

CALCUTTA HIGH COURT

Saila Bala Roy

Vs.

Chairman, Darjeeling Municipality

(R.C. Mitter, J.)

10.02.1936

JUDGMENT

R.C. Mitter, J.

1. This rule, which has been obtained by the defendant, relates to the claim of the opposite party to minimum charges for the supply of electric energy. Dr. D.N. Roy was the owner of a house within the limits of the Darjeeling Municipality known as the "Roy Cot." The said Municipality obtained a license in the year 1913 from the Local Government for the supply of electric energy in Darjeeling. It constructed a plant and began supplying electric energy. Dr. Roy applied about fifteen years ago for the supply of electric energy to his premises and he was required to enter into a written contract before he was allowed the supply. This written contract must have been entered into in pursuance of 01. 6 of the schedule annexed to the Indian Electricity Act of 1910. At the time when the contract was entered between Dr. Roy and the Municipality, there was no clause in the said schedule which, subject to such additions and modification as may be made by the Local Government, was incorporated in every license by the provisions of Clause (f), Section 3 of the said Act. In the year 1922 the Act was amended and a Clause 11-A, was added to the schedule. The clause is in these terms:

A licensee may charge a consumer a minimum charge for energy of such amount and determined in such manner as may be specified by his license and such minimum charge shall be payable notwithstanding that no energy has been used by the consumer during the period for which such minimum charge is made.

2. The license of the Municipality has not been produced, but a copy of the Calcutta Gazette dated 22nd January 1925 has been produced by the plaintiff. The notification dated 19th January 1925 in the Calcutta Gazette runs as follows:

It is hereby notified for general information that, in exercise of the powers conferred by Cl (6), Sub-section (3), Section 4, Electricity Act 1910 (IX of 1910), the Governor in

Council is pleased to make the following amendment in Clause 5 of the Darjeeling Electric License, 1913, published under the Public Works Department notification No. 1-M. P. 1, dated 14th July 1913: After Clause 5, Sub-section (b) of the Darjeeling Electric License, 1913, the following shall be added, namely: Provided that where the total charge for energy in any year fall short of L 72 per kilowatt of the total connected load in respect of any one installation connexion to the licensee's distributing system, the licensee may require the consumer to pay a minimum charges for such year at the rate of L 72 per kilowatt of the total connected load of the installation, and where a minimum charge is made for any such year as aforesaid, the licensee shall no charge separately for any energy consumed in respect of such installation during that period, etc.

3. On 12th March 1925 the Municipality passed a resolution authorizing the Municipality to levy minimum charges for April 1925 in accordance with the terms of the said notification. Dr. Roy died in 1926 and the defendant petitioner is his legal representative. It is admitted by plaintiff's witness 1, Nikhil Chandra Sen-Gopta, electrical sub-overseer of the Municipality, that agreements for payment of minimum charges were taken from consumers after the introduction of the minimum charges in that Municipality, but no such agreement was taken either from Dr. Roy or after his death from his legal representatives. Accordingly no contract to pay minimum charges has been pleaded by the Municipality in its plaint. In the year 1930-31 the actual consumption of "Roy Oct" was L 3-15-0. A bill for that amount was made out by the Municipality and paid by the consumer on 17th August 1932. On 29th September 1932 a further bill for L 9-0-3 was made out and served on the consumer on 17th October 1932. In the said bill the sum of L 12-15-3 was shown as the minimum charges for the year 1930-31 and the sum of L 3-15-0 which was paid by the consumer previously was deducted and a demand was made for the balance of L 9-0-3. The sum of L 12-15-3 would be the minimum charges according to the said Government Notification. The said amount being not paid the present suit was instituted by the Municipality to recover the said sum of L 9-0-3. The defendant pleaded that as there was no contract to pay minimum charges, the suit should be dismissed This defense has ben overruled and a decree has been made by the Small Cause Court Judge of Darjeeling.

4. Although the amount involved in this rule is a small one, a question of great Importance arises in the rule, and in my judgment the defendant is entitled to succeed in the plea taken by her. A license given by the Local Government to a person under the Electricity Act confers the right on the licensee to supply electric energy in a specified area. Certain statutory powers and duties are conferred and imposed on the licensee. These powers are given for the purpose of enabling the licensee, who undertakes a public undertaking, to construct his works his plant, service mains, etc., and to maintain them and certain duties are also imposed on him for the safety of the public or individuals The undertaking being for public benefit a duty is imposed on the licensee to supply energy to any person, who wants to take a supply of energy, subject to certain conditions laid down either in the body of the Act or in the schedule which is incorporated in the license subject to any addition or modification which the Local Government may make. The licensee

cannot show undue preference to any particular consumer in the matter of rates; subject to this he is empowered to regulate his relations by agreement with his consumers, but even here there are restrictions imposed. He cannot in his agreement with his consumers insert any condition whatsoever, but only such conditions which are consistent with the Act or his license and to which previous sanction of the Local Government had been obtained: Sub-section 21 to 23. Subject to these restrictions, the legislature in my opinion intended the rights between a licensee and a consumer to be regulated by contract. Clauses 6 and 5 respectively of the schedule cast the obligation on the licensee to supply electric energy to an applicant or a group of applicants for supply of electric energy only when the applicant or group of applicants enter into a written contract with the licensee. The only power which is reserved to the licensee by the Act in the matter of rates, a power which may be exercised by the licensee apart from contract, is that he can charge on any one of the three alternative modes specified in Clauses (a), (b) and (c) of sub-section 3 to Section 23 of the Act, and even when the licensee intends to prefer to go upon the basis of Clause (c) of that Sub-section, the consumer can by following the procedure laid down in Clause 10 of the schedule compel the licensee to adopt either of the modes mentioned in Clauses (a) and (b). In my judgment Clause (c) contemplates charges made on the basis of consumption. A minimum charge is not really a charge which has for its basis the consumption of electric energy. It is really based on the principle that every consumer's installation involved the licensee in a certain amount of capital expenditure in plant and mains on which he is to have a reasonable return. He gets a return when energy is actually consumed, in the shape of payments for energy consumed.

5. When no such energy is consumed by a consumer, or a very small amount is consumed in a long period, he is allowed to charge minimum charges by his license, but these minimum charges are really interest on his capital outlay incurred for the particular consumer. Clause (c), Sub-section 3, Section 23 accordingly in my judgment does not authorize a licensee to levy minimum charges without any agreement with the consumer. I also fail to see how Clause (c) can also be invoked by the Municipality to support its claim for minimum charges as the Local Government has not exercised their powers under that clause by the aforesaid notification issued by it. In my judgment Clause 11 (a) of the schedule only empowers or authorizes the licensee to levy minimum charges. That clause was inserted by the amendment of 1922 to remove doubts on the authority of the licensee to enter into contracts with intending consumers with terms for payment of minimum charges. But that power in my judgment can only be exercised by a licensee through a contract entered into with an intending consumer. The Local Government by the issue of the aforesaid notification has only amended the license of the Municipality and has simply given it the power or authority to enter into such contracts with consumers for levying minimum charges. The view I am taking is not in my judgment inconsistent with the decision in *Burdwan Electric Supply Co. v. Sm. Kumud Kamini*¹ a case which did not deal with minimum charges. As there was no such contract either with Dr. Roy or his legal representative the Municipality cannot sue for minimum charges. The rule is accordingly made absolute. The judgment and decree of the Small Cause Court are set aside. The petitioner must have the costs of the lower Court. There

will be no costs in the rule.

¹1932 Cal 14