

CASE COMMENT

Navigating the Regulatory Labyrinth of the Electricity Sector: *Mitulbhai Ranchodbhai Lakhani v. Gujarat Electricity Regulatory Commission*

Hamna Viriyam*

Introduction

Electricity is a crucial component of a country's growth and development. India has been heavily reliant on its power sector as one of the world's major consumers of electricity.

The Electricity Act of 2003 regulates various facets of electricity production, distribution, transmission, and trade. Unlawful activities like electricity theft or tampering with meters are considered offences subject to punishment. The Act has Special Courts and Commissions that deal with such offences. However, the roles of these authorities often overlap resulting in ambiguity among electricity consumers.

A significant amount of theft can be attributed to the unreliable supply of electricity, the lack of a reliable vigilance system, and the difficulty in locating and apprehending offenders. For the government, as well as suppliers and licensees, power theft has resulted in considerable financial losses. This results in a reluctance to invest in power generation or maintain the infrastructure, which results in worsening power shortages and disgruntled customers. Thus, there is an urgent need to navigate the regulatory labyrinth of the electricity sector to deal with electricity theft swiftly.

Facts

The Petitioner is a consumer of the licensee Daksin Gujarat Vij Co. Ltd. During an inspection of the electric meter installed in the premises of the Petitioner, it was found that the meter was defective. The Respondent company issued a supplementary bill for an amount of Rs.52,22,762.16 and Rs.7,93,566.00 towards compounding charges as the case of the Petitioner was considered to be a case of 'direct theft'.

Since the Petitioner was not given an opportunity to be heard, a writ petition was preferred before the Gujarat High Court. It was disposed off directing the reconnection of the electricity upon making payment of the entire amount. Ultimately, the electricity supply was reconnected in favour of the Petitioner. To institute an inquiry into an alleged false theft case, the Petitioner preferred an application before the Gujarat Electricity State Regulatory Commission. The Petitioner contended that the theft case was made based on mere imagination and the issuing

* LLM candidate, Queen Mary University, London

of huge supplementary bills ignored the provisions of the prevailing rules, regulations and the law.

The Commission noted that whether the act of the Petitioner would amount to theft of energy or not cannot be adjudicated by the Commission and it is for the Special Court constituted under the Act to look into the same and pass appropriate order either to entertain or reject the case of the Petitioner. The Commission held that the petition was not maintainable and that it had no jurisdiction to entertain the petition. Additionally, the Petitioner argued that the Respondents have violated certain provisions of the GERC (Electricity Supply Code and Related Matters) Regulations, 2015. However, due to the lack of any evidence, the Commission dismissed the same.

Issue and Decision

The Commission, as well as the Court, have not entertained the petition only on the ground of maintainability. Since the merits of the matter were not considered, any authority before which the grievance of the Petitioner is pending will not be influenced by the dismissal of this petition or by the order 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.

Analysis

The Web of Authorities

Section 86 of the Act lists the functions of the State Commission. Although the Commission has the function of adjudicating disputes between licensees and generating companies, the issue of electricity theft does not come within the jurisdiction of the Commission.¹ Section 135 lays down the offence of electricity theft, which is triable only by the Special Court as per Section 154.

Special Courts are duly constituted to decide the cases of electricity theft by Designated Sessions Judges, with a provision to prefer the first appeal before the High Court against the judgment of the Special Court.

Under the National Electricity Policy, the Commissions are empowered to make Regulations under Section 178 and Section 181 of the Act respectively. This includes setting up grievance redressal forums. However, these fora do not have jurisdiction under Section 154.

The complexity of the legal landscape within the electricity sector is a pressing concern. Too many authorities can result in a convoluted system that is difficult to navigate. The intricate web of regulations and procedures can confuse even well-informed individuals, making it difficult to comprehend rights and obligations. This, in turn, elevates the cost and time required to navigate the legal system, deterring many from seeking recourse and undermining access to justice.

¹ See *Maharashtra State Electricity Regulatory Commission v. Lloyds Industries Ltd.*, (2007) 8 SCC 381.

Alternative Remedy

It is clear that the correct authority to approach is the Special Court. In *M/s Bahuchar Stone Industries v. State of Gujarat & Ors.*, the Hon'ble Court dismissed the petition filed by the Petitioner and relegated the Petitioner to approach the Special Court constituted under Section 153 as an alternative remedy available under the Act.² In *Maharashtra Electricity Regulatory Commission v. Lloyd Steels Limited*, it was specifically observed that when there is a specific alternative remedy available under the Act for the consumer, individual disputes between the consumer and licensee cannot be adjudicated by the Commission.³

Electricity Theft

When electricity is stolen, the costs associated with generating and distributing that electricity do not disappear. Instead, they are shifted onto the remaining consumers who are paying their bills honestly. This shift in costs can lead to an increase in tariffs and hinder the utility's ability to invest in infrastructure upgrades, maintenance, and improvement projects.

The Commission noted in its order that it is necessary that a case of theft of electricity causes loss of revenue not only to the licensee but the entire class of consumers who also have to bear the expenses of electricity. The Petitioner is to substantiate otherwise however, it is difficult to ascertain what facts can establish this, especially where the Petitioner has a false case made out against him.

The Reality of Justice

While the law does lay down the remedy for cases dealing with electricity theft, the process of getting justice under Section 154 of the Electricity Act is too long, taking years to conclude. Consumers are forced to approach the Commission to get justice and protection. In the instant case, the Petitioner needed to run his business for survival, for the survival of his dependents and his employees.

While the decision in this case is correct, the Court ought to have addressed the delay in Special Courts which has compelled the Petitioner to approach the Commission.

Supply Code

In the instant case, a specific issue was raised that the assessment carried out by the Respondent violated provisions of the Electricity Supply Code Regulations notified by the Commission. The Court held that it is first necessary to be verified by the Special Court as a part of the determination of civil liability as per the provisions of Section 154 (5) and 154 (6). The Commission has no power to decide civil liability in case of disputes pertaining to electricity theft. As noted in *Torrent Power AEC Ltd. v. Gayatri Intermediate Pvt. Ltd.*, the consumer can only challenge the quantum of civil liability of a disputed bill before a Special Court.⁴

² See *Torrent Power AEC Ltd. v. Gayatri Intermediates Pvt. Ltd.*, (2006) (2) GLR 1580.

³ See *Maharashtra State Electricity Regulatory Commission v. Lloyds Industries Ltd.*, (2007) 8 SCC 381.

⁴ *Torrent Power AEC Ltd. v. Gayatri Intermediate Pvt. Ltd.*, 2006 (2) GLH 375.

Depending upon the repetition of the offence, the person aggrieved over the determination of the civil liability or fine or imprisonment, as the case may be, is given a right to challenge the same before the court of competent jurisdiction under the Code of Criminal Procedure. In such an event, the aggrieved consumer can challenge the civil liability as determined by the Special Court, before the High Court. There is no provision in the Act for computation of civil liability by the Commission in the case of electricity theft.

The Supply Code framed by the Commission also provides that the assessment of the civil liability or loss caused to the licensee is made after considering the objections of the consumers and evidence, if any, adduced. However, the same shall be decided by the Special Court which is empowered to deal with such matters.

Conclusion

Electricity theft is an offshoot of mal-governance. Creating an independent, non-partisan governance framework would require holding the regulators accountable for setting an environment that improves the performance of suppliers.

Further, a shift in the political attitude and perception of the masses is crucial to deter power theft and prevent violent tendencies of rural consumers against inspection teams.⁵ The effectiveness of the vigilance mechanism is underpinned by the quality of public service, competence and expertise of officers, as well as independence from political pressure.⁶

Regarding 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. Although this position is clear, this case outlined the pitfalls in the judicial system. Addressing electricity theft is indeed a multifaceted challenge, and a proper judicial system can play a significant role in curbing this issue. Knowing that there are legal consequences for electricity theft acts as a deterrent. Potential offenders are less likely to engage in theft if they know they could face legal repercussions, including fines and even imprisonment.

A proper judicial system guarantees fair and impartial trials for those accused of electricity theft. This ensures that individuals have the opportunity to defend themselves and that their rights are protected during legal proceedings. Further, timely adjudication of cases related to electricity theft is essential. A well-functioning judicial system can help ensure that cases move through the legal process efficiently, discouraging prolonged litigation and delays. Moreover, the judicial system can promote transparency and accountability in legal proceedings related to electricity theft. This can help build trust in the system and ensure that the rule of law is upheld. Lastly, the judiciary can also play a role in educating the public about the consequences

⁵ Swarnendu Chatterjee and Hamna Viriyam, *Power Theft Management*, Indian Journal of Projects, Infrastructure & Energy Law Blog, May 10, 2021; <https://ijpiel.com/index.php/2021/05/10/power-theft-management-the-india-chapter-is-it-time-for-a-refurbishment/>

⁶ *Id.*

of electricity theft and the importance of legal and ethical consumption. Public awareness campaigns and outreach efforts can be integrated into the judicial system's activities.