In-charge Squad, Mehsana in presence of representatives of the correspondent. The total load was found at 211.66 HP against the contract load of 100 HP. During the checking, the seal wire of MMB was found changed and the MMB seal was found resealed with substance like adhesive and all the four meter body seals were found tampered with. The meter was tested on Accue check and it was found that the same was running slow by 36.48%. It was also found that the screws of terminal block were tampered with and there were some signs of Sparks. The checking authority came to the conclusion that the respondent had abstracted electric energy by tampering with MMB seal, meter

body seals and meter mechanism. The electric connection of the respondent was disconnected on 27/6/2003. The MMB seal and meter were inspected in the laboratory on 19/9/2003 in presence of the representatives of the respondent and irregularities were found during that process.

17. The laboratory Report reveals that PT links of 'Y' and 'B' phase were found fitted on the upper portion of the screws instead of lower portion of the screws and R phase PT wire was found broken near link.
18. Thereafter, the respondent was booked for the theft of electrical energy and supplementary bill of Rs.52,91,728=24 Paisa was issued to the respondent. The respondent challenged the said bill before the Appellate Committee and the State Committee revised the bill to the tune of Rs.13,40,391-23 Paisa on 30<sup>th</sup> January 2004.

19. The case of respondent right from the beginning is that when the meter was installed the Terminal block was in a burnt condition. The said fact is undisputed on record. It seems that the respondent is trying to mix up terminal block with MMB seal and meter body seals. It is clear that the terminal block and the MMB seals and Meter Body Seals are two different parts. The respondent has harped upon the fact that terminal block was in a burnt condition at the time of installation and resultantly meter was a defective one since inception. But respondent has not been able to point out any material that burnt terminal block has direct nexus with MMB seal and Meter Body. As observed earlier, terminal block and MMB seal and Meter Body are different parts. The learned trial Judge was misdirected on this factual aspect and come to a wrong conclusion that meter was defective.

20. The learned Trial Court has failed to appreciate the inspection sheet and laboratory testing report, which establishes that respondent has tampered with the MMB Seals and Meter Body and Pressure Coils, resultantly the meter was running slow 36.28%. Tampering with MMB seal and Meter Body and pressure coil can be found from the material placed on record and duly established by the appellant. The supplementary bill was issued by the appellant on the basis of tampering of the meter and because of that the meter was running slow. The learned Trial Court has failed to appreciate that while taking Accue test of the meter it was found that the electric load was 111.66 H.P. The sealed wires were tampered with and were stuck with adhesive object. In absence of any contrary evidence against the testing report of the laboratory and the finding of fact which was arrived at by the Appellate Committee that respondent has committed a theft of electricity. Moreover, the challenge in the plaint was not

regulating the testing procedure or any plans in the report of laboratory Testing Report. It cannot be presumed that the findings recorded in the report of the laboratory is perversed or it is against the actual condition of the MMB seal and Meter Seals. The plaintiff could not point out from the evidence that the allegation of theft of electricity is wrong and MMB seals and the meter mechanism was never tampered with. In the case of **Smt. Basantbai (Supra), in paragraph Nos.9 and 13**, Hon'ble Supreme Court has observed as under:

*"9. It is evident from the provisions of this section that a dispute as to whether any meter referred to in sub-section (1) is or is not correct has to be decided by the Electrical Inspector upon application made by either of the parties. It is for the Inspector to determine whether the meter is correct or not and in case the Inspector is of the opinion that the meter is not correct he shall estimate the amount of energy supplied to the consumer or the electrical quantity contained in the supply during a period not exceeding six months and direct the consumer to pay the same. If there is an allegation of fraud committed by the consumer in tampering with the meter or manipulating the supply line or breaking the body seal of the meter resulting in not registering the amount of energy supplied to*

*the Consumer or the electrical quantity contained in the supply, such a dispute does not fall within the purview of sub- section 6 of section 26. Such a dispute regarding the commission Of fraud in tampering with the meter and breaking the body seal is A outside the ambit of section 26(6) of the said Act. An Electrical Inspector, has, therefore, no jurisdiction to decide such cases of fraud. It is only the dispute as to whether the meter is/is not correct or it is inherently defective or faulty not recording correctly the electricity consumed, can be decided by the Electrical Inspector under the provisions of the said Act.*

13. *We are however, unable to accept this contrary view as it is obvious from the provisions of section 26 sub-section 6 of the said Act that dispute whether a meter is correct or faulty would come under the said provisions and not the dispute regarding tampering of meter. In our view, the view taken about the scope of section 26(6) in the decisions cited above are correct. In the instant case the dispute relates to whether the meter is correct one or it is faulty not recording the actual energy consumed in running the oil mill of the respondent. So this dispute squarely falls within the provisions of the said Act and as such it has been rightly found by the High Court that it is the Electrical Inspector who alone is empowered to decide the dispute. If the Electrical Inspector comes to the finding that the meter is faulty and due to some defect it has not registered the actual consumption of electrical energy, then the Inspector will estimate the amount of energy consumed and will fix the amount to be paid in respect of such energy consumed within a period not exceeding six months. The appellant No. 1 is not competent pending the determination of this dispute by the Electrical Inspector to issue the impugned notice threatening disconnection of supply of*

*electricity for non payment of supplementary bill prepared and sent by it. The Board is also not competent to prepare and send a supplementary bill in respect of energy consumed by the respondent from the one phase which stopped functioning and did not record any consumption of energy. For the reasons, aforesaid we affirm the order of High Court and dismiss the appeal without costs.”*

21. The aforesaid decision applied to the case on hand. The Hon'ble Apex Court while dealing with issue held that in case whether meter is correct or faulty, would come under the provision of Section 26(6) of the Electricity Act, 1910 and not the dispute regarding tampering of meter.
22. Thus, taking into consideration the aforesaid factual aspects, I am of the view that the learned trial Court has committed an error of misreading the facts and the controversy.
23. Resultantly, the judgment and decree dated 18.4.2009 passed by the learned Principal Senior

Civil Judge, Jamnagar in Special Civil Suit No.74 of 2004 is hereby quashed and set aside. The Special Civil Suit No.74 of 2004 is hereby dismissed. The Appeal is accordingly *allowed*. No order as to cost.

24. Record and proceedings to be sent back to the concerned Court forthwith.

SD/-  
**(D. M. DESAI,J)**

VATSAL