

# **BOMBAY HIGH COURT**

Devidayal Metal Industries

Vs.

The Municipal Corporation for Greater Bombay Municipality

S.C. Suit No. 630 of 1967

(Mrs. Manohar, J.)

14.02.1979

## **ORDER**

**Mrs. Manohar, J.**

1. The Plaintiffs have filed this suit challenging the right of the Bombay Electric Supply and Transport undertaking to demand from them a deposit representing the value of three months' average consumption of electricity as security for the supply of electric energy to them. The 1st defendants, namely, the Municipal Corporation for Greater Bombay are licensees within the meaning of Section 3 of the Indian Electricity Act, 1910. They own and operate the Bombay Electric Supply and Transport Undertaking. By an agreement in writing dated July 9, 1964 the defendants agreed to supply to the Plaintiffs electric energy for their factory at Mazgaon, Bombay-10, on the terms and conditions mentioned in the agreement.

Clause 13 of the agreement is as under :-

"Clause 13. Deposits :-

Consumer shall deposit whenever required by the Corporation in cash or Government Securities such sum as shall represent the value of three months' previous consumption as security for the due payment for energy supplied under this agreement and of any sum which may become payable to the Corporation under this agreement. The said Corporation will allow interest at a rate equal to Post Office Savings Banking in force from time to time on the cash deposits of Rs. 50/- and more and will credit the interest received on Government Securities after deducting the collection charges of 2% of the amount collected." After this agreement was entered into, the defendants supplied to the Plaintiffs electric energy without demanding any deposit up to the end of 1966. Thereafter by their letter dated December 15, 1966 addressed to M/s. Devidayal and Sons, the Defendants demanded a security deposit under Clause 13 amounting to Rs. 92,310/-. The defendants were required to deposit this amount in cash or by a cheque. Since the letter was not addressed to the defendants, certain correspondence ensued between the parties regarding th

e change of name. Thereafter by their letter of 13th June 1967 the defendants called upon the Plaintiffs to deposit the amount of Rs. 92,310/-

within seven days to avoid disconnection of supply. On receipt of this letter the plaintiffs filed a suit in the Bombay City Civil Court on June 30, 1967 being Suit No. 3950 of 1967. By an order dated September 26, 1967, the Plaintiffs were allowed to withdraw this suit with liberty to institute a fresh suit on the same cause of action. In the meanwhile on July 12, 1967 the plaintiffs served on the defendants a notice under Section 527 of the Bombay Municipal Corporation Act. After the withdrawal of the suit in the Bombay City Civil Court on Sept. 25, 1967, the Plaintiffs filed the present suit on Oct. 19, 1967 for a declaration that the defendants have no power to demand any security deposit from the Plaintiffs of an amount equal to the value of three months' bills of electrical energy consumed by the Plaintiffs, for a declaration that Clause 13 of the agreement dated 9th July, 1964 is null and void and unenforceable and asking for an injunction restraining the defendants from making any demand for a security deposit under Clause 13 of the agreement.

2. The first defense which is taken by the defendants is that the suit of the Plaintiffs is barred by the law of limitation. According to the defendants, as the present suit is for setting aside Clause 13 of the agreement of July 9, 1964, the suits should have been filed within three years of the date of the agreement, that is to say, on or before July 8, 1967. The plaintiffs have averred that the period taken by the Plaintiffs, in prosecuting the suit in the City Civil Court between June 30, 1967 and Sept. 25, 1967 may be excluded in computing the period of limitation. Even so according to the defendants, the present suit which is filed by the Plaintiffs on October 19, 1967 would be barred by the law of limitation. The defendants have further averred that as notice under Section 527 was given after the expiry of the period of limitation, the notice period cannot be availed of by the Plaintiffs for extending the period of limitation. This entire argument of the defendants proceeds on the assumption that the cause of action in the present suit arose on July 9, 1964. This does not appear to be a correct assumption. Until the defendants made a demand for security deposit under Clause 13 of the agreement, it would not have been open to the Plaintiffs to file a suit for a declaration simpliciter that this clause was void and/or unenforceable. Under Section [31](#) of the Specific Relief Act, 1963 any person against whom a written instrument is void or voidable and who has a reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, may sue to have it adjudged void or voidable. Unless there is a reasonable apprehension of serious injury, a suit for the cancellation of an instrument cannot be filed under Section 31. Admittedly at the date when the agreement was entered into, the defendants were not taking security deposits. They decided to take security deposit from the year 1966 onwards. Hence, it could not be said that prior to the demand being made on them by the defendants, the Plaintiffs had any reasonable apprehension of serious injury by virtue of Clause 13 of the agreement between the parties. The defendants have argued that such a suit could have been filed by the Plaintiffs under Section [34](#) of the Specific Relief Act, 1963. Under this Section any person entitled to any legal character, or to any right as to any property may institute a suit against any person denying or interested in denying his title to such character or right in such a case, a declaratory suit may be filed by the Plaintiffs without asking for any further relief. In the present case, however the defendants have not

challenged the legal character or the right to any property, of the Plaintiffs. Hence, a declaratory suit for a declaration that Clause 13 of the agreement was null and void could not have been filed under Section 34 of the Specific Relief Act. The Plaintiffs are therefore right when they contend that the demand for a security deposit made by the defendants on the plaintiffs on June 13, 1967 is an essential part of the cause of action. The right to sue, therefore, accrued to the Plaintiffs when the demand for deposit was made. Even if we take the first letter of 15th Dec. 1966 as the date of the demand, the suit of the Plaintiffs is within the time prescribed under Article 113 of the Limitation Act, 1963.

3. A notice under Section 527 of the Bombay Municipal Corporation Act is not required for the present suit. Section 527 of the Bombay Municipal Corporation Act applies to suits which are instituted against the Bombay Municipal Corporation in respect of any act done in pursuance of execution or intended execution of the Bombay Municipal Corporation Act or in respect of any alleged neglect or default in the execution of this Act. The present suit is in respect of the action taken by the Bombay Municipal Corporation through the B.E.S.T. Undertaking under the provisions, not of the Bombay Municipal Corporation Act, but under the provisions of the Indian Electricity Act, 1910. Hence, a notice is not required to be given under the provisions of Section 527 of the Bombay Municipal Corporation Act.

4. It is next argued by the defendants that the State of Maharashtra is a necessary party to the suit. In the absence of this necessary party, this suit should be dismissed. The defendants have urged that in the present suit, the plaintiffs have challenged the resolution passed by the State Government sanctioning the conditions and miscellaneous charges printed by the B.E.S.T. Undertaking under the provisions of Section 21(2) of the Indian Electricity Act, 1910. Since this resolution of the State Government is challenged, the State Government is a necessary party. This contention does not appear to be justified. The Plaintiffs have not challenged the right of the State Government to sanction conditions framed by the B.E.S.T. Undertaking under Section 21(2) of the Indian Electricity Act, 1910. The challenge is to the provisions of the Indian Electricity Act, the rules framed under Section 39 of the Act and to the conditions of supply which are framed by the defendants who are the licensees under the Act. For such a challenge it is not necessary that the State of Maharashtra should be a party. Furthermore, a notice under Order 27A. Civil Procedure Code is given to the Attorney General and to the Advocate General as the Plaintiffs have challenged the provisions of, Section 21 of the Indian Electricity Act, and have also challenged the constitutional validity of Section 21(2) and the scheme and the rules framed there under. No prejudice, therefore, is caused to the State by not being made a party.

5. The main point which arises for consideration in the suit is whether under the provisions of Section 21(2) of the Indian Electricity Act, 1910 it is open to the defendants to frame conditions which require any consumer to give a security deposit for the supply of electrical energy to him. In this connection it is necessary to examine the scheme of the Indian Electricity Act, 1910. The intention of the Act is to impose inter alia duties and obligations on the licensees who supply electric

al energy to the public. Power has been granted to the licensees to construct their works, plant, service main etc. The duties cast on them are imposed for the safety of the public or individual who purchase electricity for them. The Undertaking being for public benefit, a duty is cast on the licensee to supply electricity to any person who wants it, subject to the conditions laid down by the statute and the conditions of license. A licensee is not permitted to impose on the consumer any condition contrary to the Act.

6. Under Section 3 of this Act, the State Government is empowered to give a licence to any person or body of persons to supply electricity in any specified area. Admittedly, the defendants are a licensee under this Section. Under Section 3(2)(f) the provisions contained in the Schedule shall be deemed to be incorporated with, and to form part of, every license granted under this Section. In the Schedule there are a number of conditions laid down which the licensee must comply with Clause (ii) of the schedule provides for a deposit or security to be given by the licensee to the satisfaction of the State Government before the licensee can exercise any of the powers conferred on him.

7. Sub-

Clause (a) of cl.VI(1) of the Schedule enables the licensee before he complies with a requisition made by any person for the supply of energy to him, to take a sufficient security from the applicant binding himself to take a supply of energy for not less than two years. It also enables the licensee to charge the consumer for the costs of any service line. Sub-

Clause (a) of Cl.VI(1) of the Schedule also enables the licensee to enter into a written contract with the applicant for the supply of electrical energy. The contract must be in a form approved by the State Government. Similarly under Clause 9 there are provisions enabling a licensee to enter into a written agreement with other bulk-licensees for the supply of energy.

8. Clause 10 deals with the method of charging for electricity which the licensee must adopt.

9. Under Section 22 of the Act, there is a legal obligation on the licensee to supply energy to every person within the area of supply on the same terms as the other persons in that area.

10. Under Section 23, a licensee is required to charge for energy supplied by him to any consumer, (a) by the actual amount of energy so supplied, or (b) by the electrical quantity contained in the supply, or (c) by such other method as may be approved by the State Government. However, such other method approved by the State Government must be based upon the following consideration, namely :-

(a) the consumer's load factor, or (b) the power factor of his load, or (c) his total consumption of energy during any stated period, or (d) the hours at which the supply of energy is required. It is clear from this that the charge which the licensee can levy for the supply of energy must be related to the energy supplied by the licensee to a consumer. A special power is given to the licensee under Section 24 to facilitate the recovery of such charges. Under this Section a licensee may cut off

the supply of energy to a consumer who neglects to pay such charges to the licensee. There are other provisions of the Act which enable the licensee to recover from the consumer something in addition to the charge for electricity. For example, under Section 26, he can take a security from the consumer for the price of a meter. Similarly under the Schedule also, a licensee is empowered to take a security in terms of cl.VI(1)(a) from an owner or occupier before complying with his requisition under that clause. It will thus appear that whenever a licensee is required to impose any financial obligation on the consumer, whether it be in the form of charges or security, a right to impose such a financial obligation is expressly so conferred under the Act. The Act does not permit a licensee to take a security deposit for the payment of electricity charges.

11. Under Section 21(2) of the Act, a licensee may, with the previous sanction of the State Government given after consulting the State Electricity Board and also the local authority, where the licensee is not the local authority, make conditions not inconsistent with this Act or with his license or with any rules made under this 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 condition made by a licensee without such sanction shall be null and void. In the exercise of the powers conferred by Sub-Section (2) of Section 21, the defendants have framed conditions for the supply of electrical energy. (Ex. 'B'). In part I of the conditions of supply, at Clause 12 it is provided as follows :-

"Deposits :-

The consumer may be required by the Undertaking to enter into a contract in the form of Annexure-

'B' hereto appended and to make a cash deposit or to give security in Government Promissory Notes or other approved securities for the payment of his monthly bills for energy supplied and for the value of the meter and other apparatus installed on his premises. In the event of no contract having been entered into between the Undertaking and the consumer, the latter, after the supply of energy has once commenced, shall be bound by the terms and conditions of supply herein set forth. The Undertaking will allow interest as follows upon deposits lodged with it against, (a) regular payment of energy bills, (b) a reasonable return under Cl.V and/or VI of the Schedule to the Indian Electricity Act, 1910. In both the above cases, deposits must be made in cash if the sum deposited is below Rs. 100/- and in cash or Government Securities if the sum is Rs. 100/-

or exceeds that amount. No interest shall be allowed upon deposits below Rs. 50/-

. On deposits of Rs. 50/-

or more which may be made in cash, interest will be allowed at the rate equal to the P. O. Savings Bank rate in force from time to time. On deposits made in Government Securities the interest accruing thereon will be collected periodically and credited to the depositor's Electric Supply Account less 2 per cent, which will be retained by the Undertaking to cover the cost of collection, etc. When Government Securities are deposited the amount of the deposit shall be calculated at the current market value of the said securities and not upon their face value. No interest will be allowed on deposits lodged against the costs of service lines, as the account is only of a temporary nature." This Clause has been subsequently amended by deleting the words, "other approved securities

" from the first sentence of the clause. Hence, now the consumer is required to make either a cash deposit or to give security in the form of Government Promissory Notes. Annexure-'B' to these conditions of supply, which is a pro forma contract, contains Clause 7 which also enables the defendants to take such a deposit. Part II of these Conditions, inter alia, provides for a levy of certain miscellaneous charges' Clause 5 of such 'miscellaneous charges' deals with Security Deposit against regular payment of energy bills. When required by the Undertaking to do so, an existing consumer is required to deposit as security, an amount approximately equal to three months' average bills with a minimum of Rs. 10.00. These conditions of supply and miscellaneous charges were approved by the Government of Bombay by a Resolution dated July 21, 1959. These conditions have been subsequently amended in 1964-

85; but these amendments are not relevant for the purposes of this suit. According to the defendants, these conditions have been framed under Section 21(2) of the Act. They have been sanctioned by the State Government as provided in this Section. Therefore, they are entitled to enter into an agreement with the plaintiffs which contain a clause for a security deposit for payment of monthly bills. They are thus entitled to demand from the Plaintiffs a sum Rs. 92,310/-

as such a deposit. The defendants also rely upon the rules framed by the Central Electricity Board under Section 37 of the Indian Electricity Act, 1910. These are the Indian Electricity Rules, 1956. Under Rule 27 without prejudice to the powers conferred by Section 21 on the State Government, certain model conditions are laid down which may be adopted by a licensee under that Section with the previous sanction of the State Government. All these model conditions have been set out at Annexure-VI to these Rules. Clause 14 of Annexure-

VI provides that a licensee may require any consumer to deposit a security for the payment of his monthly bills of the energy supplied to him. The defendants, therefore, claim that they are amply empowered under the Indian Electricity Act and the Rules framed thereunder as well as the conditions framed to demand a security deposit for payment of the electricity bills.

12. It is, however, quite clear that there is no provision in the body of the Act itself which enables a licensee to demand such a security deposit. Various types of security deposits which can be demanded by a licensee have been spelt out in the Act. But a security for the payment of monthly bills is not one of them. Hence, it is necessary to examine, whether under Section 21(2) it is open to the licensee to frame conditions of supply which enable the licensee to demand such a deposit for payment of monthly bills. Mr. Singhvi, who has argued the case on behalf of the defendants has argued that basically the relationship between a licensee and a consumer is a contractual relationship. A licensee can normally put such terms as he wishes in a contract to supply energy to the consumer. However, this right of the licensee is restricted by Statute. The licensee cannot, therefore, put conditions in the contract which are either prohibited by Statute or are inconsistent with its provisions. Subject to this restriction, it is open to a licensee to provide such conditions as he deems fit, in the contract. There is no prohibition against a licensee taking any deposit for payment of monthly bills. Hence, he argues it is open to a licensee to enter into a contract with the consumer which provides for the consumer giving such a security deposit. Such a provision is not inconsistent with the Act according to him. He has further pointed out that the condition which requires such

a deposit to be made by the consumer has been sanctioned by the State Government and hence it forms a part of the Statute and can be given effect to. In support of his contention that the relationship between the licensee and the consumer is basically a contractual relationship, he has relied upon AIR 1953 Punjab 166, *Aminchand Bhola Nath v. Jullundur Electric Supply Co. Ltd.* which lays down that subject to the provisions of the Electricity Act, 1910, and the rules made thereunder, a contract for the supply of electrical energy is regulated by the same rules, and is binding on the parties as any other contract. Now it is true that the relationship between a licensee and a consumer is contractual. But the contract is strictly controlled by the Statute. In fact the Statute gives a power to the licensee to enter into a contract not inconsistent with the provisions of the Statute. Hence it is necessary to find out whether there is under the Act any implied prohibition which prevented a licensee from contracting for the taking of any security deposit of the type in question from a consumer. In the first place, the relationship between the licensee and the consumer although technically contractual, is strictly controlled under the Act. Supply of electrical energy is a supply of an essential commodity. A licensee who has a licence to supply this essential commodity is required to comply strictly with the provisions of the Act which are meant for the protection of the consumer. Even the method of charging for electricity and the circumstances in which a licensee can charge anything to a consumer in addition to payment for the electricity supplied, are all specified in the Act itself. Under Section 22 there is a statutory obligation on the licensee to supply energy to all the consumers. A licensee therefore is required to charge a consumer strictly in accordance with the provisions of the Act. He cannot impose on the consumer financial obligations which are not warranted by the Act itself. In my view the language of Section 21(2) also lends support to this construction. Under Section 21(2) a licensee is authorized to make conditions to regulate his relations with persons who are or intend to become consumers. These conditions are regulatory and they must be ancillary to the main provisions of the Act itself. They cannot impose obligations and in particular, monetary obligations, which are not spelt out by the Act. Hence if any conditions are framed under Section 21(2) which enable a licensee to recover from the consumer anything more than what is laid down in the Act, such conditions would be in excess of the authority delegated under Sub-

Section (2) of Section 21 to a licensee to frame conditions to regulate his relations with the consumers. A power to tax or to levy any compulsory charge, (even if it be a security deposit), cannot be inferred from a mere generality of the powers conferred by the enabling Section. Thus in AIR 1965 Supreme Court 1773 (*Venkata Subbarao v. State of Andhra Pradesh*), the Supreme Court cited with approval a decision of the House of Lords in (1922) 127 LT 822 which struck down an agreement entered into by the Food Controller with the defendants under which the latter were permitted to purchase milk in certain areas on condition that they would pay to him 2 pence per gallon. In striking down such a condition, Lord Wrenbury observed: "The Crown in my opinion cannot here succeed except by maintaining the proposition that where statutory authority has been given to the executive to make regulation controlling acts to be done by His Majesty's subjects, or some of them, the Minister may, without express authority so to do, demand and receive money as the price of exercising his power of control in a particular, way, such money to be applied to some public purpose to be determined by the Executive."

He negated the claim of the Crown. Applying the same principle, the Supreme Court negated the claim of the Government to levy a surcharge on the procuring agents for procuring rice under the Essential Supplies (Temporary Powers) Act, 1946. The Court held that the Act did not confer any power on the Government to levy such a surcharge. It is true that on the facts of the case before the Supreme Court, the Court came to the conclusion that the amount collected by the Government was a surcharge levied without any explicit provision in the Act. In the present case, the financial obligation which is imposed cannot be considered as a tax or a surcharge. It is essentially a deposit which has to be returned to the consumer as and when he ceases to take electrical energy. Nevertheless the demand for a deposit does constitute an additional financial burden on the consumer. The scheme of the Act makes it clear that it is not open to a licensee to impose any financial burden in addition to what is provided for in the Act itself. If this were not so, the whole object of the Act, which is to ensure the supply of electricity to the consumers in a controlled manner at rates which have to be controlled and approved by the State Government, would be destroyed. Because, in addition to the electricity charges, the licensee may, by contract, provide for other charges and thus impose a greater financial burden on the consumer than contemplated in the Act itself. If the argument of Mr. Singhvi is to be accepted, all charges which may be levied by a licensee other than those which are specified, are not inconsistent with the Act because they are not expressly prohibited. If this argument were to be accepted, the entire purpose of the Act would be nullified. It is therefore not open to the licensee to impose any additional financial obligation on the consumer.

13. In this connection a reference may also be made in the Electric Lighting (Clauses) Act, 1899 which is the English Act on this subject. In this Act, under Section 118, every owner or occupier of the premises requiring a supply of energy, if required by the undertakers, must inter alia give a security for the payment of all money which may become due to them in respect of any electric line to be furnished by the Undertakers and in respect of energy to be supplied by them. This express provision in the English Act of 1899 is lacking in the Indian Electricity Act, which is a subsequent Act of 1901. In my view, in the absence of such an express power, the defendants cannot demand a security for the payment of monthly bills.

14. Mr. Kotwal who appears for the Advocate General has sought to rely on the Indian Electricity Rules of 1956 in support of his contention that under Section 21 Sub-Section (2) it is open to a licensee to frame conditions which require a consumer to give a security deposit for the payment of monthly bills. He has stated that the rules can be looked at in order to resolve any ambiguity in the Act. The rules framed under the Act are an indication of what the legislature considered to be the meaning of the Act. This contemporaneous exposition of the meaning of the Act as embodied in the rules should carry considerable weight with the Court. In support, he has relied on AIR 1954 Bombay 518 (Pramod Bhat v. Kanwar Raj) and AIR 1965 Mysore 227 (Veerappa v. State of Mysore). It is pointed out in the judgment of the Mysore High Court, that if the construction of the Act is ambiguous or doubtful on any point, and if it is found in the rules that any particular construction has been put on the Act, it is the duty of the Court to adopt and

follow that construction because these rules form a sort of contemporanea exposition. In the present case Section 21 Sub-Section (2) has been inserted in the Indian Electricity Act in the year 1922. In the Indian Electricity Rules of 1922 and the Indian Electricity Rules of 1937 there is no provision for any security deposit for the payment of monthly bills. Such a provision appears to have been made for the first time in the Indian Electricity Rules of 1956. Obviously these rules cannot be considered as contemporanea exposition. They have been framed years after the original Act and they would not be a good guide to the intention of the legislature when the Act was passed. Secondly in my view there is no ambiguity in the Act which requires to be resolved with reference to the rules. The narrow question for consideration is whether there is any implied prohibition in the Act against the licensee charging anything in addition to what is permitted under the Act. If the rules go beyond the provisions of the Act, the rules to that extent can be struck down. It should also be noted that the rules which have been framed are merely model rules which a licensee may adopt and they do not have any mandatory force.

15. It is next urged by the plaintiffs that even assuming that the licensee has power to frame conditions requiring such a deposit under Section 21, the conditions violate Article 19(1)(f) of the Constitution and therefore also such conditions should be struck down. According to the plaintiffs such a condition imposes an unreasonable restriction on their right to carry on business. In this connection the plaintiffs have emphasized two aspects of the, deposit required to be given by them it is said firstly that a deposit amount equivalent to the average monthly bills for three months is unreasonable and secondly the provision which requires a deposit either in cash or in Government Promissory Notes is unreasonable. In view of my finding that the defendants are not empowered to demand a security deposit, it is not necessary to decide this point. A provision which requires a deposit equivalent to three months' bills does not, however, appear to be unreasonable, having regard to the object for which such a deposit is required.

16. Mr. Parekh who appears for the plaintiffs has argued that the defendants have not produced any statistics to show that their bills were not being paid and hence they were required to obtain such a deposit to secure themselves against non-payment.

17. In my view it is not necessary for the defendants to produce any statistics in this connection. On the face of it, the deposit is for the purpose of securing them against non-payment and it is not necessary that there should be nonpayment before such a security can be demanded. Hence, there is no substance in this contention of Mr. Parekh. His other contention, namely, that it is unreasonable to demand cash or Government Promissory Notes does carry a certain amount of weight. In the Act itself there is a provision relating to security to be given by the consumer in various types of cases. In none of these cases it is specified that the security should be in the form of cash or Government Promissory Notes. Secondly, the conditions framed by the defendants themselves originally made a provision for another type of security also which has been subsequently deleted. There is of course, an advantage to the defendants in asking for cash because this is an amount which can be immediately appropriated in the event of a default and in fact, the

defendants in their pleadings have defended their position on the ground that they might have to file suit to recover other types of security. But this would cause inconvenience to the consumer who can be required to deposit large amounts in cash over long periods of time at nominal interest. It is therefore possible to view this provision as unreasonable. However, in view of my finding that the condition demanding security for payment of monthly bills is in excess of the power conferred by Sub-Section (2) of Section 21, this aspect of the dispute need not be examined further.

18. The plaintiffs have also argued that the power conferred under Section 21(2) to demand a deposit for payment of monthly bills has been used by the defendants for a collateral purpose. According to the plaintiffs, cash deposits are being demanded because the money is required by the defendants for their capital projects. In the first place there is no evidence in support of this plea. The two letters on which the plaintiffs sought to rely in this connection were not relevant for this purpose and hence they have not been admitted in evidence. Secondly, if the defendants are entitled to take such a cash deposit, they would be within their rights if they utilise this cash amount for such purposes as they may consider proper so long as they are in a position to return the deposit as and when required to do so.

19. The Plaintiffs have lastly argued that in any event this present of the defendants in their electricity bills specify not merely a charge for the electricity supplied but also specify and collect electricity duty. Under the provisions of the Bombay Electricity Duty Act, 1958 the defendants as licensees are authorized to collect from the consumers the proper electricity duty payable under that Act on the units of energy supplied by the licensee to the consumers. They are required to collect and pay this duty to the State Government. In calculating the amount of deposit, the defendants have taken into account not merely electricity charges but also electricity duty. Hence the account claimed by the defendants is beyond the authority conferred on them. However, in view of my finding that the defendants are not entitled to claim any security for the payment of monthly bills this question need not be examined any further.

20. Accordingly issues are answered in the following manner. Issues No. 1 and No. 2 in the negative, issues Nos. 3, 4 and 5 in the affirmative, issues Nos. 6 and 7 not pressed, issue No. 8 not necessary to decide, issue No. 9 not pressed, issue No. 18 in the negative, issues Nos. 11 and 12 not pressed, issues Nos. 13 and 14 not necessary to decide, issue No. 15 in the affirmative and issue No. 16 not pressed.

21. Accordingly, there will be a decree in favour of the plaintiffs in terms of prayers (a) and (c).

22. The defendants to pay to the plaintiffs the costs of the suit.

23. Advocates fees are quantified at Rs. 8,500/-.

Ordered accordingly.

