

Jindal Oil Mills and Others, Somalal Nathji and Others

Vs

Godhra Electricity Co. Ltd

Civil Appeal Nos. 15 and 16 of 1969

(S.M. Sikri, R.S. Bachawat, K.S. Hegde JJ)

26.02.1969

JUDGMENT

HEGDE, J. -

1. Common questions of law arise for decision in these appeals, by certificate. The suits from which these appeals arise have been considered together and decided by common judgments both in the High Court as well as in the courts below. It is convenient to do so in this court as well.

2. The suits in questions are representative suits. The plaintiffs-appellants who are consumers of electricity in the Godhra areas sued the respondent-company on behalf of all the consumers in that area seeking to restrain the respondent from enforcing the enhanced charges sought to be collected from the consumers of power used for lights and fans as well as of motive power.

3. The facts leading to these appeals may now be stated. On November 19, 1922, the then Government of Bombay granted a licence under the Indian Electricity Act, 1910, to a concerned called Lady Sulochna Chinubhai and Co. authorising it to generate and supply electricity to the consumers in Godhra area. Clause 10 of the licence prescribed then maximum charges that the licensee could levy for the power supplied. The respondent is the successor of the said licensee. After the Electricity (Supply) Act, 1948 (to be hereinafter referred to as the Supply Act, came into force, a rating committee was constituted under Section 57(2) of the Supply Act at the request of the respondent on January 19, 1950. On the recommendation of that committee, the Government fixed with effect from February 1, 1952, the following charges for the power supplied :

(i) 0-7-9 pies per unit for the electricity supplied for lights and fans with a minimum of Rs. 3/- per month and per installation; and

(ii) for motive power at 4 annas per unit with a minimum of Rs. 4-8-0 per month-per installation.

The Supply Act was amended in 1956. The respondent increased the charges for motive power from January 1, 1963, to 35 N. P. per unit with a minimum of Rs. 7/- per month for every installation. On June 22, 1963, the rates for lights and fans were increased with effect from July 1, 1963 to 70 N.P. per unit with a minimum of Rs. 5/- per month for every installation. The contention of the appellants is that the respondent was not competent to enhance the charges in question without the matter having been considered by a rating committee. Their suits to restrain the respondent from levying the proposed increased charges were decreed by the trial court. Those decrees were affirmed by the first appellate court as well as by a single judge of the Gujarat High Court in second appeals

but the appellant bench of the Gujarat High Court reserved those decrees and dismissed the suit holding that under the Supply Act as amended in 1956 the respondent has a unilateral right to enhance the charges subject to the conditions prescribed in Schedule VI to that Act. It is as against those decision these appeals have been brought. Civil Appeal No. 15 of 1969, relates to the enhancement of charges for electricity power for lights and fans and Civil Appeal No. 16 of 1969, relates to the enhancement of charges for the motive power.

4. The only question that arises for decision in these appeals is whether under the provisions of the Supply Act as amended in 1956, the respondent was competent to unilaterally enhance the charges.

5. In these appeals we are not concerned with the provisions of the Electricity Act, 1910. There is no dispute as regards the charges fixed by the Government with effect from February 1, 1962, under Section 57(2)(c) of the Supply Act on the basis of the recommendation made by the rating committee. The appellants admit their liability to pay enhanced charges that may be fixed by the Government on the basis of any recommendation by a freshly appointed rating committee. They merely challenge the respondent's right to unilaterally enhance the charges. According to the appellants they have a vested right to be governed by the charges fixed in 1952, until the same is revised by the Government on the basis of the recommendation of a rating committee. It was urged on their behalf that the amendments made in 1956 do not affect the charges fixed in 1952 and they continue to rule till altered by the Government in accordance with law. The respondent repudiates those contentions. It denies that the appellants have any vested rights in the charges fixed. It was urged on its behalf that the amendments made to the Supply Act in 1956, have substantially altered the scheme as regards levying charges, it is now open to a licensee to alter the charges fixed by the Government unilaterally subject to the conditions prescribed in Section 57(A) and in Schedule VI of the Supply Act. We may mention at this stage that even according to the appellants the charges that may be fixed by the Government now on the basis of the recommendation of a rating committee can be unilaterally altered by the licensee after the period fixed in the Government order in accordance with clause (e) of Section 57(A)(1) expires.

6. In order to decide the point in controversy, we have to take into consideration the relevant provisions of the Supply Act as it stands now and as it stood prior to its amendment in 1956. For the sake of convenience we shall set out side the side the relevant provisions.

#The Supply Act as it stood The Supply Act as amended before 1956. in 1966. Section 57. Licensee's charges to Section 57. - The Provisions consumers - of the Sixth Schedule and the Seventh Schedule shall (1) The provisions of the Sixth be deemed to be incorporated Schedule and the Table appended in the licence of every to the Seventh Schedule licensee, not being a shall be deemed to be incorporated local authority :in the licence of every licensee, not being a local (a) in the case of a licence authority, from the date of the granted before the commencement the commencement of the licensee's this Act, from the date of the next succeeding year of account, commencement of the and from such date the licensee licensee's next succeeding year shall comply therewith accordingly of account; and any provisions of such (b) in the case of a licence licence or of the Indian Elec- granted after the commencement tricity Act, 1910 (LX of 1910), of this Act, from the date of for any other law, agreement or the commencement of supply, instrument applicable to the licensee shall, in relation to the and as from the said date, the licensee licensee be void and of no shall comply with the provisions of the said Schedules consistent with the provisions of accordingly and any provision this

section and the said of the Indian Electricity Act, 1910, Schedule and Table. and the licence granted to him there under and of any other law, agreement (2) Where the provisions of the or instrument applicable to the Sixth Schedule and the Table licensee shall in relation to appended to the Seventh Schedule the licensee, be void and of no effect under sub-section (1) in so far as they are deemed to be incorporated in inconsistent with the provisions of the licence of any licensee, section 57-A and the said Schedules. the following provisions shall apply to the licensee, namely : provisions of the Sixth Schedule and the Seventh Schedule are under (a) The Board, or where no Board Section 57 deemed to be incorporated is constituted under this Act in the licence of any licensee, the Provincial Government, following provisions shall have effect, if it is satisfied that the licensee has failed to comply with any provisions of the Sixth Schedule and shall (a) the Board or where no Board when requested so to do by the licensee, constitute a Rating Committee to examine the licensee's charges for the (i) may, if satisfied that the supply of electricity and to the licensee has failed to comply with any of the provisions of the Sixth Schedule; and the committee shall be constituted in respect of a licensee within three years from the date on which such a committee by the licensee has reported in respect of licensee in writing that licensee, unless the Provincial Government declares that in its opinion the circumstances have arisen rendering the orders passed on the recommendations of the previous rating committee unfair to the licensee or any of its undertakings, to make recommendations in that behalf to the State Government : after giving the licensee a reasonable opportunity of being heard and after taking into consideration the efficiency of operation and management on account of the failure of the licensee to comply with his undertakings, report to the Provincial Government making such recommendations (and giving notice thereof) regarding the charges for electricity which the licensee may clear (which period, if make to any class or classes of the circumstances so warrant consumers so however that the recommendations are not to be extended from time to time) to show cause against the action proposed to be taken from earning clear profits taken : sufficient when taken with the sums available in the Tariffs Provided further that no Dividends Control Reserve such Rating Committee shall be constituted if the alleged return during his next failure of the licensee to succeeding three years of comply with any provisions of the Sixth Schedule raises any of the undertakings of the licensee, with efficient interpretation of the said operation and management, so provisions or any matter arising therefrom and such difference or dispute has been referred by the licensee to the arbitration of the Authority clause (b) the Provincial Government shall cause the report to be published in the Official Gazette, and may at the same time make an order referred within the period in accordance therewith fixing of the said notice

:the licensee's charges for the supply of electricity Provided further that now with effect from such date, Rating Committee shall be not earlier than two months constituted in respect of after the date of publication licensee within three years of the report, as may be specified from the date on which such in the order; and the a committee has reported in licensee shall forthwith give respect of that licensee, effect to such order : unless the State Government declares that in its opinion Provided that nothing in circumstances have arisen this clause shall be deemed rendering the orders passed onto prevent a licensee from the recommendations of the reducing at any time any previous Rating Committee charges, so fixed. unfair to the licensee or any of his consumers : THE SIXTH SCHEDULE (b) a Rating Committee under I. The licensee shall so adjust clause (a) shall, - his rates for the sale of electricity by periodical revision (i) where such committee is that his clear profit in any to be constituted under year shall not as far as sub-clause (i) of that possible exceed the amount of clause, be constituted reasonable return : not later than three months after the expiry Provided that the licensee shall of the notice referred to not be considered to have failed so in the first proviso to adjust his rates if the clear that clause; profit in any year of account has not exceeded the amount of the reason- (ii) where such committee is to able return by more than thirty per be constituted at the centum of the amount of the reason- request of the licensee, able return. be constituted within three months of the date II. (1) If the clear profit of a of such request : licensee in any year of account is in excess of the amount of (c) a Rating Committee shall, reasonable return, one-third of after giving the licensee as such excess, not exceeding 7 1/2 reasonable opportunity of per cent. of the amount of reason- being heard and after taking able return shall be at the into consideration the disposal of the undertaking. Of the efficiency of operation and balance of the excess, one half shall management and the potentialities be appropriated to a reserve which of his undertaking, shall be called be Tariffs and report to the State Government Dividends Control Reserve and the within three months from the remaining half shall either be distri- date of its constitution, but in the from of a proportion- making recommendations with able rebate on the amounts collected reasons therefor, regarding from the sale of electricity and meter the charges for electricity rentals or carried forward in the which the licensee may make to in the accounts of the licensee for any class or classes of consumers distribution to the consumers in so, however, that the future such matter as the Provincial recommendations are not likely Governmental may direct. to prevent the licensee from earning clear profit, sufficient (2) The Tariffs and Dividends Control when taken with the Reserve shall be available for sums available in the Tariffs disposal by the licensee only to and Dividends Control Reserve the extent by which the clear to afford him a reasonable profit is less than the reasonable return as defined in the Sixth return in any year of account. Schedule during his next succeeding three years of (3) On the purchase of the undertaking account : under the terms of the licence any balance remaining in the Provided that the State Tariffs and Dividends Control Government may, if it so deems Reserve shall be handed over to necessary, extend the said the purchaser and maintained as period of three months by as such Tariffs and Dividends further period not exceeding Control Reserve. three months within which the report of the Rating Committee may be submitted to it; (d) within one month after the receipt of the report under clause (c), the State Government shall cause the report to be published in the Official Gazette, and may at the same time make an order in accordance therewith fixing the licensee's charges for the

supply of electricity with effect from such date, not earlier than two months or later than three months, after the date of publication of the report as may be specified in the order and the licensee shall forthwith give effect to such order; (e) the charges for the supply of electricity fixed under clause (d) shall be in operation for such period not exceeding three years as the State Government may specify in the order : Provided that nothing in this clause shall be deemed to prevent a licensee from reducing at any time any charges so fixed. THE SIXTH SCHEDULE I. Notwithstanding anything contained in the Indian Electricity Act, 1910, except subsection (2) of Section 9 of 1910, 22-A and the provisions in the licence of a licensee, the licensee shall so adjust his (charges) for the sale of electricity whether by enhancing or reducing them that his clear profit in any year of account shall not, as far as possible, exceed the amount of reasonable return : Provided that such (charges) shall not be enhanced more than once in any year of account : Provided further that the licensee shall not be deemed to have failed so to adjust his (charges) if the clear profit in any year of account has not exceeded the amount of reasonable return by (twenty) per centum of the amount of reasonable return : Provided further that the licensee shall not enhance the (charges) for the supply of electricity until after the expiry of a notice in writing of not less than sixty clear days of his intention to so enhance the (charges) given by him to the State Government and to the Board : Provided further that if the (charges) of supply fixed in pursuance of the recommendations of a Rating Committee constituted under Section 57-A are lower than those notified by the licensee under and in accordance with the preceding proviso, the licensee shall refund to the consumers the excess amount recovered by him from them : Provided also that nothing in this Schedule shall be deemed to prevent a licensee from levying, with the previous approval of the State Government minimum charges for supply of electricity for any purpose. I-A. The notice referred to in the third proviso to Paragraph I shall be accompanied by such financial and technical data in support of the proposed enhancement of charges as the State Government may, by general or special order, specify. II. (1) If the clear profit of a licensee in any year of account is in excess of the amount of reasonable return, one-third of such excess, not exceeding (five per cent.) of the amount of reasonable return, shall be at the disposal of the undertaking. Of the balance of the excess, one-half shall be appropriated to a reserve which shall be called the Tariffs and Dividends Control Reserve and the remaining half shall either be distributed in the form of a proportional rebate on the amounts collected from the sale of electricity and meter rentals or carried forward in the accounts of the licensee for distribution to the consumers in future, in such manner as the State Government may direct. (2) The Tariffs and Dividends Control Reserve shall be available for disposal by the licensee only to the extent by which the clear profit is less than the reasonable return in any year of account. (3) On the purchase of the undertaking under the terms of its licence any balance remaining in the Tariffs and shall be handed over to the purchaser and maintained as such Tariffs and Dividends Control Reserve : Provided that where the undertaking is purchased by the Board or the State Government the amount of the Reserve may be deducted from the price payable to the licensee.##

7. From an examination of these provisions it would be seen that under the Supply Act prior to its amendment in 1956, the charges fixed by the Government under Section 57(2)(c) remained in force unless reduced by the licensee in the meantime till the same were altered by a subsequent order

made by the Government after getting a fresh recommendation from the Rating Committee but under the law as it now stands the rate fixed by the Government under Section 57(A)(1)(d) would be in operation only for such period not exceeding three years as the State Government may specify in the order. Thereafter it can be enhanced by the licensee in accordance with the provisions contained in Schedule VI. It was urged on behalf of the appellants that the present Section 57(A)(1)(e) can only govern the charges fixed under Section 57(A)(1)(d) and it has no impact on an order made under the old Section 57(2)(c). According to the appellants the charges so fixed can only be modified by the Government after getting a report from the Rating Committee. Mr. Chagla, learned Counsel for the appellants contended that the consumers who get power from the respondent have a vested right in the charges fixed in 1952 and that vested right cannot be considered to have been taken away by the provisions of the Amending Act. He argued that the provisions of the Amending Act are not retrospective in character nor is there any inconsistency between those provisions and the present provisions as the two operate on different fields; hence in view of Section 6 of the General Clauses Act, 1897, we must hold that the charges fixed by the Government in 1952 continue to be in operation. In this connection he relied on certain observations made by this Court in *State of Punjab v. Mohar Singh* ((1955) SCR 893) and *Deep Chand v. State of U. P. and Others* ((1959) 2 Supp SCR 8). On the other hand it was contended by the learned Counsel for the respondent that the rights and liabilities of the respondents at present are exclusively regulated by the provisions of the Supply Act as it stands now; the terms of licence as they originally stood or as they stood on the coming into force of the Supply Act in 1948, are of no consequence now; they cannot be looked into for finding out the rights or duties of the licensee as at present; for that purpose we must look into those terms as modified by the provisions of the Supply Act as it is now. It was also urged on its behalf that there is no question of vested rights in these cases; herein we are only concerned with the procedure to be adopted in modifying the charges fixed in 1952.

8. In *Mohar Singh's* case this Court laid down that the provisions of Section 6(c), (d) and (e) of the General Clauses Act, 1897, relating to the consequences of the repeal of a law are applicable not only when an Act or Regulation is repealed simpliciter but also to a case of repeal and simultaneous enactment re-enacting all the provisions of the repealed law. In the course of its judgment this Court observed that when the repeal is followed by a fresh legislation on the same subject, the court has undoubtedly to look into the provisions of the new Act but that only for the purpose of determining whether they indicate a different intention. The line of inquiry would be, not whether the new Act keeps alive the old rights and liabilities but whether it manifests any intention to destroy them. In *Deepchand's* case this Court was considering the effect of repugnancy between a State Act and a Central Act. The observations made in that context, we think, have no bearing on the point in issue in this case. It is true that when an existing Statute or Regulation is repealed and the same is replaced by fresh Statute or Regulation unless the new Statute or Regulation specifically or by necessary implication affects rights created under the old law those rights must be held to continue in force even after the new Statute or Regulation comes into force. But in the cases before us there is no question of affecting any vested right. There is no dispute that the charges fixed can be altered. The controversy relates to the procedure to be adopted in altering them. That controversy does not touch any vested right. The procedure in question must necessarily be regulated by the law in force at the alteration of the charges.

9. Section 57 of the Supply Act as it stands now lays down that the provisions of Schedule VI shall be deemed to be incorporated in the licence of every licensee not being a local authority, in the case of a licence granted before the commencement of the Act from the date of the commencement of the licensee's next succeeding year of account. Admittedly the licensee with which we are concerned in these cases was granted even before the Supply Act was enacted. Therefore quite clearly the

licence in question is governed by the present Section 57. Hence we have to read into that licence the provisions contained in Schedule VI. If any of the earlier provisions in the licence either as they stood when the licence was originally granted or as they stood modified as per the provisions of the Supply Act prior to its amendment in 1956 are inconsistent with the provisions of Schedule VI or Section 57(A) as they are now they must be held to be void and of no effect. In other words we must read into the licence the provisions of Schedule VI and strike out therefrom such terms as are inconsistent with those provisions and thereafter give effect to the same. For determining the rights and duties of the licensee as at present we have only to look into the terms of the licence as modified by Schedule VI. We cannot go behind them. That much is clear from the language of the Supply Act. The intention of the Legislature is clear and unambiguous. Therefore there is no need to call into aid any rule of statutory construction or any legal presumption. Further no reason was advanced before us, nor can we conceive of any way those who obtained licences prior to the amendment of Supply Act in 1956 should be in a more disadvantageous position than those who got their licences thereafter. Correspondingly we fail to see why those who are served by licensees who obtained their licenses prior to the amendment of the Supply Act in 1956, should be placed in a better position than those served by licensees who obtained their licences thereafter. After all, every law has some reason behind it. Section 57(A) (2)(e) was intended to meet the changing economic circumstances. The purpose behind the new provisions appear to be to permit the licensees to so adjust their charges as to get reasonable profits. But at the same time a machinery has been provided to see whether any excess charges have been levied and if levied and if levied, get the same refunded to the consumers.

10. The law declared by the Amending Act does not affect any right or privilege, accrued under the repealed provision. It merely prescribes as to what could or should be done in future. Therefore there is no basis for saying that it affects vested rights. For finding out the power of the licensee to alter the charges one has to look to the terms of the licence in the light of the law as it stands, the past history of that law being wholly irrelevant. If the terms of the licence, including the deemed terms permit him to unilaterally alter the charges then he has that right. If we merely look at those terms, as we think we ought to, then there is no dispute that the respondents was within its rights in enhancing the charges as admittedly it had followed the procedure prescribed by law. We also do not agree with Mr. Chagla in his contention that there is no inconsistency between the present scheme relating to the enhancement of charges vis-a-vis the scheme provided under the Supply Act prior to its amendment in 1956. The two schemes are substantially different. Under the former scheme once the Government fixes the charges the licensee cannot alter it but at present at the end of the period fixed in the Government Order the licensee has a unilateral right to enhance the charges in accordance with the conditions prescribed in Schedule VI. Therefore in view of Section 57 the provisions contained in that schedule have an overriding effect.

11. In *Amalgamated Electricity Co., Ltd. v. N. S. Bhathena and Another* ((1964) 7 SCR 503), this Court was called upon to consider the scope of Section 57(a) and the Schedule VI as it stands now. Therein the controversy was whether the appellant therein was entitled to levy charges more than the maximum charges prescribed in its licence issued in 1932. It may be noted that in that case the notice of enhancement of the charge was given on September 25, 1958. This Court held that the maximum stipulated in the licence no longer governed the right of the licensee to enhance the charges; his rights were exclusively governed by the provisions contained in Paragraph I of Schedule VI of the Supply Act. It is true that in that case this Court was considering the right of the licensee under the Supply Act vis-a-vis his right under the licence granted under the Indian Electricity Act, 1910, but that difference is not material. What this Court in fact considered was the right of the licensee under the existing law to enhance the charges. Dealing with the scope of

Paragraph I of Schedule VI, Ayyangar, J., who spoke for the majority observed thus :

"Para I of Schedule VI both as it originally stood and as amended, as seen already, empowered the licensee "to adjust his rates, so that his clear profit in any year shall not, as far as possible, exceed the amount of reasonable return". We shall reserve for later consideration the meaning of the expression "so adjust his rates". But one thing is clear and that is that the adjustment is unilateral and that the licensee has a statutory right to adjust his rates provided he conforms to the requirements of that paragraph viz., the rate charges does not yield a profit exceeding the amount of reasonable return. The conclusion is therefore irresistible that the maxima prescribed by the State Government which bound the license under the Electricity Act of 1910, no longer limited the amount which a licensee could charge after the Supply Act, 1948, came into force since the "clear profit" and "reasonable return" which determined the rate to be charged was to be computed on the basis of very different criteria and factors than what obtained under the Electricity Act".

12. For the reasons mentioned above, these appeals fail and they are dismissed with costs. One hearing fee.

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