

HIGH COURT OF GUJARAT (D.B.)**ESSAR STEEL LTD*****Versus*****EXECUTIVE ENGINEER (O&M), DAKSHIN GUJ VIJ CO LTD****Date of Decision:** 14 March 2007**Citation:** 2007 LawSuit(Guj) 584**Hon'ble Judges:** [J M Panchal](#), [Abhilasha Kumari](#)**Case Type:** Civil Application; Letters Patent Appeal; Special Civil Application**Case No:** 3676 of 2007; 254 of 2007; 13886 of 2006**Subject:** Constitution**Acts Referred:**[Constitution of India Art 226](#)**Final Decision:** Application dismissed**Advocates:** [K Sudhir Nanavati](#), [Keyur Gandhi](#), [Nanavati Associates](#), [Mihir Joshi](#), [Kamal B Trivedi](#), [Lilu K Bhaya](#)**[Cases Referred in \(+\):](#) 5****J. M. PANCHAL**

[1] Rule. Ms.Lilu K.Bhaya, learned counsel, waives service of notice on behalf of the respondents.

[2] The instant application was heard at length and in great detail on March 13, 2007 as well as today, i.e. March 14, 2007, and therefore, the Court proposes to dispose of the same finally by this order.

[3] By filing the instant application, the applicants have prayed to stay the operation and implementation of the judgment and order dated January 15, 2007, rendered by the learned Single Judge in Special Civil Application No.13886 of 2006, during the pendency and final disposal of the abovenumbered Appeal, by which it is held that the applicants are liable to make payment of Wheeling charges demanded by the respondents. The applicants have also prayed to stay the demand/ disconnection notice dated February 23, 2007, produced at Annexure-1 to the application.

[4] The applicant No.1 is a Company incorporated under the provisions of the Companies Act. It is engaged in manufacture and sale of steel products. Under the provisions of the Gujarat Electricity Industry (Reorganization and Regulation) Act, 2003, the Government of Gujarat has transferred and vested its distribution assets in the respondent No.1. The Government has also transferred and vested its transmission assets in the respondent No.2 in terms of Notification dated October 24, 2003. Prior thereto, the Gujarat Electricity Board was supplying electricity to the applicant No.1-Company upto 44.5 MVA on the terms mentioned in Agreement dated December 1, 1989. The respondent No.1, by letter dated January 18, 2006, claimed Wheeling charges of Rs.6.63 crores from the applicant for the period from May 11, 2005 to December 31, 2005. The applicant No.1-Company asserted by reply dated January 27, 2006, that it was not liable to pay those charges. After exchange of correspondence, i.e. notices by the respondent No.1 and the replies by the applicant No.1, the respondent No.1 served Bill-cum-Disconnection notice dated June 5, 2006, demanding Wheeling charges aggregating Rs.13,18,35,735/-. Therefore, the applicants invoked jurisdiction of this Court under Article 226 of the Constitution by filing Special Civil Application No.13886 of 2006.

[5] In the petition, following reliefs were claimed:

"(A) Your Lordships may be pleased to issue a writ of or a writ in the nature of Mandamus and/or any other appropriate writ, order or direction quashing and setting aside the Bill-cum-Disconnection Notice dated 5.6.2006 at Annexure-A;

(B) Your Lordships may be pleased to issue a writ or a writ in the nature of Mandamus directing the Respondents to issue permission/ approval for parallel operation of additional 240 MW CPP in pursuance of the application dated 9th May 2006 at Annexure-J on such usual terms and conditions as are applicable for the same and without insisting for payment of wheeling charges under the Bill-cum-Disconnection Notice;

(C) Pending the hearing and final disposal of this Petition, Your Lordships may be pleased to-

(i) restrain the respondent No.1, its servants and agents from disconnecting power supply to the Petitioner Company on the ground of non-payment of wheeling charges claimed under the Bill-cum-Disconnection Notice;

(ii) direct the Respondents to issue permission/ approval for parallel operation of additional 240 MW CPP in pursuance of the application dated 9th May 2006 at Annexure-J on such usual terms and conditions as are applicable for the same and

without insisting for payment of wheeling charges under the Bill-cum-Disconnection Notice;

(D) An ex-parte ad-interim reliefs in terms of prayer (C) above may kindly be granted; and

(E) Pass such other and further order or orders as may be deemed just and proper on the facts and in the circumstances of the present case."

[6] It may be mentioned that the applicant-Company was not permitted to commence generation of additional power for failure to make payment of Wheeling charges. Therefore, interim relief to direct the respondents to permit the applicant to commence generation of additional power was claimed. The learned Single Judge passed an order dated July 31, 2006, granting interim relief in the following terms:

"After the matter is discussed at some length, taking into consideration the facts of the case and particularly the fact that late commencement of power generation is not in the interest of anyone, it is deemed fit that the respondent shall consider the request of the petitioner company to permit it to commence generation of additional power and the petitioner company deposit 50% of the amount, demanded by the respondent from the petitioner company, on or before 11.08.2006 and for the rest of the 50% amount, an undertaking be filed by an authorized officer of the petitioner company before the said date.

It is clarified that the petitioner company shall comply will all the technical requirements which are condition precedent for grant of such permission. It is further clarified that after the petitioner company complies the technical requirements, the respondents taking into consideration all other technical aspects on their part, will grant the permission.

This arrangement is without prejudice to the rival contentions of both the parties.

At the joint request of the learned counsels, the matter is adjourned to 25.08.2006."

[7] As is evident from the record, the petition filed by the applicants is dismissed by the learned Single Judge vide judgment dated January 15, 2007, which has given rise to the abovenumbered Appeal. The Appeal is ordered to be admitted by an order dated March 9, 2007, and is pending for final disposal.

[8] In order to resolve the dispute whether the applicant is entitled to the reliefs claimed in the instant application, it would be relevant to notice the findings recorded by the learned Single Judge in the impugned judgment.

[9] The issue decided by the learned Single Judge is about the ownership of 220 KV Bus-Bar shown in the maps produced by the parties between points `X' and `Y', which is 400 meter long and is connected to 220 KV transmission line leading to Ichhapur sub-station and Sachin sub-station of the respondent No.2. The learned Single Judge has held that 48 kilometer long 200 KV line is from Ichhapur sub-station to Sachin sub-station. The learned Judge has referred to clause 6(b) of the Agreement dated December 1, 1989, as well as Agreement dated May 25, 1994, and held that the Bus-Bar which is shown in the maps produced by the parties between the points `X' and `Y' belongs to the respondents. As per the finding recorded by the learned Single Judge, electricity passes through the service line beyond the premises of the applicant whereas the length of the Bus-Bar is only 1% of the total length of service line which is 48 kilometers. The contention raised by the applicant that the distribution system belonging to the respondent No.1 is only upto the metering point is negated and it is held that notwithstanding the contribution made by the applicant No.1 for Bus-Bar, the same vests in the respondents because the ownership of service lines is of Gujarat Electricity Board and the Board would be entitled "to bring upon accommodation, cables, equipments, etc." for giving connections to other consumers. According to the learned Single Judge, 220 KV line from the generating station to Ichhapur sub-station was being owned, operated and maintained by the respondents for evacuation of electricity from generating plant of Essar Power Limited and also for supply of electricity to the applicant No.1. It is further found that the generating station of Essar Power Limited was commissioned in the year 1996 and till 2001, evacuation of power was through Ichhapur sub-station and that the respondents, at their own costs, had extended line upto Sachin sub-station in the year 2001 to enable them to evacuate and supply power from Ichhapur sub-station to Sachin sub-station and vice-versa. According to the finding recorded by the learned Single Judge, both sub-stations are also connected to other sub-stations. The learned Single Judge took into consideration the decisions rendered in (1) Calcutta Electric Supply Corporation v. Commissioner of Wealth Tax, West Bengal - (1972)3 SCC 222, (2) Hoshiarpur Electric Supply Company v. Commissioner of Income-tax, Simla - AIR 1961 SC 892, (3) The Upper Ganges Valley Electricity Supply Co. Ltd. v. The U.P. Electricity Board - 1973 SC 683, (4) The Caxton Press Pvt. Ltd., New Delhi v. Municipal Corporation of Delhi - AIR 1976 Delhi 30, and (5) M/s.Sagar Art Service, New Delhi v. Municipal Corporation, Gwalior and another - AIR 1988 MP 46, and has held that the principle emerging therefrom that even if payment of cost of service line is made by the consumer, the ownership of service line as well as the distribution system vests in the licensee is applicable to the facts of the instant case. After noticing the fact that other powers are being transmitted through 220 KV line in addition to transfer of Essar's power, it is held that the power is distributed beyond metering points of the applicant, and therefore, the respondents are entitled to levy Wheeling charges. The learned Judge noticed that

tariff of Wheeling charges was not in dispute. In view of the abovereferred to conclusions, the learned Single Judge has dismissed the petition. The operative part of the judgment reads as under:

"12. In view of the aforesaid facts, reasons and judicial pronouncements, the demand notice dated 18th January, 2006 as well as 5th June, 2006 and bills for the month of May, 2005 to May, 2006 is true and correct and the petitioners are liable to make the payment of Wheeling charges for transmission of electricity. There is no substance in this Special Civil Application and, therefore, the same is hereby dismissed. Rule is discharged. Interim relief, if any, stands vacated."

[10] This Court has taken into consideration the detailed submissions advanced at the Bar and record of the case. From the interim order which was passed by the learned Single Judge, it is evident that it pertained to grant of permission to the applicants to commence generation of additional power. While directing the respondents to consider the request of the applicant-Company to permit it to commence generation of additional power, the applicants were directed to deposit 50% of the amount demanded by the respondents from the Company on or before the date specified therein and for the rest of the amount, the applicants were directed to file an Undertaking through an authorized officer of the Company. Prima-facie, this Court is of the opinion that no interim relief was granted staying the operation and execution of notice dated June 5, 2006, which was challenged in the petition. It was submitted by the learned counsel for the applicants that in view of the understanding arrived at between the learned counsels for the parties, Bill-cum-Disconnection notice dated June 5, 2006, was not enforced. However, the statement made at the Bar by the learned counsel for the applicants is disputed by the learned counsel for the respondents. Therefore, this Court cannot proceed on the footing that enforcement of notice-cum-bill dated June 5, 2006, was stayed during the pendency of the petition. Thus, for the first time, this Court is called upon to decide the question whether on the facts and in the circumstances of the case, stay of the bill dated February 23, 2007, produced at Annexure-1 to the application should be granted. It may be noticed that permission to commence generation of additional power is already granted but in spite of the Undertaking having been filed by the applicants, the remaining amount is not paid till the date in terms of the order dated July 31, 2006. The Court cannot lose sight of the fact that the respondents have succeeded before the learned Single Judge. The Appeal is admitted because it involves determination of questions raised therein, but merely because the Appeal is admitted, the applicants would not be entitled to stay of judgment delivered by the learned Single Judge because that would amount to setting the judgment of the learned Single Judge at naught without adjudicating the claims raised in the Appeal. Such a course is not warranted in the facts of the case. Prima-

facie, this Court is of the opinion that the entire line from Ichhapur sub-station to Sachin sub-station, including the Bus-Bar, is an integrated one and is used for transfer of power not only of Essar but also of those other than Essar. As pointed out by the learned counsel for the respondents, the applicants have insisted to remain as part of the integrated system and to use the line and Bus-Bar in an integrated manner. The grant of relief claimed in the application would debar the respondents from claiming Wheeling charges till the disposal of the Appeal, which is not likely to take place in the near future. Such relief, if granted, would not only adversely affect the respondents but the projects which may be undertaken for supply of electricity to other consumers. It is pertinent to note that the challenge made by the applicant to the notice-cum-bill dated June 5, 2006, has failed before the learned Single Judge. In the petition, no declaration was sought to the effect that the applicant was/ is not liable to pay the Wheeling charges. Even if it is assumed that such a declaration was deemed to have been claimed, what is sought to be challenged in the instant application is validity of bill dated February 23, 2007. With the passage of time, such bills are bound to be issued to the applicant. Every time the Court cannot stay the operation of bills which may be issued to the applicant, on the footing that the applicant is entitled to the declaration that it is not liable to pay the Wheeling charges, though this Court finds that such a general declaration is not claimed in the petition. Prima-facie, the demand of Wheeling charges is in accordance with (1) the statutory Agreements entered into between the parties, (2) the provisions of the Electricity Act, 1910, (3) the provisions of the Electricity Act, 2003, and (4) the meters installed at CPP of Essar Steel as well as at 220 KV Main Receiving Sub-Station Control Room of Essar Steel. Therefore, this Court is of the opinion that no case is made out by the applicants for grant of relief claimed in the application and the application is liable to be dismissed.

[11] For the foregoing reasons, the application fails and is dismissed. Rule is discharged. There shall be no orders as to costs.

[12] At this stage, the learned counsel for the applicant prays to grant reasonable time to enable the applicant to approach higher forum. On the facts of the case, this Court is of the opinion that interest of justice would be served if time to make payment of amount due as mentioned in notice-cum-bill dated February 23, 2007, is extended by three weeks on certain conditions. Having regard to the facts of the case, the applicants are directed to make payment of remaining amount of bill dated June 5, 2006, within a week from today, as per the Undertaking which was filed by the authorized officer of the applicant to comply with one of the conditions imposed by the learned Single Judge while directing the respondents to consider the application to permit the applicant to generate additional power. The applicants are granted time of three weeks from today to make payment of the amount mentioned in bill dated

February 23, 2007, which is produced at Annexure-1 to the application and are also directed to pay regularly, the amount of Wheeling charges, which may be demanded by the respondents from time to time without prejudice to their rights and contentions. Having regard to the facts of the case, the Registry is directed to notify the Appeal for final hearing in the week commencing from July 16, 2007.

