

BOMBAY HIGH COURT

Babulal Chhaganlal Gujerathi

Vs.

Chopda Electric Supply Co. Ltd

Second Appeal No. 45 of 1954, in Appeal No.67 of 1952

(Shah, J.)

21.06.1954

JUDGMENT

Shah, J.

1. This second appeal arises out of a suit filed by certain residents of the town of Chopda in the District of East Khandesh against the Chopda Electric Supply Company, Ltd., for a declaration that a 'standing charge' of Rs. 2 for every 25 K.W. sought to be levied by the Chopda Electric Supply Company, Ltd., which I will hereafter refer to as the defendant-company, from every consumer of electricity for domestic or general use was illegal and for an injunction restraining the defendant-company from discontinuing the supply of electricity for non-payment of the charge and for costs of the suit. The suit was filed under Order 1, Rule 8, Civil Procedure Code, as a representative suit on behalf of all consumers for domestic use in the town of Chopda.

2. The learned trial Judge decreed the plaintiffs' suit. In appeal to the District Court at Jalgaon the appeal filed by the defendant-company was allowed and the plaintiff's suit was dismissed. Plaintiffs Nos.1 and 3 have come to this Court in second appeal.

3. A few facts which give rise to the appeal may be stated. In 1936 a license for supplying electrical energy in the town of Chopda was issued to one Fakirchand Jankiram by order of the Government of Bombay. The license was transferred from time to time and finally on 21-8-1938, it was assigned to the defendant-company. Clause 9 of the license set out the limits of rates to be charged by the defendant-company for supply of electrical energy.

The material clause relating to levy of charges is Clause 9(A). In so far as it is relevant, it provides:

"The rates to be charged by the licensee for energy supplied by him shall not exceed the

maxima set out below: (A) Where energy is supplied by meter-(1) for general supply purpose, namely (a) for lights and fans not provided for in item (b) below,-a rate of Annas 6 per unit;(c) for heating and refrigerating purposes-a rate of Annas 2 per unit."

Under sub-Clause (4) of Clause 9 the defendant-company was authorized to charge meter rent not exceeding annas 8 per month for a Single Phase A.C. meter. This license was issued by the Government of Bombay in exercise of the power conferred by the Electricity Act of 1910. The Central Government passed the Electricity (Supply) Act (54 of 1948) with a view to provide 'for the rationalization of the production and supply of electricity and generally for taking measures conducive to the electrical development to the State of India and for incidental matters.' By Section 70(2) of the Act 54 of 1948 it was provided that save as otherwise provided in the Act the provisions of the Act shall be in addition to, and not in derogation of, the Electricity Act of 1910. The defendant-company assuming that by Act 54 of 1948, restrictions which were placed under the license and by the Electricity Act of 1910 upon the right of the licensee to levy rates and charges from consumers of electrical energy were abrogated, issued a notice dated 23-4-1950, generally to the consumers informing them of revised charges for the supply of electrical energy with effect from 1-5-1950. By the notice the consumers were informed that for lights and fans there would be levied a charge of annas 8 per unit and for heating circuits and refrigeration a charge would be made at the rate of annas 5 per unit. An additional monthly standing charge of Rs. 2 for every 25 K.W. of 'connected load' was also intimated to be levied from every consumer of energy used for light and fans and for heating circuits and refrigeration. Some of the consumers paid the additional standing charge of Rs. 2 for the months of May and June 1950. An objection was, however, raised against the levy of the standing charge for subsequent months. In the meanwhile correspondence ensued between the defendant-company and the Government of Bombay in connection with the right of the defendant-company to levy the additional standing charge. By their letter dated 26-9-1950, the Government of Bombay informed the defendant-company that their action in levying a monthly standing charge of Rs. 2 upon the 'lighting consumers' with effect from 1-5-1950, was not in accordance with the Press Note issued by the Government on 10-12-1949, and the defendant-company was requested to withdraw that charge forthwith and to apply to Government for appointment of a Rating Committee under Section 57 of Act 54 of 1948 if the defendant-company considered it necessary to increase the existing rates. The defendant-company accepted the suggestion of the Government, and discontinued the standing charge with effect from 1-9-1950, and agreed to refer the question to the Rating Committee appointed under Section 57. On 27-10-1950, the defendant-company issued a circular letter informing the consumers that while it regarded the Government's intervention in connection with the standing charge as illegal and 'ultra vires' and while the company was competent to revise the rates under Section 57 and Clause 1 of Schedule 6 of Act 54 of 1948, the company had accepted the suggestion of Government and had cancelled the revised rate with effect from 1-9-1950. It is evident that by the circular the defendant-company asserted that it had a right to recover the standing charge for the period between May 1 and August 31, 1950, and contended that the levy was legal. The plaintiffs thereupon filed the suit out of which this second

appeal arises, in a representative capacity for themselves and on behalf of the consumers who opposed levy of the standing charge.

4. In the trial Court a large number of technical contentions were raised by the defendant-company as to the maintainability of the action by the plaintiffs. It was also contended that levy of the standing charge was not illegal. The learned trial Judge rejected all the contentions of the defendant-company and decreed the plaintiffs' suit. The learned Judge declared that the standing charge levied by the defendant-company from 1-5-1950, was illegal and the defendant-company had no right to recover the standing charge. The learned Judge restrained the defendant-company from recovering the standing charge from the plaintiff-consumers except in so far as it related to the rates which had been sanctioned by Government as from 1-7-1951. As stated earlier, in appeal the decree passed by the learned trial Judge was reversed by the lower appellate Court.

5. The only substantial question which falls to be decided in this appeal is as to the legality of the standing charge sought to be levied by the defendant-company under its notice dated 23-4-1950. (His Lordship, after dealing with a contention of the defendant-company, not material to the report, continued).

6. The more substantial point, however, is as to the legality of the charge sought to be made by the defendant-company. It is necessary to refer to certain provisions of the Electricity Act, 1910, and the Electricity (Supply) Act of 1948, before dealing with the question of the legality of the charge made by the defendant-company. By Sub-Section (1) of Section 3 of the Electricity Act, 1910, it is provided that the State Government may grant to any person a license to supply electrical energy in any specified area, and also to lay down or place electric supply-lines for the conveyance and transmission of energy.

In respect of every license granted under Sub-Section (1) of Section 3 certain provisions made in Sub-Section (2) shall have effect; and two out of those provisions are that a license granted under Sub-Section (1) of Section 3 may prescribe such terms as to the limits within which, and the conditions under which, the supply of energy is to be compulsory or permissive, and as to the limits of price to be charged in respect of the supply of energy, and generally as to such matters as the State Government may think fit.

The other provision which shall have effect is that the provisions contained in the Schedule to the Act shall be deemed to be incorporated with, and to form part of, every license granted under Part I, save in so far as they are expressly added to, varied or excepted by the license, and shall, subject to any such additions, variations or exceptions which the State Government is empowered to make, apply to the undertaking authorized by the license. By Section 4 of the Act the State Government is authorized to revoke or amend a license. Under Section 21(2) a licensee may with the previous sanction of the State Government, given after consulting the local authority, where the licensee is not the local authority, make conditions not inconsistent with the Act or with his license or with any rules made under the Act, to regulate his relations with persons who are or intend to become consumers, and may with the like sanction given after the

like consultation, add to or alter or amend any such conditions; and any conditions made by a licensee without such sanction shall be null and void. It is clear from these provisions that the licensee is entitled to enter into contracts with the consumers only subject to the terms of the license and the provisions of the Act and the licensee can make special conditions not inconsistent with the Act and the license only with the previous sanction of the Governments and any conditions made by a licensee without the sanction of the State Government are to be regarded as null and void. The terms of the license enable the defendant-company only to charge for energy supplied by meter, for general supply purposes at a specified rate per unit. They also enable the defendant-company to charge a fixed meter-rent where energy is supplied by meter. But the defendant-company is under the license not authorized where energy is supplied by meter for general purposes to make any additional charge.

Therefore, the notice issued for levy of a standing charge of Rs. 2 for every 25 K. W. of 'connected load' is in my judgment illegal. By that notice the defendant-company sought to make a charge which was not a permissible charge; and by reason of Section 21, Sub-Section (2), even if the consumers agreed to pay the amounts demanded by the notice, the charge must be regarded as illegal.

7. The defendant-company contended that under the provisions of the Electricity (Supply) Act (54 of 1948) they were entitled to make the additional standing charge, and reliance was placed upon Section 57(1) and Clause 1 of Sch.6 of that Act. Subsection (1) of Section 57, in so far as it is material, provides:

"The provisions of the Sixth Schedule and the Table appended to the Seventh Schedule shall be deemed to be incorporated in the license of every licensee. ... from the date of the commencement of the licensee's next succeeding year of account, and from such date the licensee shall comply therewith accordingly and any provisions of such license or of the Indian Electricity Act, 1910. ... or any other law, agreement or instrument applicable to the licensee shall, in relation to the licensee, be void and of no effect in so far as they are inconsistent with the provisions of this section and the said Schedule and Table."

Sub-section (1) of Section 57 requires the licensee to comply with the provisions of the 6th Schedule and the Table appended to the 7th Schedule. In substance that provision imposes an obligation and does not create new rights in favour of the licensee. It is true that the section proceeds to state that the provisions of the license or the provisions of the Electricity Act or any other law, agreement or instrument inconsistent with the 6th Schedule and Table shall be void and of no effect in so far as they are inconsistent therewith.

Clause 1 of 6th Schedule provides:

"The licensee shall so adjust his rates for the sale of electricity by periodical revision that his clear profit in any year shall not as far as possible exceed the amount of reasonable

return:"

It is followed by a proviso which it is unnecessary to set out because it has no bearing on the argument advanced on behalf of the defendant-company. Even the operative part of Clause 1 of 6th Schedule seeks to impose an obligation upon the licensees and does not create any new rights in the licensees. An obligation appears to have been cast thereby upon the licensees to so adjust the rates by making periodical revisions that their clear profits in any year shall not as far as possible exceed the amount of reasonable return. Clause 1 appears in my judgment to have been intended to prevent profiteering by licensees even within the limits of the terms of the license or the sanction obtained from Government under Section 21, Electricity Act of 1910. Not only does Section 57(1) of Act 54 of 1948 impose an obligation upon the licensee to conform to the provisions of Schedule 6 and the Table appended to Schedule 7 but the first clause of Schedule 6 imposes a further obligation to make periodical revisions and to adjust the profit so that his profit in any year does not as far as possible exceed a reasonable return on his investment. There is nothing in Section 57 or in the first clause of Sch.6 which either expressly or by implication amends the provisions of the Electricity Act, 1910, contained in S 3 (2), Clause (d), or in Section 21, Clause (2), of that Act or the rates and methods of charging the same as fixed by the license. The provision contained in Clause (d) of Sub-Section (2) of Section 3, which requires the State Government to prescribe the terms and conditions under which the supply of energy is to be made, is not affected by the Electricity (Supply) Act 54 of 1948. The right to amend the license is conferred by the Electricity Act upon the State Government and that right is not affected by Act 54 of 1948. If the argument of the defendant-company is accepted, it would mean that the licensee in all cases would be entitled unilaterally and without sanction or even the approval of the Government, to alter the terms of the license subject to which he is liable to supply energy to consumers in the area of supply, and it would be open to a licensee to impose conditions which may in conceivable cases be unreasonable or highly onerous upon the consumers. It cannot be forgotten that licensees under the Electricity Act are monopoly licensees. Being monopoly licensees they are required primarily to cater to the public convenience and public interest. In order that the license may be worked in the interests of the public stringent provisions have been made under the Electricity Act requiring licensees to conform strictly to its provisions. It is true that a licensee must be enabled to earn an economic return on his investment in the undertaking and with that end in view provision has been made in Sub-Section (2) of Section 57, Electricity (Supply) Act, 1948, for appointing a Rating Committee at the instance of a licensee where he claims that the rates charged by him are unduly low or uneconomic. The provision of Sub-Section (2) of Section 57 also shows that by enacting Clause 1 of Schedule 6 and correlating it to Sub-Section (1) of Section 57 it was not intended to leave it to the option of the licensee either to make an alteration in the rates without the sanction of the Government or without approaching a Rating Committee. By the very nature of its constitution the Rating Committee is an independent body which would take into consideration the interests of the consumers as well as the reasonable profits which an electricity undertaking may expect to earn and would adjust the rates having regard to the interests of the consumers as well as of the licensee. If, however, it is open as

contended by the defendant-company to the licensee by his unilateral act to alter the rates, it is difficult to understand why a licensee would in any case approach an independent body which is likely to take into consideration the interests of the consumers. In my judgment there is nothing in Clause 1 of Schedule 6 or Section 57 (1), Electricity (Supply) Act (54 of 1948), which confers a right upon a licensee unilaterally to alter the terms and conditions on which supply may be made by a licensee of electrical energy to consumers in the area of supply. In my view, the learned appellate Judge was in error in holding that Section 57 read with Clause 1 of Sch.6 conferred authority upon the defendant-company to alter the rates of supply and to impose a new head of liability upon consumers irrespective of the restrictions contained in the license and the Electricity Act.

8. In that view of the case this appeal will be allowed, the decree passed by the lower appellate Court set aside and the decree passed by the trial Court restored with costs in this Court and in the District Court, payable by the defendant-company.

Appeal allowed.