

BOMBAY HIGH COURT

Municipal Corporation

Vs

Devidayal Metal Industries

(Chandurkar, C.J. Pendse, J.)

01.08.1983

JUDGMENT

Chandurkar, Ag. C.J.

1. This appeal filed by the Municipal corporation of Greater Bombay and the General Manager of the Bombay Electric Supply and Transport Undertaking is directed against the judgment and decree passed by the learned single Judge in suit No. 630 of 1967 by which the learned single Judge held that the Municipal corporation and the B. E. S. T. Undertaking were not entitled to demand from the plaintiffs-respondents any security deposit of the amount equal to the value of three months' bills of the electric energy consumed by the plaintiffs as and by way of security deposit for the payment of the electric bills. By the decree a permanent injunction was also granted restraining the appellants-defendants from taking any action under Section 24 of the Indian Electricity Act of 1910 (hereinafter referred to as "the Act").

2. Since the power of the Municipal Corporation of Greater Bombay and the B. E. S. T. Undertaking to demand a security deposit like the one demanded from the plaintiffs-respondents was questioned by several other consumers of, electricity, to whom electricity was being supplied by the B. E. S. T. Undertaking, we have also allowed the petitioners in those petitions to intervene. In this appeal, the Tata Power Company Ltd. had also taken out a Notice of Motion asking for permission to intervene and earlier they were also granted permission to intervene in appeal. Mr. R. J. Joshi appearing on behalf of the Tata Power Co. Ltd. was also heard and he has adopted the arguments advanced by the learned Counsel for the appellants in this appeal.

3. The facts in this case are not in dispute. The B. E. S. T. Undertaking, which is an Undertaking of the Bombay Municipal Corporation, is admittedly a licensee under Section 3 of the Act. On 21st July 1959, the government of Bombay by a resolution sanctioned the conditions and miscellaneous charges for the supply of electrical energy by the B. E. S. T. Undertaking. There

have been some amendments to the original conditions of supply, which were sanctioned by the Government of Maharashtra on 25th April 1961. But nothing turns on those amendments. Clause 12 of the conditions of supply deals with 'Deposits'. That clause provides as follows:-

"12. 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."

4. There was an agreement on 9th July 1964 between the B. E. S. T. Undertaking of electrical energy. The general conditions and technical regulations, which form a part of the agreement. Contain Clause 13. The validity of this Clause being in dispute, we reproduce the said 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 the rate equal to post Office savings Bank 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."

5. Admittedly when the supply was commenced in accordance with the agreement between the plaintiffs and the B. E. S. T. Undertaking, no Security, as contemplated by Clause 13, was furnished. On 15th December, 1966 the B. E. S. T. Undertaking called upon the plaintiffs by a letter "to deposit with this Undertaking an amount approximately equivalent to your electricity bills for 3 months, viz., Rs. 92,310/-". This amount was required to be deposited in cash or by cheque drawn by the plaintiffs on a Bombay Bank.

6. The plaintiffs having failed to furnish the necessary security, a second letter dated 3rd March 1967, was issued calling upon the plaintiffs to deposit the said amount of Rs. 92,310/-, failing which, it was stated, their supply was liable to be disconnected without further notice.

7. The plaintiffs thereafter filed a suit in the Bombay City Civil court challenging the demand made by the B. E. S. T. Undertaking. This suit was, however, allowed to be withdrawn with liberty to file a fresh suit on the same cause of action. The plaintiffs thereafter filed a suit in this

Court on 19th October 1967, out of which this appeal arises, for a declaration that the defendant had no power to demand any security deposit from the plaintiffs of an amount equal to the value of the months bills. A declaration was also sought that clause 13 of the agreement dated 9th July, 1964 was null and void and unenforceable and an injunction restraining the defendants from making any demand for a security deposit under clause 13 of the agreement was also asked for.

8. The defendants had raised a plea of bar of limitation, which was negated by the learned single Judge, and it was held that the suit was within limitation as it was one under Section 31 of the Specific Relief Act, 1963 and the cause of action for the suit arose. When the demand was first made on 15th December, 1966. The suit was held to be governed by Article 113 of the Limitation Act, 1963. The defence of the defendants that the notice under Section 527 of the Bombay Municipal Corporation Act was necessary was also negated. The State of Maharashtra which had sanctioned 527 of the Bombay Municipal Corporation Act was necessary was also negated. The State of Maharashtra which had sanctioned the terms and conditions of supply was held to be not a necessary party. The learned single Judge referred to the different provisions of the Act which enabled the licensee to recover from the consumer something in addition to the charge for electricity such as section 26 and clause (a) to the first proviso to sub-clause (a) to the first proviso to sub-clause (1) of Clause VI of the Schedule to the Act (herein after referred to as "clause VI (1) (a) of the Schedule"). The learned Judge held on an examination of the provisions of Section 21(2) of the Act that though the relationship between the licensee-defendants and the plaintiffs was a contractual relationship, that relationship was controlled by the statute and the learned Judge found that a licensee under the Act is required to charge the consumer strictly in accordance with the provisions of the Act, and the licensee cannot impose on the consumer financial obligations which are not warranted by the Act itself. The learned Judge, therefore, took the view that if any conditions are framed under Section 21(2) which enabled 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 Section 21(2) to a licensee to frame conditions to regulate his relations with the consumers. The learned Judge, therefore, took the view that since the scheme of the Act makes it clear that it scheme of the Act makes it clear that it is not open to a licensee to impose financial burden in addition to what is proimplied prohibition against imposing financial burdens which were not authorised by the Act. The learned Judge drew support for her conclusions from the provisions of Section 118 of the English Electric Lighting (Clauses) Act 1899, which provided that 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.

9. The appellants had placed reliance on the provisions of Rule 27 of the Indian Electricity Rules, 1956 (hereinafter referred to as "the Rules") which, according to the appellants, authorised them to demand security for electric bills. The learned Judge held that the Rules were made for the first time in 1956 and, therefore, could not be considered as contemporaneous exposition and they were, therefore, not a good guide to the intention of the legislature when the Act was passed. The learned Judge further went on to hold that if the Rules go beyond the provisions of the Act, to that extent the Rules will have to be struck down, but not such question arose in the suit obviously because the rule itself was not challenged. The learned Judge then went on to consider the argument as to whether assuming that the licensee had a power to consider the argument as to whether assuming that the licensee had a power to demand security for the payment of the bills. Such a condition was unreasonable and the learned Judge held that the provision which requires a deposit equivalent to three months' bill did not appear to be unreasonable having regard to the object for which the deposit was required. The learned Judge also held that if the "Undertaking had the power to demand security, then asking for cash security was not unreasonable because such a security was an advantage to the defendants as the amount could be immediately appropriated in the event of the default. But the learned Judge further took the view that where large amounts were required to be deposited by the consumer, it would cause inconvenience and it was therefore, possible to view the provision of cash security as unreasonable. No firm opinion was, however; expressed by the learned Judge.

10. It may be pointed out at this other issues which were raised such as that clause 13 of the Agreement violated the fundamental rights of the plaintiffs under Article 19(1)(f) and (g) of the Constitution of India and the rights under Articles 301 to 305 of the Constitution as well as Article 14 of the Constitution were not pressed at the hearing.

11. Having regard to the findings referred to above, the learned Judge decreed the plaintiffs' suit. This appeal is now filed by the defendants challenging the judgment and decree made by the said judgment and decree made by the learned single Judge.

12. Mr. Singhvi appearing on behalf of the appellants made it clear at the commencement of the hearing of the appeal that the only question which is being agitated in this appeal is the right of the Undertaking to demand cash security equivalent to the amount of three months' energy bills of the consumer.

13. Before we refer to the contentions raised before us, it will be convenient to refer to certain provisions of the Act and the Rule on the construction of which the decision of this appeal depends. As already observed, the construction of which the decision of this appeal depends. As already observed, the undertaking is a licensee under Section 3 of the Act and is granted a licence

to supply energy and to discharge the necessary functions referred to in Section 3. Section 3(2) refers to the several provisions which automatically become effective and applicable where such a licence is granted. In so far as the present appeal is concerned, the material provision is in Section 3(2)(f) which reads as follows:--

"3. (2) In respect of every such licence and the grant thereof the following provisions shall have effect, namely, to (e)

(f) the provisions contained in the Schedule shall be deemed to be incorporated with, and to form part of every licence granted under this part, save in so far as they are expressly added to, varied or excepted by the licence, and shall, subject to any such additions, variations or exceptions which the State Government is hereby empowered to make, apply to the undertaking authorised by the licence:

provided.....

so far as the Schedule to which reference in Section 3(2)(f) is made is concerned, that Schedule contains several clauses. Clause I, which falls under the heading "Security and account" deals with a licensee, which is not a local authority, and refers to CIS. (a), (b) and (c) which provided a security to be given by such licensee which is not a local authority. Then there is Clause V which reads as follows:--

"V (1) Where, after the expiration of two years and six months from the commencement of the licence, a requisition is made by two or more owners or occupiers of premises in or upon any street or part of a street within the area of supply or by the State Government or a local authority charged with the public lighting thereof, requiring the licensee to provide distributing mains throughout such street or part thereof, the licensee shall comply within six months with the requisition unless:--

Where it is made by such owners or occupiers as aforesaid, the owners or occupiers making it do not, within fourteen clear days after the service on them by the licensee of a notice in writing in this behalf, tender to the licensee a written contract in a form approved by the State Government duly executed and with sufficient security binding themselves to take, or guaranteeing that there shall be taken, a supply of energy for not less than two years to such amount as will in the aggregate assure to the licensee at the current rates charged by him, an annual revenue not exceeding fifteen per centum of the cost of the distributing mains (not including transformers and other sub-station equipment) required to comply with the requisition; or Where it is made by the State Government or a local authority, the State Government or local authority, as the case may be, does not, within

the like period, tender a like contract binding itself to take a supply of energy for not less than seven years for the public lamps in such street or part thereof.

(2) Where any difference or dispute arises between the licensee and such owners or occupiers as to the sufficiency of the security offered under this clause, or as to the cost of the distributing mains or as to the amount of energy to be taken or guaranteed as aforesaid, the matter shall be referred to the Electrical inspector and decided by him.

(3) Every requisition under this clause shall be signed by the maker or makers thereof and shall be served on the licensee.

(4) Every requisition under this clause shall be in a form to be prescribed by rules under the Indian Electricity Act, 1910; and copies of the form shall be kept at the office of the licensee and supplied free of charge to any applicant."

Clause VI, which is also relevant, reads as follows:--

"VI. (1) Where after distributing mains have been laid down under the provisions of Clause IV or Clause V and the supply of energy through those mains or any of them has commenced, a requisition is made by the owner or occupier of any premises situate within the area of supply requiring the licensee to supply energy for such premises, the licensee shall, within one month from the making of the requisition, or within such longer period as the Electrical Inspector may allow supply, and, save in so far as he is prevented from doing so by cyclones, floods, storms or other occurrences beyond his control, continue to supply energy in accordance with the requisition: Provided, first, that the licensee shall not be bound to comply with any such Requisition unless and until the person making it:-- within fourteen days after the service on him by the licensee of a notice in writing in this behalf, tenders to the licensee a written contract, in a form approved by the State Government, duly executed and with sufficient security, binding himself to take a supply of energy for not less than two years to such amount as will assure to the licensee at the current rates charged by him, an annual revenue not exceeding fifteen per centum of the cost of the service-line required to comply with the requisition, and if required by the licensee so to do, pays to the licensee the cost of so much of any service-line as may be laid down or placed for the purposes of the supply upon the property in respect of which the requisition is made, and of so much of any service-line as it may be necessary for the said purposes to lay down or place beyond one hundred feet from licensee's distributing main, although not on that property:

Provided, secondly, that the licensee shall be entitled to discontinue such supply:--if the

owner or occupier of the property to which the supply is made has not already given security, or if any security given by him has become invalid or insufficient, and such owner or occupier fails to furnish security or to make up the original security to a sufficient amount, as the case may be, within seven days, after the service upon him of notice from the licensee requiring him so to do, or if the owner or occupier of the property to which the supply is made adopts any appliance, or uses the energy supplied to him by the licensee for any purposes, or deals with it in any manner, so as unduly or improperly to interfere with the efficient supply of energy to any other person by the licensee, or if the electric wires, fittings, works and apparatus in such property are not in good order and condition, and are consequently likely to affect injuriously the use of energy by the licensee, or by other persons, or if the owner or occupier makes any alterations of, or addition to, any electric wires, fittings, works or apparatus within such property as aforesaid, and does not notify the same to the licensee before the same are connected to the source of supply, with a view to their being examined and tested, but the licensee shall re-connect the supply with all reasonable speed on the cessation of the act of default or both, as the case may be, which entitled him to discontinue it:

Provided, thirdly, that the maximum rate per unit of time at which the owner or occupier shall be entitled to be supplied with energy shall not exceed what is necessary for the maximum consumption on his premises. and, where the owner or occupier has required a licensee to supply him at a specified maximum rate, he shall not be entitled to alter that maximum, except after one month's notice in writing to the licensee, and the licensee may recover from the owner or occupier any expenses incurred by him by reason of such alteration in respect of the service-lines by which energy is supplied to the property beyond one hundred feet from the licensee's distributing main, or in respect of any fittings or apparatus of the licensee upon that property: and Provided, fourthly, that, if any requisition is made for a supply of energy and the licensee can prove, to the satisfaction of an Electrical Inspector:--

that the nearest distributing main is already loaded up to its full current-carrying capacity, or that, in case of a larger amount of current being transmitted by it, the loss of pressure will seriously affect the efficiency of the supply to other consumers in the vicinity, the licensee may refuse to accede to the requisition for such reasonable period, not exceeding six months, as such Inspector may think sufficient for the purpose of amending the distributing main or laying down or placing a further distributing main.

(2) Any service-line laid for the purpose of supply in pursuance of a requisition under sub-clause (a) shall, notwithstanding that a portion of it may have been paid for by the

person making the requisition, be maintained by the licensee who shall also have the right to use it for the supply of energy to any other person.

(3) Where any difference or dispute arises as to the amount of energy to be taken or guaranteed as aforesaid, or as to the cost of any service-line or as to the sufficiency of the security offered by any owner or occupier or as to the position of the meter board or as to the improper use of energy or to any alleged defect in any wires, fittings, works or apparatus, or as to the amount of the expenses incurred under the third proviso to sub-clause (1), the matter shall be referred to an Electrical Inspector and decided by him.

(4) Every requisition under this clause shall be signed by the maker or makers thereof and shall be served on the licensee.

(6) Every requisition under this clause shall be in a form to be prescribed by rules under the Indian Electricity Act, 1910; and copies of the form shall be kept at the office of the licensee and supplied free of charge to any applicant."

There are four clauses in the proviso to clause VI in which the circumstances under which the licensee is entitled to discontinue the supply are set out. Under clause (a) of the second proviso, a licensee becomes entitled to discontinue the supply if the owner or occupier of the property to which the supply is made has not already given security, or if any security given by him has become invalid or insufficient and such owner or occupier fails to furnish security or to make up the original security to a sufficient amount, as the case may be, within 7 days after service upon him of notice from the licensee requiring him so to do. Clauses (b), (c) and (d) of that proviso are not material.

14. Two more provisions in the main Act, which need to be mentioned are contained in Section 24 and Section 26 of the Act. Section 24 authorises a licensee to cut off the supply "where any person neglects to pay any charge for energy, due from him to licensee in respect of supply of energy to him". But a 7 days' notice in writing has to be given to such person before this drastic power is exercised. Section 26 deals with meters and provides that in the absence of an agreement to the contrary the amount of energy supplied to the consumer or the electrical quantity contained in the supply shall be ascertained by means of a correct meter which, if required by the consumer, will have to be supplied by the licensee. There is a proviso to Section 26(1) which provides that "the licensee may require the consumer to give him security for the price of a meter and enter into an agreement for the hire thereof, unless the consumer elects to purchase a meter.

15. An important provision, which must then be reproduced and on the construction of which a long debate has taken place at the bar, is to be found in Section 21(2) which reads as follows:--

"21 (2). 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 any rules made under this Act, to regulate his relations 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 conditions made by a licensee without such sanction shall be null and void."

The proviso is not material.

16. The only other provision which now requires to be referred to is contained in Rule 27 (1) of the Rules which reads as follows:--

"27. (1) Without prejudice to the powers conferred by Section 21 on the State Government in this behalf the model conditions of supply contained in Annexure VI may, with such variations as the circumstances of each case require, be adopted by the licensee for the purpose of sub-section (2) of that Section with the previous sanction of the State Government."

This rule refers to the model conditions of supply contained in Annexure VI, which is a part of the Rules, and in the model conditions of supply, clause 14 refers to security deposit. This clause reads as follows:--

"The licensee may require any consumer to deposit security for the payment of his monthly bills for energy supplied, for the value of the meter and other apparatus installed on his premises. No interest will be allowed on deposit up to Rs. 25/- Interest at the rate of ... per cent per annum will be paid by the licensee on deposits exceeding Rs. 25/-.

The licensee shall be at liberty at any time to apply any security deposited towards payment or satisfaction of any money which shall become due or owing by the consumer. The licensee shall also be at liberty to demand enhanced security deposit from consumers at any time during the life of the contract. The balance of the security deposit will be returned to the consumer on the termination of the contract.

The consumer may at any time, with the previous consent of the licensee, transfer the contract and its liabilities to any other person approved by the licensee."

17. The learned Counsel appearing on behalf of the appellants has contended that Clause VI (1) (a) of the Schedule is an express power which enables the licensee to ask for sufficient security

and that Clause 13 in the conditions of supply, to which the plaintiffs have agreed, is expressly made in pursuance of the power to demand security contained in clause VI (1) (a) of the Schedule. According to the learned Counsel. The learned Judge was not right in holding that there is no express power in the Act enabling the licensee to demand security for electricity bills.

18. Mr. Mody, who appeared for the ed Judge was right in holding that nothing which is not permitted under the Act can be charged from the consumer even by way of security because, according to the learned Counsel. Under the Act there are strait-jacketed conditions regarding charges which are imposed upon the licensee. The learned Counsel contended that the provisions for security made in Clause VI (1) (a) of the Schedule refer to a security for a limited time and having regard to the mainner in which Clause VI (1) (a) of the Schedule is that the consumer has to bind himself to take a supply of energy for not less than two years and the security which is contemplated by that clause is a security which will gruantee the consumption of electricity by the consumer within the first two years of the commencement of the supply to such an extent as will assure to the licensee an annual revenue not exceeding 15% of the cost of the servie-line required to comply with the requisition.

19. Mr. Chinoy, who appeared for one of the interveners, has also contended that Clause VI (1) (a) is attracted only at the time when the initial supply is given and the once the supply has already started, no securlty can be demanded. In other words, the contention is that sub-clause (a) deals with the point of time determined by the first commencement of the supply and if at that time sufficient security as contemplated by sub-clause (a) is not demanded by the licensee, the licensee is then disentitled to make a demand for secutrity at any further point of time.

20. In order to decide these contentions it is necessary to refer to the scheme of Clause VI of the schedule. The first part of Clause VI passes an obligation on the licensee in case a requlsition is made by an onwer or occupier of any premises situated within the area of supply whereafter distributing mains have been laid down under the provisions of Clauses IV or V and the supply of energy from those mains or any of them has commenced, to supply energy for such premises and this supply has to be made within one month from the may now. Certain circumstances under which a licensee may be justified in delaying in that clause such as cycones, floods, storms or other occurrences beyond the control of the licensee and the licensee has to continue to supply energy in accordance with the requisition. The provisio is really in the nature of a provision requiring the consumer to comply with certain conditions before the supply can be commenced by the licensee and under the provisio until and unless the consumer complies with those requirements, the licensee is justified in not commecning the supply. Under sub-cl (a) the licensee has to give a notice in writing to the consumer to enter into a written contract in a form approved by the State Government. Under this contract which is to be duly executed by the

consumer, the consumer has to bind himself to take a supply of energy for not less than two years. Sub-clause (a) also refers to the quantum of energy which the consumer is necessarily obliged to take within these two years and the quantum is prescribed in terms of the return which the licensee is entitled to get on the cost of the service-line, which is incurred by the licensee to comply with the requisition of the consumer. Subclause (a) states that the return which must be guaranteed to the licensee must be at the rate of 15% p. a. of the cost of the service-line at the current rates which are chargeable by the licensee. The requirement of Clause (a) in so far as it is material is that within 14 days after the service on the consumer by the licensee of a notice in writing, the consumer has to tender "to the licensee a written contract duly executed and with sufficient security, binding himself to take a supply of energy for not less than two years to such amount as will assure to the licensee at the current rates charged by him, an annual revenue not exceeding fifteen per centum of the cost of the service-line required to comply with the requisition....." The argument of the learned Counsel for the defendants is that the security spoken of in the clause is a security which is to be valid only for a period of two years. It is not possible for us to accept this contention. The words "binding himself to take a supply of energy" obviously refer to "written contract duly with sufficient security" refer to an additional condition which has to be satisfied by the consumer. Which has to be complied with along with the tender of a written contract contemplated by subclause (a). It is undoubtedly true that the agreement casts an obligation on the consumer regarding consumption of such amount of energy for a period of two years as to give the specified return to the licensee. But there is nothing in that clause to indicate that the sufficient security spoken of in that clause relates only to the consumption of energy for the minimum period of two years. It is not in dispute that where supply is made available under Clause VI (1) on a requisition made by the consumer at the end of the period of two years referred to in sub-clause (a), there is any fresh agreement required to be entered, into between the licensee and the consumer. It is the same agreement in pursuance of which the supply is continued and there is also nothing in the provisions of subclause (a) to indicate that the security was intended to lapse after the period of two years referred to in that subclause. Therefore when sub-clause (a) refers to the agreement to be entered into along with sufficient security what is required to be tendered is security separately, along with the agreement. The sufficiency of the security is a matter which will have to be decided by the licensee. In this context, we may refer to Clause (a) of the second proviso which refers to circumstances in which a security may be asked for from the consumer after the supply has already commenced. Clause (a) of the second proviso says that 'if the owner or occupier of the property which the supply is made has not already given security, or if any security given by him has become invalid or insufficient, and such owner or occupier fails to furnish security or to make up the original security to a sufficient amount, as the case may be, within seven days, after the service upon him of notice from the licensee requiring him so to do, "the licensee shall be

entitled to discontinue the supply. There is nothing in Cl. (a) of the proviso to limit the operation of that clause only during the two years' period referred to in sub-clause (a) of the first proviso. Indeed this clause is a complete answer to the contention of Mr. Chinoy that if no security is furnished or asked for at the time when the supply had commenced, such security can never be asked for after the supply has already commenced. The very fact that the Legislature itself contemplated that an owner or occupier has started receiving supply and has not already given security would mean that the security can be demanded even after the commencement of the supply. It has to be appreciated that Clause VI is a part of a scheme dealing with the relationship between the licensee and the consumer in the matter of supply of energy. Mutual rights and obligations have been created in Clause VI. While obligation of the licensee is to make the supply of energy available and to continue the supply, there are also obligations created against the consumer which he has to discharge and failing which, a further power has been given to the licensee to disconnect or discontinue the supply. The security spoken of in Clause (a) of the second proviso is obviously the security referred to in Clause (a) of the second proviso has to be read and understood in the light of the sufficient security referred to in Clause (a) of the second proviso to limit the right to demand security only within the period of two years which has been referred to in Clause (a), artificially, such a period cannot be read into sub-clause (a). Further if Clause VI is the repository of the rights and obligations of the licensee and the consumer throughout the period of time when energy is being supplied to the consumer, we see no reason to limit either the sufficient security referred to in Clause (a) of the first proviso or the insufficient or invalid security referred to in Clause (a) of the second proviso only to the period of two years from the commencement of supply. We are, therefore, of the view that Clause (a) of both the provisos contemplates firstly, that the security has not been given at all when the security may be sufficient at the time when the supply has commenced but has become insufficient because of certain events following the commencement of the supply, and thirdly, the security becoming invalid for several reasons which are not enumerated and indeed are incapable of being enumerated. We have, therefore, no doubt that either at the time when the supply has commenced or at any time thereafter, the licensee is entitled to demand in question is a security for payment of bills equivalent to the approximate amount of three months' bills. Though the purposes for which sufficient security can be demanded have not been enumerated in Clause VI (1) (a) it is difficult for us to take the view that when security is demanded to provide for a contingency of bills not being paid, the security has no nexus with the supply of electrical energy to the consumer.

21. It is undoubtedly true that the learned judge has referred to provisions of Section 26 which refers to security for the price of the meter, to Clause V which also refers to the security and Clause VI (1) (a) which refers to sufficient security. The learned Judge has taken the view that

wherever security was required, an express power has been given to the licensee but that there is no express power to take a security for the amount of the bills for electricity consumed. The judgment of the learned single Judge does not however show that it was argued before the learned Judge that the security, which was being asked for from the plaintiff, was expressly permitted by Clause VI (1) (a) of the Schedule. Indeed the judgment seems to proceed on the footing that the security asked for is not under Clause. VI (1) (a) at all.

22. Mr. Singhvi has referred us to a decision of the Andhra Pradesh High Court in *Kistna Cement Works v. Secretary, APSEB, Vidyut Soudha*, . That decision is not of much assistance to the learned Counsel for the appellants because the contention there was that when Clause VI (1) (a) refers to sufficient security, the Andhra Pradesh Electricity Board was entitled to ask for cash deposit of an amount, representing three months' consumption. While dealing with that contention the Andhra Pradesh High Court took the view that whatever security deposit was fixed upon by the Board, that should be reasonable and should have a reasonable nexus to the requirements of the situation. While upholding that the requirement of security for three months' average consumption charges by way of cash deposit was reasonable, the Division Bench took the view that a public utility service like Electricity Board cannot launch itself on litigation to recover consumption charges on a large scale and that when an amount was required to be deposited in the form of cash the demand of the Board was quite reasonable. The Division Bench also took the view that "By no stretch of imagination could it be said that there is no nexus between cash deposit for security and the object for which the Board that in actual practice it was found that the procedure of accepting other types of security gave rise to serious inconvenience and difficulty and realisation of security was at times a lengthy and inconvenient process as there had been cases where the Board had suffered financial injury being unable to realise the security and, therefore, it had become necessary to insist on cash security.

23. The learned Judge has referred to the provisions of the Electric Lighting (Clauses) Act, 1899. One of the learned Counsel appearing on behalf of the interveners has referred to a passage from Halsbury's Laws of England, Third Edition, Volume 16, at paragraph 129, inquired under the Schedule to the Electric Lighting (Clauses) Act, 1899, to be deposited or otherwise, and of an amount agreed or, failing agreement, determined by a magistrate's court, and where security is given by way of deposit the party to whom it is given must pay interest at the rate of 4% per annum on every 50 p for each period of six months during which it remains so deposited. The reference to the English Act was made by the learned Judge to show that there is no express provision in the Electricity Act, 1910, authorising the demand for such security. Apart from the fact that the provisions of one Act cannot always be construed with reference to the provisions of another similar Act, especially when the provisions are not in Clause VI (1) (a) of the Schedule to

the Act contains an express power to demand security.

24. Alternatively it was contended by Mr. Singhvi that the conditions of supply have been expressly approved by the State Government under Sec. 21(2) of the Act and that Clause 12 of the conditions of supply empowered the B. E. S. T. Undertaking to demand security for the payment of monthly bills of energy. Mr. Singhvi has also referred us to a form of an agreement between the consumer and the B. E. S. T. Undertaking which is made a part of the requisition form which is required to be signed by the prospective consumer and our attention was invited to Cl. 7 of the agreement which provides.

"The Consumer shall, on receipt of a requisition from the Undertaking in this behalf, deposit with it the sum of Rupees... as security for the purpose next hereinafter mentioned, and shall on a like requisition from time to time renew or replenish such security in the event of the same becoming exhausted or insufficient."

The learned Counsel has contended that there is also clear indication in Rule 27 of the Rules which indicates that the rule-making authority itself contemplated that one of the conditions permissible under Section 21(2) is a condition relating to security as contained in Cl. 14 in Annexure Vi to the Rules, which we have already reproduced above.

25. This argument has brought forth opposition from both Mr. Chinoy and Mr. Hidayatullah who were appearing in Miscellaneous Petition No. 1416 of 1979 and Writ Petition No. 1209 of 1983 respectively. Mr. Chinoy contended that Section 21(2) of the Act expressly provides that the conditions contemplated therein must not be inconsistent with the Act or with the licence or with any rules. Relying on the view taken by the learned single Judge that security was expressly referred to in Section 26 of the Act Clause VI (1) (a) of the Schedule and also relying on Clause I of the Schedule, Mr. Chinoy submitted that the terms and conditions providing for furnishing security would be clearly inconsistent with the provisions of the Act and would, therefore, be invalid. Mr. Chinoy State of U. P., , in order to show in what circumstances two provisions could be said to be inconsistent with each other.

26. Now, undoubtedly the conditions which are contemplated by Section 21(2) or the licence or the Rules made under the Act. Such conditions are permissible to be made for the purposes of regulating the relations of the licensee with the persons who are or intend to become consumers. We have no manner of doubt that a condition providing for a security to guarantee the payment of bills in respect of energy supplied to a consumer will be a condition providing for a security to guarantee the payment of bills in respect of energy supplied to a consumer will be a condition regulating the relation between the licensee and the consumer. The licensee is the seller

or the supplier of energy. If there is a condition which provides for safeguarding the interest of the seller so as to make recovery of the price of the energy supplied easy, it is difficult to entertain a submission that such a condition does not deal with the relations between the licensee and the consumer. Even Section 37(1) which contains the general rule-making power enables the Central Electricity Board to make rules to regulate inter alia the supply and use of energy. Where rules are permitted to be made to regulate the supply and use of energy, this will obviously include a condition which could be attached to the use of energy in the form of securing the payment of bills.

27. Now, apart from the view that we have already taken that asking for sufficient security for payment of bills is expressly authorised under Cl. VI (1) (a) of the Schedule to the Act, even alternatively it is difficult for us to appreciate why a condition providing for such security will not be consistent with the Act or rather why it should be treated as inconsistent with the Act. The Act and the Rules are together intended to cover the whole field of relations between the licensee and the consumer. If a rule like Rule 27 could be validly made under the general rule-making power under Section 37 of the Act, then obviously such a condition will not be inconsistent with the Rules. Undoubtedly the Act and the licence have to be read together, but it would be difficult to authorise in certain respects, such security cannot be provided for by the terms and conditions made by the licensee and sanctioned by the state Government. In a case like the present one, in order that the condition must be inconsistent that the condition must be inconsistent with the Act, there must be something in the Act which indicates that the licensee is prohibited from levying such a condition. The fact that security is provided for in some respects does not necessarily make asking for security in other respects inconsistent with the Act. No Act can be comprehensive of all situations and contingencies and especially when there is an express power given with regard to the framing of conditions of supply and to regulate the relations between the licensee and the consumer, we must find a clear prohibition in the Act barring or preventing the licensee from recovering security deposit is a financial payment required to be made and it is a financial obligation. But strictly it cannot be said to be a charge which is imposed because it is only a security and undoubtedly it is always adjustable in case the consumer fails to pay the electricity bills. We do not think the decision in Deep Chand's case can be of much assistance to the learned Counsel for the Interveners. That was a case which dealt with a conflict between two legislations and undoubtedly the general principles as to when the two provisions of two laws can be said to be inconsistent were laid down. The question in that decision related to the conflict between the Act of the U. P. Legislature and the Motor Vehicles (Amendment) Act, 1956, which was an Act made by the Parliament and the question was whether certain provisions of the U. P. Legislature and the Motor Vehicles (Amendment) Act, 1956, which was an Act made by the Parliament and the question was whether certain provisions of the U. P. Act dealing with

transport schemes were valid after the passing of the Motor Vehicle (Amendment) Act, the operation of the provisions of the General Clauses Act was excluded. In that context the Supreme Court pointed out that repugnancy between two statutes may be ascertained on the basis of the following three principles: down an exhaustive code in respect of the subject-matter replacing the Act of the State Legislature.

(3) Whether the law made by the Parliament and the law made by the Legislature occupy the same field.

It was held that the unamended Motor Vehicles Act of 1939 did not make any provision for the nationalisation of transport services, but the State had introduced amendments to implement the scheme of nationalisation of road transport. It was also held that after the amendment of the Motor Vehicles Act by the Parliament, the Amending Act occupies the same field in respect of the schemes initiated after the Amending Act and, therefore, to that extent, the State Act must yield its place to the Central Act. Having regard to Article 254(1) of the Constitution of India, it was held that the law under the U. P. Act subsists to support the schemes framed thereunder and it becomes void only in respect of schemes framed under the Central Act. The criterion of inconsistency laid down in the Supreme Court decision is not of much assistance in the present case. Expressly Section 21(2) of the Act provided for the framing of conditions to regulate the relations between the consumer and the licensee. Undoubtedly, this will have to be consistent with the Act. But merely because in some cases security was expressly provided according to the Act, it would not be proper to hold that the licensee was prohibited from asking for security for the electricity bills, more so when a rule was expressly made making this permissible.

28. We are also not inclined to accept the argument that the Act must be treated as an exhaustive code in itself. For the same reason, reliance placed on the maxim *expressio unius exclusio alterius* the express mention of one thing implies exclusion of another, is not of much assistance. It is deliberate that conditions of supply are left expressly to be made by the licensee subject to the provisions of the Act and the Rules and if the Rules themselves provide for such a condition, it would be difficult for the learned Counsel to invoke the above maxim.

29. Mr. Hidayatullah, who appears in writ Petition No. 1209 of 1983 in challenge the validity of Rule 27 by an amendment, has also contended that the model conditions of supply, which were made a part of the Rules cannot be elevated to the statutory status, as contended by Mr. Singhvi, because, according to the learned Counsel, rule 27 itself provided for "such variations as the circumstances of each case require" before they are adopted by the licensee. The learned Counsel pointed out that the model conditions and variations thereof would be in the nature of model byelaws and they cannot travel beyond the Act and the Rules. The learned Counsel also pointed

out that the model conditions are not made a part of the Act at all as would be found in statutory provisions such as the Maharashtra Regional Town Planning Act, 1966, in which a provision is made in Section 86(3) that the town planning schemes under the said Act would be a part of the Act. The learned Counsel argued that assuming that the model conditions were a part of the model conditions were a part of the statute, on that ground alone they do not become consistent with the Act. Now there cannot be any dispute on the proposition that once the Rules are framed under the Act, they have the same force as the Act itself.

30. In *State of U.P. v. Babu Ram*, in paragraph 23 the Supreme Court pointed out that rules made under a statute must be treated for all purposes of construction or obligation exactly as if they were in the Act and are to be of the same effect as if contained in the Act and are to be judicially noticed for all purposes of construction or obligation exactly as if they were in the Act and are to be of the same effect as if contained in the Act and are to be judicially noticed for all purposes of construction or obligation. Rule 27 provides that for the purposes of sub-section (2) of Section 21, the model conditions of supply contained in Annexure VI may be adopted by the licensee with such variations as the circumstances of each case require. Now, the limited reliance which is placed by Mr. Singhvi on this rule is that Rule 27 is a statutory rule which is made by the Authority authorised under Section 37 of the Act to make the Rule and if the rule-making authority itself has provided for a model bye-law or model conditions of service in which there was a clause relating to security deposit, that was enough for the purposes of the licensee to show that a term or model conditions of service in which there was a clause relating to security deposit, that was enough for the purposes of the licensee to show that a term or condition relating to security deposit is a permissible term in the terms and conditions of supply. It is not the argument of Mr. Singhvi that these model terms and conditions must also be treated as a part and parcel of the Act itself. They are standard terms and conditions which under the rule are held to be permissible. When such term and conditions are prescribed by the rule-making authority itself and the rule expressly refers to such terms and conditions it is difficult to see how they can be said to travel beyond the rule. So far as the Act itself is concerned, we have already pointed out that such a term falls squarely within the scope of terms and conditions regulating the relations between the licensee and the consumer.

31. Mr. Hidayatullah has relied upon a decision of the Mysore High Court in *Banaglore Municipality v. Messrs N. Sirur*, and a decision of the Madhya Pradesh High Court in *Dukhuram Gupta v. Co-operative Agricultural Association*, to highlight the difference between a bye law and a rule and to show that if a bye-law will be invalid. It is a well established position that if a byelaw travels beyond the power which authorises the framing of bye-law, then the bye-law will be bad. The limited purposes of reliance on Rule 27 in this case was to show that Rule 27 in this

case was to show that Rule 27 read with the model terms and conditions clearly indicated that a condition asking for a deposit was a permissible condition. This is not a case where there was any question of the bye-law traveling beyond the four corners of the Act of the rules.

32. That brings us to the argument of Mr. Hidayatullah in Writ Petition No. 1209 of 1983 challenging the validity of Rule 27 read with clause 14 as being ultra vires the Act. The argument was that Section 37 empowers the framing of rules to carry out the purposes and objects of the Act, and anything done pursuant to such a power cannot travel beyond the four corners of the Act. The argument further was that the only scope of the rule-making power would be to frame a rule regulating the mode, extent, time or place of the deposits contemplated by the Act and the Schedule and not to provide for taking a security deposit for payment of charges. In addition, it was urged that the Schedule had expressly referred to certain kinds of deposits being permissible and that the rule could not provide for an additional deposit. As already pointed out, apart from the general provision in Section 37 that rules could be made "to carry out the purposes and object of this Act", the Central Electricity Board was also authorised to regulate inter alia the supply and use of energy. It is not in dispute that Rule 27 does not fall in the specific subjects in section 37(2) for which making of rules was permissible. We have already pointed out that regulating the supply and use of energy must be given the widest possible meaning and the power to regulate the supply and use of energy will also include the power to lay down conditions for the supply and use of energy read with the specific power in Section 21(2), which empowered making conditions to regulate the relations between the licensee and the consumer. It is important to point out that Rule 27 itself refers to the provisions of Section 21(2) Rule 27 begins with the words "Without prejudice to the powers conferred by section 21 on the State Government in this behalf" and proceeds to provide that "model conditions of supply contained in Annexure VI may, with such variations as the circumstances of each case require, be adopted by the licensee for the purpose of sub-section(2) of that section (section 21) with the previous sanction of the State Government." It is obvious that Rule 27 is referable to the power under Section 37(1) read with Section 21(2) of the Act and we have already earlier pointed out that the matter relating to asking for deposit will be expressly covered by Section 21(2) of the Act. The reference to the decision of the Calcutta High Court in *Hazrat Syed v. Coimr. Of Wakfs*, in which it was held that when power is given to frame rules under the Act and when so framed, they are made part of the Act and when so framed, they are made part of the Act and in such case it might be permissible to supplement the provisions of the statute itself, but where rules are to be framed for the purpose of carrying out the purposes of carrying out the purposes of the Act, such rules cannot travel beyond the four corners of the Act itself, would not take the case of Mr. Hidayatullah any further because we have already held that Section 37(1) enables making of rules to regulate the supply and use of energy and rule 27 relates to conditions regulating supply and use of energy.

33. Reference was also made before us to a decision in *Newspapers Ltd v. State Industrial Tribunal*, , in which the question was whether a rule with regard to a reference of an individual industrial dispute was valid. On a construction of rules in that case, it was held that those rules could not be a valid foundation for sustaining the argument that an individual dispute was within the definition of "industrial dispute" in Section 2(k) of the Industrial Disputes Act. It was observed that rules cannot be read in such manner as would be tantamount to enlarging the scope of the expression "industrial dispute". Reference was made in that case to the legal position that all regulations which are contrary or repugnant to statutes under which they are made are ineffective. We have already pointed out above that R. 27 cannot be held to be in excess of the rule-making power.

34. This brings us to the last argument advanced by Mr. Hidayatullah that Clause 12 of the draft agreement is arbitrary and unreasonable. The argument was that the power to impose conditions cannot be exercised to impose unreasonable conditions and it must also be ascertained whether the condition achieves the object for which it is imposed. On principle, the proposition is undisputable. The question is whether there is anything in Clause 12 which can be described as unreasonable and whether this Clause has no nexus with the object of the Act and the Rules. The argument appears to be that if the object of security is to secure payment of bills, then insistence on cash deposits would be unreasonable because the object could also be served by furnishing of any security and it is said that the consumer was willing to furnish a bank guarantee. In addition, it is urged that the period of consumption for which the security is required should not exceed two months and, therefore, the determination of three months is arbitrary.

35. Now, the ground on which cash security was insisted upon is set out in the supplementary written statement of the B. E. S. T. Undertaking dated 21st January 1975. The stand of the B. E. S. T. deposited in cash with the licensee can be appropriated by such licensee straightway towards arrears of charges, in the case of a bank guarantee, it would be necessary for the licensee to ask the bank concerned the honour the guarantee and if frivolous or vexatious disputes are raised by a consumer questioning the liability of the consumer to pay such charges and if the bank concerned for the said reason or otherwise refuses to honour the guarantee, it would become necessary for the licensee to file a suit against the bank. Therefore, according to the B. E. S. T. Undertaking, a bank guarantee is not an adequate security and, at any rate, is not as satisfactory a security as cash. We do not see any reason to reject the validity of this ground. While the advantage of a cash security is that it can be appropriated straightway, enforcement of a bank guarantee is bound to involve a time element and in some cases can give rise to disputes because nothing prevents a consumer from taking steps to see that the bank guarantee is not enforced early. The object of asking for security will thus be frustrated if the security is such that

the licensee is not guaranteed is not enforced early. The object of asking for security will thus be frustrated if the security is such that the licensee is not guaranteed prompt recovery of charges for the electricity bills which represent the cost of energy already utilised by the consumer. We have already referred to the decision of the Andhra Pradesh High Court in which such a condition has been held to be quite reasonable.

36. coming to the argument that three months' period is arbitrary, in our view, it would not be permissible to go into this question because unless the period is so large that it appears prima facie to be unreasonable the discretion of determining the approximate amount of bills which have to be safeguarded and provided for must be left to the licensee. The argument of Mr. Singhvi was that if the statutory procedure preceding the actual disconnection is to be gone through, it takes a sufficiently long time. Mr. Hidayatullah, on the other hand, pointed out that if the licensee acts strictly in accordance with the statute, at the end of two months the licensee would be in a position to take recourse to its drastic power under Section 24. The only difference, according to Mr. Hidayatullah, was that instead of three months, two months' guarantee should to a large number of consumers and having regard to the fact that the bills for one month are sent some time in the course of the next month, because taking of readings of the meters and despatching of bills is bound to take considerable time where large number of consumers are involved, it is obvious that a strict mathematical calculation as to the time and procedure involved and permissible under the Act cannot be the only guide for determining whether two months' guarantee should have been taken and, therefore, three months' security was unreasonable. We are not satisfied in the instant case that asking for a security for bills for a period of three months would be unreasonable.

37. One more argument, which was advanced by Mr. Hidayatullah, was that in determining the amount of security, the licensee makes provision also for electricity duty which is really a duty payable to the State Government. This contention overlooks the provisions of Section 4 of the Bombay Electricity Duty Act, 1958. Under Section 41 of the Act it is obligatory for the licensee to collect and pay to the State Government at the time and in the manner prescribed the proper electricity duty payable under the Act on the units of energy supplied by him to consumers. Under this provision, therefore, the responsibility of payment of duty to the State Government is that of the licensee. What is further important is that it is statutorily provided in the latter part of Section 4 (1) that a duty so payable shall be a first charge on the amount recoverable by the licensee for the energy supplied by him and shall be a debt due by him to the State Government. In other words, the effect of this clause is that if any amount on account of the price of energy is recovered by the licensee, then the amount of duty payable is a first charge on that amount and the duty is statutorily made a debt due by the licensee to the State government. In the face of the

rigour of this provision, it is difficult for us to find any error in the demand for security being comprised not only of the charges for electricity but also for electricity duty.

38. The last argument is that, the rate of interest payable is unreasonably low as compared with the market rates because the deposit will lie for a long period of time. Now, the agreement itself provides that the rate of interest payable will be the same as interest on the postal saving bank account. That, in our view, is a good guide for payment of interest. The fact that it is low as compared with the market rates would not make the demand unreasonable because what is being done by the consumer is not any investment but a security for which interest at the rate at which Government pays on postal deposits would be sufficient to make it reasonable.

39. Having regard to the view which we have taken, it is difficult for us to uphold the judgment and decree made by the learned single Judge. So far as Appeal No. 78 of 1979 is concerned, we must, therefore, set aside the judgment and decree made in suit No. 630 of 1967 and dismiss the plaintiffs' suit. The order for costs is also set aside. Then appellants will be entitled to get costs of two counsel in this appeal. The amount of deposit made by the appellants shall be refunded. Leave to appeal to Supreme Court asked for is refused. Mr. Sawant makes a statement that no action under Section 24 will be taken for a period of four weeks from today.

Writ Petition No. 1209 of 1983 and Writ Petition No. 982 of 1983.

40. In both these petitions identical demands for security were challenged by the petitioners. It will suffice to mention that in Writ Petition No. 1209 of 1983, the petitioner was called upon to make an additional deposit of Rupees 7,06,780/- in addition to the amount of Rs. 15,08,950/- already deposited. In Writ Petition No. 982 of 1983, the petitioner was called upon to deposit an amount of Rs. 6,63,550/- in addition to the security deposit of Rs. 6,17,000/- which was already made. Both these demands were challenged on grounds identical to those in Appeal No. 78 of 1979. In view of our decision in Appeal No. 78 of 1979 just rendered, both these petitions must fail and are dismissed with costs. Leave to appeal to Supreme Court asked for is refused. Mr. Sawant makes a statement that no action under Section 24 will be taken for a period of four weeks from today.

41. Order accordingly.

Cases Referred.

1 AIR 1955 Mys 147