

CIVIL REVISION.

Before Nasim Ali J.

JOHN EARNEST EDWARD

v.

JOGENDRACHANDRA GHOSH.*

1935

Jan. 29, 30;
Feb. 5.

Electric supply—Bona fide exercise of statutory powers—Charges unpaid by consumer—Licensees' powers—Supply, to cut off—Conditions of supply—Condition—Relaxation—Tribunal's powers—Indian Electricity Act (IX of 1910), ss. 3, 20(1), 21(2), 24(3), 47, Part II, Sch.

It is well settled that a public body invested with statutory powers (such as those conferred upon the Calcutta Electric Supply Corporation) must take care not to exceed or abuse its powers: it must keep within the limits of the authority committed to it: it must act in good faith, and it must act reasonably.

Westminster Corporation v. London and North Western Railway (1) followed.

Section 24 does not clearly lay down that the licensee can cut off the supply of the premises (for which the charge has been paid) for the consumer's neglect to pay the charges for current supplied to his other premises.

Even if the corporation had authority to cut off the supply under section 24, the statutory power to do so should be exercised in good faith and reasonably.

As the power to discontinue supply to a premises is evidently a power given in addition to the rights to realise the arrears by suit, the consumer should be given an opportunity to pay off the arrears immediately before the connection is cut off.

Under section 20 (1) the information (about cutting off the supply on failure to make immediate payment of arrears due) is to be given to the occupier.

That the licensee or his agent cannot enter the house against the wishes of the occupier is clear from the provisions contained in clause (3) of section 20.

If the occupier is not the consumer, he may refuse entry to cut off the supply and the licensee would then have to give a further notice under clause (3) to the consumer, and in the meantime the occupier may make arrangements for paying off the arrears.

Such an interpretation of section 20 (1) as ostensibly disclosing one purpose for entering the house, though a different purpose is intended in

*Civil Revision, Nos. 1125 and 1126 of 1934, against the order of J. N. Sen, Judge of the Court of Small Causes at Sealdah, dated May 1, 1934.

reality (*viz.*, to cut off supply) would frustrate the object of the legislature, which did *not* contemplate that entry into private property could be secured by misrepresentation.

It is not within the province of any tribunal to relax conditions, which the legislature has thought fit to impose.

Herron v. Rathmines and Rathgar Improvement Commissioners (1) referred to.

Where there is an agreement between licensee and consumer, but the right to enforce the terms thereof is also made subject to the provisions of law, a suit for damages brought by the consumer is one for breach of an obligation imposed by statute, and not for breach of contract by licensee.

CIVIL RULES obtained by the defendants.

The facts of the case and the arguments in the Rules appear fully in the judgment.

S. M. Bose, Standing Counsel, *M. Barwell*, *Sateendranath Mukherji* and *Siddheshwar Chakrabarti* for the petitioners.

Saratchandra Basak, Senior Government Pleader, *Sureshchandra Talukdar*, *Anilendranath Ray Chaudhuri* and *Rajendrachandra Guha* for the opposite party.

Cur. adv. vult.

NASIM ALI J. These two Rules were issued at the instance of the defendants upon the plaintiff, opposite party, in a suit instituted in the court of the Small Causes, Sealdah, for recovery of damages. The case of the plaintiff, opposite party, briefly stated is as follows:—

Plaintiff is the owner of premises 25 and 25A, Harish Mukherji Road, Bhawanipur P. S. On the 7th and 8th June, 1933, defendant No. 2, *i.e.*, Calcutta Electric Supply Corporation, Ltd., served notices upon him demanding payment of the charge for supplying electric current and intimating that on failure thereof the supply would be cut off. The amounts covered by the said notices were paid in time by the plaintiff. No notice of discontinuing the current of the aforesaid premises on account of their arrears was ever served on him. He was never informed by the defendant No. 2 that the electric connection of the

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said premises would be cut off for non-payment of the charges for supplying energy to his other premises. Though nothing was due to the defendant No. 2 on account of the said premises, the defendant No. 1, an inspector of defendant No. 2, entered the said premises on the 23rd June, 1933 on the false pretext of examining the meters of the said premises for changing it without disclosing his real purpose and cut off the supply without knowledge of the plaintiff. There are ten shops in the one-storied out-house appertaining to the said premises, the shop keepers of which pay for the current to the plaintiff. On account of this wrongful cutting off of the supply the tenants of the shops lost their customers and plaintiff also sustained loss and damage. On these allegations plaintiff claimed Rs. 400 as damages.

The defences of the defendants in substance are :—

(1) That the plaintiff did not pay certain bills for supplying energy to premises 27A, 27B, 27C, 27D, Harish Mukherji Road.

(2) That, on 1st June, 1933, plaintiff was given express notice that unless all the sums due from him were paid, the defendant No. 2 would disconnect the meters at Nos. 25 and 25A, Harish Mukherji Road.

(3) That statutory notices were given to the plaintiff.

(4) That on 23rd June, 1933, Rs. 380-5-6 pie was due from the plaintiff to the defendant No. 2.

(5) That by virtue of the provision of clauses 6 and 10 of the agreement executed by the plaintiff on 17th June 1922, 29th December 1924, 14th January 1925, 28th January 1925, 4th February 1925 and 12th January 1932, and in pursuance of the power conferred by section 20, sub-section (1) and section 24 of the Indian Electricity Act, 1910, the defendant No. 2 by its servant, defendant No. 1, entered upon the plaintiff's premises, Nos. 25 and 26A and by its said servant removed and took away some fuses connecting defendant's meters in the said premises installed with the service and supply lines.

(6) That on the said occasion and prior to the removal of the said fuses the defendant No. 1 verbally intimated to the plaintiff his intention and purpose to disconnect the said meters and that he had authority and order of defendant No. 2 to cut off the supply of electrical energy from the said premises, unless the plaintiff then and there paid to him, as representing defendant No. 2, the whole of the money then due and owing in respect of energy supplied to the premises 27A, 27B, 27C and 27D.

(7) That the written notices served upon the plaintiff prior to the cutting off of the supply constitute "information" required by section 20, sub-section (1) of the Electricity Act, 1910.

The opposite party gave evidence in support of his allegation in the plaint. The defendant No. 1, however, did not come to the witness box.

The learned Small Cause Court Judge held :—

(a) that the charges for the premises 25 and 25A were paid after service of notice;

(b) that the charges for 27A, 27B, 27C, 27D remained due;

(c) that under clause (6) of the agreement between the parties, defendant No. 2 had the right to cut off the supply from premises No. 25 and 25A;

(d) that the defendant No. 1, who cut off the supply, did not disclose his purpose to the plaintiff—that he wanted to enter the premises for cutting off the supply.

(e) that the defendant No. 1 cut off the supply stealthily without the knowledge of the plaintiff and bolted away;

(f) that, if the plaintiff had known that the defendant No. 1 had come to cut off the supply, he would have paid off the dues then and there, although there was controversy how far the bills for the premises No. 27, which was sold away by the plaintiff, are recoverable from him;

(g) that the plaintiff was entitled to get damages at the rate of Rs. 20 *per diem*.

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The suit has, accordingly, been decreed in part.

The present Rules were, thereupon, obtained by the defendants Nos. 1 and 2 under section 25 of the Provincial Small Cause Court Act.

The only point urged in support of the Rules is that, on the facts found by the learned Small Cause Court Judge, plaintiff's suit should be dismissed.

Now,—

It is well settled that a public body invested with statutory powers such as there conferred upon the corporation must take care not to exceed or abuse its powers. It must keep within the limits of the authority committed to it. It must act in good faith. And it must act reasonably.

Per Lord Macnaughton in *Westminster Corporation v. London and North Western Railway* (1).

Under section 24 of the Indian Electricity Act, 1910, the licensee, after giving seven days' notice in writing to a person, who neglects to pay any charge in respect of the supply of energy to him, without any prejudice to his right to recover such charge by suit can cut off that supply and for that purpose can cut or disconnect any electric supply line and other works being the property of the licensee, through which energy may be supplied and may discontinue the supply until such charge is paid. It is, therefore, clear that, in addition to the right to realise the charge by suit, the legislature has given power to the licensee to discontinue the supply of energy to a consumer, who neglects to pay the charge. The section does not clearly lay down that the licensee can cut off the supply of the premises, for which the charge has been paid, for the consumer's neglect to pay the charges for current supplied to his other premises. The corresponding provision in the English Act, which is to be found in section 18 of Electric Lighting Act, 1909 [9 Ed. VII c. 34] is, however, clear on the point. It is in these terms :—

The undertakers may refuse to supply electrical energy to any person, whose payments for the supply of electrical energy are for the time being in arrear (not being the subject of a *bona fide* dispute) whether any such payments be due to the undertakers in respect of a supply to the premises in respect of which such supply is demanded or in respect of other premises.

(1) [1905] A. C. 426, 430.

Dr. Basak, appearing on behalf of the plaintiff, opposite party, contends that section 24 of the Indian Electricity Act authorises the licensee to cut off supply only of that premises, the charge of which is in arrear and that it does not authorise the licensee to discontinue supply to premises, the charge of which has been paid off. Mr. Bose, appearing on behalf of the petitioners, on the other hand, contends that the words—"any person," "any charge for energy," "in respect of the supply of energy to him"—are very wide and authorise the licensee to cut off the supply where the default occurs, as well as in other premises owned by the same person within the area of supply. In order to accept Mr. Bose's contention, one will have to read into the section some words which are not there. One will have to import into the section words to the effect, "the premises, in respect of which the charge is due or in respect of other premises" after the words "cut off the supply." Mr. Bose, however, contends that the words—"any person," "to him"—rather indicate that the legislature had in mind the same owner and not the same premises. But section 18 of the English Act also contains the words "any person whose payments for the supply of the electrical energy for the time being in arrear." The English Act definitely allows the licensee to refuse supply to other premises of the consumer, whose payments are in arrears. But the Indian Act does not say so. Again, if such powers were given by section 24, it is difficult to understand why a clause embodying this right of the licensee to cut off the supply from premises, where there was no default, was not mentioned in the agreement executed before 1923 (see Ex. A5 taken from the plaintiff) in respect of premises No. 25 on 17th June, 1922. Such a clause was introduced for the first time in the agreements, the forms of which were sanctioned by the Local Government in 1923 under proviso (a) sub-section (1), clause VI of the Schedule. Up to the year 1922, the licensee evidently thought that the Indian Act was different from the English Act in this connection. At any rate "The benefit of doubt is to be given to those,

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“who might be prejudiced by the exercise of powers which the enactment grants, and against those who claim to exercise them.” See Maxwell’s Interpretation of Statutes, 7th edition, page 258. It is, therefore, difficult to say that the right to discontinue supply to premises, for which the charge has been paid off, is given to the licensee by section 24.

The next point for determination is whether the agreements executed by the plaintiff authorise the defendant No. 2 to discontinue supply to premises 25, 25A, though the charges of those premises were paid off. It may be mentioned at the outset that the notices, which were served upon the plaintiff, did not mention that the supply would be discontinued on the basis of the agreements. Apparently they purported to be notices under section 24 of the Act.

Under section 3(2) (d) (i), the license granted under the Act may prescribe such terms as to the limits, within which and the conditions, under which the supply of energy is to be compulsory or permissive and generally as to such matter as the Local Government may think fit. The exercise of the power under section 3 of the Act, however, is subject to the control of the Governor-General in Council. The schedule in the Act contains provisions, which are to be deemed to be incorporated with and to form part of every license granted under Part II of the Act, save in so far as they are expressly added to or varied or excepted by the license. The license granted to defendant 2 is not before the court. The provisions of the schedule are to be taken, therefore, to be incorporated in the license of defendant No. 2. By proviso (a) to clause VI(i) of the Schedule, the licensee is not bound to supply energy to a consumer, unless the latter executes a written contract in a form approved by the Local Government. In this case the plaintiff did execute the agreement, Ex. A5, for premises No. 25 on 17th June, 1922, in the form, which was sanctioned by the Local Government. I have already pointed out that this agreement does not empower the defendant No. 2

to discontinue supply to premises No. 25 for non-payment of the charges, of other premises of the plaintiff. Clause 6 of the subsequent agreements executed by the plaintiff in respect of his other premises, however, contain a clause empowering the licensee to discontinue the supply to the plaintiff's premises, where there is no default. Dr. Basak, however, contends that clause (10) of these agreements definitely states that the other clauses in the agreements are subject in all respects to the provisions of the Calcutta Electric License and to the provisions of the Indian Electricity Act of 1910, and that the condition, contained in clause (6) of these agreements, on which the petitioners rely, being inconsistent with the terms of the license and section 24 of the Act, is not enforceable. Under proviso (a), clause VI the written contract, which is to be executed by the consumer, binds him to take a supply of energy for not less than two years to such amount as will produce at current rates charged by the licensee a reasonable return to the licensee. The license, therefore, authorises the licensee to take such an undertaking from the consumer. Mr. Meares in his "Law relating to Electrical Energy in India," fourth edition, page 75, has observed :—

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As to the agreement it will generally contain many other matters some of which may not be enforceable in law.

Again at page 78, the following passage occurs :—

It has always been customary for electric supply authorities, both in Great Britain and India, to issue so-called "rules" purporting to bind the consumer, giving in considerable detail the way in which the consumer is to wire his premises and so on. A licensee may demand that the prospective consumer shall enter into an agreement, in a form to be approved by the Local Government, to take a supply for two years and to give security to that effect; but he may not prescribe any special form of appliance nor may he control or interfere with the use of energy. No doubt, as a guide to the non-technical consumer, these so-called rules had a value. In Great Britain such licensee's rules have never received legal sanction, but the custom has now been legalised in India by the Indian Electricity (Amendment) Act, in section 21 of the Act, in which the second and third sub-sections were inserted in 1922. The conditions of supply as authorised must not be inconsistent with the Act, the rules or the license: they require the previous sanction of the Local Government both for their introduction and as to their contents, so that in practice the onus of ensuring that they are unobjectionable will lie on the electric inspector.

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If any other conditions are to be imposed on the consumer, the licensee is bound to take the previous sanction of the Local Government under section 21(2). In this case it does not appear that previous sanction of the Local Government for inserting the condition under discussion in clause (6) of the agreements was obtained under section 21(2) of the Act. Again the conditions must be *intra vires*. If I am right in my view, that section 24 does not authorise the licensee to discontinue supply to the premises where there is no default, clause (6), so far as it gives power to the licensee to discontinue supply to any other premises owned or occupied by the consumer, would be inconsistent with the Act. The Regulations of the licensee, which received the approval of the Local Government and which were placed before me, do not appear to contain the "condition," on which the petitioners rely.

I am, therefore, of opinion that defendant No. 2 had no right to cut off supply from premises No. 25 and 25A, in respect of which all charges were paid.

Again, assuming that the defendant No. 2 had authority to cut off the supply under section 24, this statutory power should be exercised in good faith and reasonably. In the written statement of the defendants, it was definitely stated that defendant No. 1, when he went to the plaintiff's residential house at premises No. 25, informed the plaintiff that unless the arrears were paid off to him then and there he would cut off the supply. Plaintiff, in his evidence, denied this. The defendant No. 1 did not come to the witness box to support this allegation in the written statement. In the notices, Ex. D and T series, it was not stated that, unless the arrears of 27A, 27B, 27C, 27D were paid off, the supply to his residential house at premises No. 25 would be cut off. Plaintiff in his letter, dated 26th May, 1933, intimated to the defendant No. 2 that he had sold off his mansion in 27A, 27B, 27C, 27D to Raha Court of Wards Estate and they were liable for all current bills from that date. Assuming that the purchaser refused to pay, one would expect that the defendant No. 2 would

inform the plaintiff that, unless the arrears for other premises were paid off immediately, the supply to his residential house would be discontinued. The power to discontinue supply to a premises is evidently a power given in addition to the rights to realise the arrears by suit. Under the circumstances the defendant No. 1 should have given an opportunity to the plaintiff to pay off the arrears immediately before the connection was cut off. The learned judge has found that, if the defendant No. 1 had asked the plaintiff to pay off these arrears, the plaintiff would have at once paid them off. The defendant No. 1, instead of taking that course obtained access to the house on a representation, which he knew to be not true and did not inform the plaintiff even after entering the house that he was there to cut off the supply for non-payment of arrears of the other premises. The facts of this case show that the power of cutting off the supply was not exercised reasonably.

Further the plaintiff's case is that the connection was not cut off in accordance with the provisions of section 20 of the Act. The contention of Dr. Basak is that before cutting off the supply, the defendant No. 1 was bound to inform the plaintiff of his intention to enter the house for *the purpose* of cutting off the supply and that, if the defendant No. 1 had given him that information, he would have either paid off the arrears or refused to allow the defendant 1 to enter his house. It is argued that, if arrears were paid off, the connection could not have been cut off. If, however, plaintiff refused to allow the defendant 1 to enter the house, plaintiff would have been entitled to a further notice under section 20, clause (3). The contentions of Mr. Bose on behalf of the petitioners with regard to this matter are however two-fold:—(i) that section 20(1) applies only when the licensee or his agent wants to enter for *removing* something cut, whereas in this case, as defendant No. 1 wanted only to cut off the supply and not to remove anything he was not bound to follow the formalities prescribed by section 20(1): (ii) that, even if the defendant 1 was bound to follow

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those formalities, he was bound simply to inform the plaintiff of his intention to enter and that he was not bound to disclose the purpose of his entry.

I am unable to agree with Mr. Bose in this view of the matter. As regards the first contention, it may be pointed out that this is not the defendants' case in the written statement, in which it was definitely stated that some fuses were removed and taken away by defendant No. 1. As regards the second contention, it should be remembered that in the written statement it was definitely stated that the defendant No. 1 informed the plaintiff that he wanted to enter the premises for the purpose of cutting off the supply and that, unless the arrears were paid then and there, the supply would be immediately cut off. Again under section 20 (1) the information is to be given to the occupier. The occupier may not be in a particular case the consumer. He may not even know whether the arrears have been paid off. Notice under section 24 is served on the consumer. If the occupier is not the consumer he may refuse entry, and the licensee would then have to give a further notice under clause (3) and in the meantime the occupier may make arrangements for paying off the arrears. Again, if the licensee or his agent does not disclose the purpose, how is the occupier to know whether he has the right to enter, because the right of entry into the house is only for the purposes specified in section 20 (1)? Unless the purpose is disclosed it is also very difficult for him to decide whether the time, when the licensee or his agent wants to enter the house, is reasonable or not. Rule 108 of the statutory rules lays down that all persons entering in pursuance of the Act any building, which is used as a human dwelling, shall, in making such entry, have due regard so far as may be compatible with the exigencies of the purpose, for which entry is made, to the social usages of the occupant of the building entered. Mr. Bose also contended that it was not necessary that the real purpose should be disclosed. It is argued by him that it would be sufficient

compliance with the requirements of law, if one of the purposes mentioned in the section be disclosed. In other words, one purpose for entering the house may be disclosed, though a different purpose is really intended. This interpretation would, however, frustrate the object of the legislature. It is true that the properties mentioned in the clauses (a) (b) (c) of section 20(1) are the properties belonging to the licensee. But they are in a house in the possession of another man, which is his castle. That the licensee or his agent cannot enter the house against the wishes of the occupier is clear from the provisions contained in clause (3) of section 20. Under the said clause, if the licensee or his agent is not allowed to enter the premises, the licensee is to serve a notice and then he can cut off the supply. In fact, clause (3) was introduced into section 20 by the amending Act of 1922 to meet difficulties of the licensees in obtaining access to houses on their lawful business. The object of the amendment was to enable them to cut off the supply in the last resort. It is true that, if a dishonest consumer persists in refusing to allow the licensee or his agent to enter the premises to cut off the supply even after the notice under section 20(3), the section does not say how the supply is to be cut off. If possible, the licensee may cut off the supply from outside without entering the house. Perhaps, the object may also be achieved by starting prosecution under section 47 of the Act. But the provisions contained in the Act certainly contemplate that the supply should be discontinued as a last resort, after all the formalities laid down in the Act had been complied with. Regard being had to the formalities laid down, I am not in a position to hold that the legislature contemplated that entry into private property could be secured by misrepresentation. It was also contended by Mr. Bose that notices, Ex. E series, are notices under section 20(3) of the Act. These notices were given on 19th June, 1933. By these notices even the plaintiff was not informed that the connection of premises No. 25 and 25A would be cut off. Further, there was no attempt

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before the date, on which the said notices were given, to enter the premises in question as required by section 20(1) and consequently there had been no refusal within the meaning of section 20(3). Mr. Bose also contended that the written notices given on 19th June, 1933, contained the information as required by section 20(1). I have already pointed out that those notices do not mention even that the licensee wanted to cut off the supply from premises 25. It is also argued by Mr. Bose that, if a person has got a right to do something and if he succeeds in doing that thing by employing fraudulent means, he is not liable in tort. It is, however, not necessary for the purpose of the present case to express any opinion on this point. The legislature has given certain powers to a corporation to be exercised in a particular manner. Suffice it to say that—

It is not within the province of any tribunal to relax conditions, which the legislature thought fit to impose.

See *Herron v. Rathmines and Rathgar Improvement Commissioners* (1). The provision about cutting off the supply is in the nature of a penal provision. The object of the legislature is that the supply is to be cut off as a last resort, *i.e.*, after all the steps indicated in the Act for realization of the arrears have failed. This view of the matter was also presented in the written statement of the defendants. When the defendant No. 1 went to cut off the supply, if he had simply informed the plaintiff that he would discontinue the supply unless the arrears were paid, the plaintiff, as the Small Cause Court Judge has observed, would have paid off the arrears, and there would have been no necessity for cutting off the supply. The learned judge in one part of his judgment has observed :—

The drastic measure adopted, the stealthy severance of electric connection and bolting away from the consumer's premises was not dignified, proper and valid.

The last point urged by Mr. Bose is that plaintiff's suit being a suit for damages for breach of contract

(1) [1892] A. C. 498, 523.

and the plaintiff having by his own act brought about the injury to himself, he is not entitled to claim any damages. In view of what I have said before, I am unable to accept this contention. The suit is really a suit for damages for breach of an obligation imposed by statute. Though there was an agreement between the parties, the right to enforce the terms thereof was also made subject to the provisions of law. In view of the fact and circumstances disclosed in this case, I am not inclined to interfere in the matter. The Rules are, accordingly, discharged with costs. There will be only one hearing-fee in the two Rules, which is assessed at 3 gold *mohurs*.

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Rules discharged.

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