

CIVIL REVISION.

Before R. C. Mitter J.

SHAILA BALA RAY

1936

Feb. 3, 1936.

v.

CHAIRMAN, DARJEELING
MUNICIPALITY.*

Electricity—Minimum charge under cl. XI (A) of schedule, if leviable without written contract with consumer—Indian Electricity Act (IX of 1910), ss. 3(f), 4(3) (b), 21, 23(3) (a), (b), (c); Schs. V, VI, X, XI(A).

The power given to a licensee under cl. XI(A) of the schedule to the Indian Electricity Act of 1910 to levy minimum charges notwithstanding non-consumption of any electrical energy can only be exercised by the licensee through a contract entered into with the consumer.

Apart from contract (to the contrary) the licensee has the power to charge consumers for the electrical energy under any one of the three alternative modes specified in the sub-cl. (a) or (b) or (c) of sub-s. (3) of s. 23 of the Act.

Section 23 (3) (c) of the Act contemplates charges for the electrical energy supplied, made on the basis of consumption and does not authorise the licensee to levy minimum charges without any agreement with the consumer.

CIVIL RULE obtained by the defendant.

The material facts of the case and the arguments in the Rule appear in the judgment.

Susheel Chandra Sen for the petitioner.

Sarat Chandra Basak and *Gopesh Chandra Chatterji* for *Asita Ranjan Ghosh* for the opposite party.

Cur. adv. vult.

R. C. MITTER J. This Rule, which has been obtained by the defendant, relates to the claim of the opposite party to minimum charges for the supply of electric energy.

*Civil Revision, No. 757 of 1935, against the order of B. C. Sen, Judge, Court of Small Causes at Darjeeling, dated Mar. 30, 1935.

1936

Shalla Bala Ray

v.

*Chairman,
Darjeeling
Municipality.**R. C. Mitter J.*

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

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

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

It is hereby notified for general information that, in exercise of the powers conferred by cl. (b) of sub-s. (3) of s. 4 of the Indian Electricity Act, 1910 (IX of 1910), the Governor-in-Council is pleased to make the following amendment in cl. 5 of the Darjeeling Electric License, 1913, published under the Public Works Department Notification No. 1 M. P. 1, dated July 14, 1913:—After cl. 5, sub-s. (b) of the Darjeeling Electric License, 1913, the following shall be added, namely:—

Provided that where the total charges for energy in any year fall short of Rs. 72 per kilowatt of the total connected load in respect of any one installation connection to the licensee's distributing system, the licensee may require the consumer to pay a minimum charge for such year at the rate of

Rs. 72 per kilowatt of the total connected load of the installation and where a minimum charge is made for any such year as aforesaid, the licensee shall not charge separately for any energy consumed in respect of such installation during that period, etc.

On March 12, 1925, the municipality passed a resolution, authorising the municipality to levy minimum charges from April, 1925, in accordance with terms of the said notification. Dr. Ray died in 1926 and the defendant petitioner is his legal representative.

It is admitted by plaintiff's witness No. 1, Nikhil Chandra Sen Gupta, electrical sub-overseer of the municipality, that agreements for payment of minimum charges were taken from consumers after the introduction of the minimum charges in that municipality, but no such agreement was taken either from Dr. Ray or after his death from his legal representatives. Accordingly no contract to pay minimum charges has been pleaded by the municipality in its plaint.

In the year 1930-31 the actual consumption of "Ray Cot" was Rs. 3-15. A bill for that amount was made out by the municipality and paid by the consumer on August 17, 1932. On September 29, 1932, a further bill for Rs. 9-0-3 was made out and served on the consumer on October 17, 1932. In the said bill the sum of Rs. 12-15-3 was shown as the minimum charges for the year 1930-31 and the sum of Rs 3-15-0 which was paid by the consumer previously was deducted and a demand was made for the balance of Rs. 9-0-3. The sum of Rs. 12-15-3 would be the minimum charges according to the said Government notification. The said amount being not paid, the present suit was instituted by the municipality to recover the said sum of Rs. 9-0-3.

The defendant pleaded that as there was no contract to pay minimum charges, the suit should be dismissed. This defence has been overruled and a decree has been made by the Small Cause Court Judge of Darjeeling.

1936

—
Shaila Bala Ray

v.

*Chairman,
Darjeeling
Municipality.*—
R. C. Mitter J.

1936

Shaila Bala Ray
 v.
*Chairman,
 Darjeeling
 Municipality.*
R. C. Mitter J.

Although the amount involved in this Rule is a small one, a question of great importance arises in the Rule, and, in my judgment, the defendant is entitled to succeed in the plea taken by her. A license given by the Local Government to a person under the Electricity Act confers the right on the licensee to supply electric energy in a specified area. Certain statutory powers and duties are conferred and imposed on the licensee. These powers are given for the purpose of enabling the licensee, who undertakes a public undertaking, to construct his works, his plant, service mains, *etc.*, and to maintain them and certain duties are also imposed on him for the safety of the public or individuals. The undertaking being for public benefit, a duty is imposed on the licensee to supply energy to any person, who wants to take a supply of energy, subject to certain conditions laid down either in the body of the Act or in the schedule which is incorporated in the license, subject to any addition or modification which the Local Government may make. The licensee cannot show undue preference to any particular consumer in the matter of rates. Subject to this, he is empowered to regulate his relations by agreement with his consumers, but even here there are restrictions imposed. He cannot in this agreement with his consumers insert any condition whatsoever, but only such conditions which are consistent with the Act or his license and to which previous sanction of the Local Government had been obtained (sections 21 to 23). Subject to these restrictions, the legislation, in my opinion, intended the rights between a licensee and a consumer to be regulated by contract. Clauses VI and V respectively of the schedule cast the obligation on the licensee to supply electric energy to an applicant or a group of applicants for supply of electric energy only when the applicant or group of applicants enter into a written contract with the licensee. The only power which is reserved to the licensee by the Act in the matter of rates—a power which may be exercised by

the licensee apart from contract—is that he can charge on any one of the three alternative modes specified in cls. (a), (b) and (c) of sub-s. (3) to s. 23 of the Act and even when the licensee intends to prefer to go upon the basis of cl. (c) of that sub-section, the consumer can, by following the procedure laid down in cl. X of the schedule, compel the licensee to adopt either of the modes mentioned in cls. (a) and (b). In my judgment, cl. (c) contemplates charges made on the basis of consumption. A minimum charge is not really a charge which has for its basis the consumption of electric energy. It is really based on the principle that every consumer's installation involves the licensee in a certain amount of capital expenditure in plant and mains on which he is to have a reasonable return. He gets a return when energy is actually consumed, in the shape of payments for energy consumed. When no such energy is consumed by a consumer, or a very small amount is consumed in a long period, he is allowed to charge minimum charges by his license, but these minimum charges are really interest on his capital outlay incurred for the particular consumer. Clause (c) of sub-s. (3) of s. 23, accordingly, in my judgment, does not authorise a licensee to levy minimum charges without any agreement with the consumer. I also fail to see how cl. (c) can also be invoked by the municipality to support its claim for minimum charges as the Local Government have not exercised their powers under that clause by the aforesaid Notification issued by it. In my judgment, cl. XI (A) of the schedule only empowers or authorises the licensee to levy minimum charges. That clause was inserted by the amendment of 1922 to remove doubts on the authority of the licensee to enter into contracts with intending consumers with terms for payment of minimum charges. But the power, in my judgment, can only be exercised by a licensee through a contract entered into with an intending consumer. The Local Government, by the issue of the aforesaid notification, has only

1936

Shaila Bala Ray

v.

*Chairman,
Darjeeling
Municipality.**R. C. Mitter J.*

1936
Shaila Bala Ray
 v.
*Chairman,
 Darjeeling
 Municipality.*
R. C. Mitter J.

amended the license of the municipality and has simply given it the power or authority to enter into such contracts with consumers for levying minimum charges. The view I am taking is not in my judgment inconsistent with the decision in the case of *The Burdwan Electric Supply Company v. Kumudkumari Chaudhuri* (1), a case which did not deal with minimum charges. As there was no such contract either with Dr. Ray or his legal representative, the municipality cannot sue for minimum charges.

The Rule is accordingly made absolute. The judgment and decree of the Small Cause Court are set aside. The petitioner must have the costs of the lower Court. There will be no costs in the Rule.

Rule absolute.

A. K. D.

(1) (1931) I. L. R. 58 Cal. 1458.