

(1952) 08 P&H CK 0011
In the Punjab And Haryana At Chandigarh
Case No : First Appeal No. 5-E of 1947

Amin Chand Bhola Nath

APPELLANT

Vs

The Jullundur Electric Supply Co. Ltd.

RESPONDENT

Date of Decision : 27-08-1952

Acts Referred:

Contract Act, 1872 — Section 73, 74
Electricity Act, 1910 — Section 22

Citation : AIR 1953 P&H 166

Hon'ble Judges : Soni, J;Bhandari, J

Bench : Division Bench

Advocate : Som Datt Bahri and D.K. Kapur, for the Appellant; Guru Datt Sehgal and Shamair Chand, for the Respondent

Final Decision : Dismissed

Judgement

Bhandari, J.—The, only point for decision in the present case is whether the plaintiffs are entitled to recover from the defendant-company a sum of Rs. 7,897/6/- which was paid by them under protest in respect of electric current alleged to have been consumed by them.

2. On the 10-3-1941 the Jullundur Electric Supply Company, Limited, Jullundur, (hereinafter referred to as the Company) entered into an agreement with Messrs. Amin Chand-Bhola Nath, Merchants, Jullundur, (hereinafter referred to as the plaintiffs) for the supply of electrical energy to their premises situate on the Tanda Road at Jullundur. The principal terms of the agreement were: (1). The Company shall furnish to the consumer a constant supply of electrical energy on and from the date on which "the premises shall be connected with the Company"s distributing mains". (2) The Company shall draw the high tension and erect a new sub-station in the premises of the consumer. (3) The consumer guaranteed a minimum consumption of 1,60,000 units in two years and the Company agreed in that case to charge the plaintiffs at the rate of Re. -/1/3 per unit for all energy consumed on the new connection. (4) In case the plaintiffs

failed to consume the guaranteed 1,60,000 units in the period of two years from the date of the agreement they were to pay to the Company the cost of 1,60,000 units at the stipulated rate of Re. -/1/3 per unit (5) The consumer was not to be at liberty, save with the consent of the Company, to determine the agreement before the expiration of two years from the date of commencement of the supply of the electrical energy. (6) The full supply under the agreement was to commence as soon as the sub-station required to be put was ready for use, but the Company was to arrange for as much load as was possible from the existing mains even prior to the erection of the sub-station.

3. The plaintiffs paid all the amounts which were due in respect of energy which was actually consumed. On the 19th June 1944 the Company addressed a communication (Exhibit P. 5) to the plaintiffs requesting the latter to arrange payment within a period of 15 days from the receipt of the letter of a sum of Rs. 7,424/12/3 in respect of 95,037 units of electrical energy less consumed by the plaintiffs up to the 8-1 1944 from the guarantee of 1,00,000 units. The plaintiffs objected to the payment of this sum, but as the Company threatened to cut off the supply under the provisions of Section 24(4), Electricity Act, 1910, the plaintiffs sent a cheque, for the requisite amount on 23-1-1945 making it quite clear that the payment was being made under protest. On 5-3-1946 the plaintiffs brought the suit, out of which the appeal has arisen, for the recovery of a sum of Rs. 7,424/ 12/3 with interest at the rate of 6 per cent, per annum from the 24th January 1945 to the date of institution of the suit and future interest at the rate of 6 per cent, per annum from the date of institution of the suit till the realization of the amount. The trial Court having dismissed the plaintiffs' suit, the latter have come to this Court in appeal, and the question for this Court is whether the Court below has come to a correct determination on points of fact and law.

4. The first and perhaps the most important point for decision is whether the Company was debarred) for the reasons mentioned in paragraph 11 of the plaint, from recovering the amount in question. I shall proceed to deal with each of these several grounds in seriatim:

5. The first ground is that the conditions about the minimum guarantee and the default were obtained by coercion and undue influence or threats of refusal to supply the energy. It is admitted that before the execution of the agreement on 10-3-1941 the plaintiffs were receiving electrical energy from the low tension mains of the Company. Sometime in the year 1940 they expressed a desire to obtain a larger quantity of electrical energy. As the increased demand could not be met from the existing mains, the Company agreed to provide the energy by drawing high tension lines from the power house and the construction of a new substation which was to be situated on land belonging to the plaintiffs on the Tanda Road.

Both the parties having agreed to the terms, a formal agreement was executed on 10-3-1941 by which the plaintiffs agreed to purchase and the Company to sell the required amount of electrical energy. The terms given to the plaintiffs appear

to be more than reasonable for the Company agreed to supply electrical energy at the low rate of Re. -/1/3 per unit. There is not an iota of evidence on the file to justify the conclusion that the conditions about the minimum guarantee and default were obtained by coercion and undue influence or threats of refusal to supply the energy in question. Even the plaintiff himself did not allege in his statement that the agreement was induced by threats, coercion or undue influence.

6. The second ground is that the conditions appearing in the agreement were nominal, were not intended to be enforced and were entered merely "in terrorem": This objection appears to me to be wholly untenable. The plaintiff Lala Bhola Nath alleges that the condition that payment would be made for the stipulated quantity of energy was incorporated in the agreement so that sanction for the supply of electrical energy might be obtained from Lahore, but that the real condition was that the plaintiffs were to pay only for the electrical energy actually consumed by them and not for the electrical energy agreed to be consumed. The uncorroborated testimony of an interested witness like the plaintiff cannot in my opinion be held to discharge the heavy onus which rested on the plaintiffs to establish that the terms which were reduced into writing and were incorporated in a formal document were not intended to be enforced and were merely nominal. On the other hand, it seems to me that the fact that the Company agreed to provide high tension lines from the Power House, and to construct a new sub-station on the Tanda Road and the fact that they agreed to supply electrical energy at reduced rates appear to indicate that the Company was anxious to be assured of a minimum supply of electrical energy. If that supply was not guaranteed it was not worth their while to enter into an agreement which was likely to involve them in the expenditure of a considerable sum of money.

7. The third objection is that the conditions are vague, indefinite and contradictory. Clause 5 declares that if the consumer fails to consume the guaranteed 1,60,000 units during the period of two years "from the date of the agreement" he would be liable to pay to the Company the cost of 1,60,000 units at the stipulated rate of Rs. -/1/3 per unit. Clause 15 provides that the full supply "shall commence as soon as the substation required to be put is ready for use". The agreement was executed on 10-3-1941, the new sub-station was constructed on 17-4-1941, the first connection was given on 4-6-1941, the second on the 5-12-1941 and the third on 5-1-1942. It is contended on behalf of the plaintiffs that the precise date from which the period of two years was to commence has not been indicated. Was this period to commence from 10-3-1941 when the agreement was executed, or from 17-4-1941 when the new sub-station was constructed, or from 4-6-1941 when the sub-station was energised, or from 5-1-1942 when the full supply of electrical energy was taken by the plaintiffs? The trial Court came to the conclusion that "the date of the agreement" to which a reference has been made in clause 5 refers not to the date of execution of the agreement but to the date on which the Company was to make the full supply

available to the plaintiffs.

This conclusion appears to be supported by Clause 1 of the agreement which provides that the company shall furnish to the consumer and the consumer shall accept at premises on and from the date on which the said premises shall be connected with the Company's distributing mains a constant supply of electrical energy for the purposes of his use and up to the maximum specified and under the conditions laid down in the agreement. As a constant supply up to the maximum load specified in the agreement could not be made available until after the sub-station had been constructed and energised it is obvious that the date on which the period of two years was to commence was the date on which full supply was made available from the new sub-station. The statement Exh. D. 28 concerning the number of units supplied to the plaintiffs from June 1941 to March 1943 shows that 4,021 units were supplied from connection No. 3618 connected on 4-6-1941, 631 units were supplied from connection No. 3764 connected on 5-12-1941 and 43,567 units were supplied from connection No. 3793 connected on 5-1-1942.

The total number of units consumed from these three mains aggregate to 48,209 units. If the period of two years is deemed to commence from 4-6-1941 when the first connection was given the plaintiffs would have had to pay for 1,11,791 units (1,60,000 units less 48,209 units equal to 1,11,791 units). The Company has however charged for only 95,037 units as it has counted two years not from June 1941 when the sub-station was energised but from 5-1-1942 when the last of the three above connections was taken and when the full working commenced. As the Company has given the maximum advantage to the plaintiffs it is not open to them to complain that the Company were unfair in their dealings or took undue advantage of the position of the plaintiffs. It has been argued on behalf of the Company that if no guarantee had been given by the plaintiffs it would not have gone to the trouble and expense of constructing high tension lines from the Power House and a new sub-station.

8. The most important point on which the parties have been at variance is in regard to the principles which should, be followed in awarding damages in the present case, it is argued on behalf of the Company that the plaintiffs guaranteed willingly and of their own accord to consume a certain quantity of electric energy, that this part of the agreement is binding upon them, that the Court must hold the parties to their contract and that it must award the maximum damages as provided for in the contract. The plaintiffs, on the other hand, contend that as the parties have done nothing more than break a contract the utmost that the Company can claim is reasonable compensation in accordance with the provisions of Sections 73 and 74, Contract Act.

9. The proviso to Section 22, Electricity Act, declares that no person shall be entitled to demand from a licensee a supply of energy for any premises having a separate supply unless he has agreed with the licensee to pay to him such minimum annual sum as will give him a reasonable return on the capital

expenditure, and will cover other standing charges incurred by him in order to meet the possible maximum demand for those premises, the sum payable to be determined in case of difference or dispute by arbitration. The provisions of Section 22 and Clause VI of the Schedule make it quite clear that It is open to a licensee to refuse to supply electrical energy (a) where the person demanding the supply has a separate supply and has not agreed to pay the licensee the required minimum charge (Section 22); (b) where the person demanding the supply has not tendered to the licensee the required contract together with the security asked for and also has not paid the service charges (Clause VI (1) first proviso); and (c) where the distributing main from which the supply is demanded is fully loaded or where by complying with the requisition, the loss of pressure on that account will seriously affect the efficiency of the supply to other consumers in the vicinity (clause VI (1) fourth proviso).

10. The object which the Legislature had in view in enacting the Electricity Act has been set out with admirable clarity by Mitter J. in - *Saila Bala Roy and on her death Malti Rose Vs. Chairman, Darjeeling Municipality*, The learned Judge-observes as follows:

"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 special 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 his 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 legislature in my opinion intended the rights between a licensee and a consumer to be regulated by contract".

11. Subject to the provisions of the Electricity Act, 1910, and the rules made thereunder, a contract for the supply of electrical energy is regulated by the same rules, and is as binding on the parties, as any other contract. It follows as a consequence that if one party fails to fulfil without adequate excuse, its part of the contract, it is liable to pay damages to the other.

12. But, what is the rule which regulates the assessment of damage in a case of this kind? Although ordinarily it is the duty of a Court to give effect to each and

every term of a contract, it is an accepted principle of law, based as it is on broad grounds of public policy and principles of natural justice, that when an action is brought for the enforcement of an agreement in which a penal sum is named for the non-performance of a covenant, the aggrieved party is not entitled to receive the whole sum but only a reasonable compensation. This is obviously a commonsense provision. Contracts are often made in which the parties agree to the payment of a large sum of money even if a minor term of the contract is broken. Stipulations of this kind result in considerable hardship to the party who has advertently or otherwise broken the contract and it is the constant endeavour of Courts to discover whether a certain provision is a penalty or liquidated damages. The Contract Act does not draw a distinction between the two forms of damages and states merely that the Party complaining of the breach is entitled to receive from the party who has broken the contract "reasonable compensation" for the breach.

Although the expression "liquidated damages" does not appear in the Indian law of Contracts, the Courts often allow the sum named in the contract on the ground that when the contract was entered into the parties themselves had made an estimate of the extent of injury which the breach of the contract was likely to cause, provided the amount so fixed is a reasonable forecast of just compensation for the harm that is caused by the breach and the harm that is caused by the breach is one that is incapable or very difficult of accurate estimation. When the loss caused by a breach of contract cannot be accurately or reasonably calculated in money and the estimate of the Court is not likely to be more accurate than the advance estimate of the parties, it is only reasonable that the Court should accept the estimate of the parties and thereby save the time of the Courts, parties and witnesses and reduce the expenses of litigation. In -- "Lekh Singh v. Dwarka Nath AIR 1929 Lah. 249 (B) a Division Bench of the Lahore High Court presided over by Sir Shadi Lal held that where the parties to a contract have mentioned a fixed sum as damages in case of breach, then ordinarily, unless there is something to show that the amount is exorbitant or unconscionable, the Court would award that amount as damages for breach of contract.

13. Section 22 of the Electricity Act appears to have provided an adequate machinery for determining with precision the minimum annual sum which will give licensee a reasonable return on the capital expenditure and other charges, for it is stated clearly and in unambiguous language that if a dispute arises between the licensee and the consumer in regard to this amount, the matters in controversy should be referred to and decided by an arbitrator. If the licensee and the consumer come to a mutual agreement in regard to this sum and the matter is not referred to an arbitrator, the Court is entitled to presume that the figure has been arrived at correctly. It will thus be wholly unnecessary for the Court to intervene or to reassess ""reasonable compensation" although technically it has power to do so under the relevant provisions of the Contract Act.

It has been held in certain cases which have arisen in the United States of America that where the consumer did not take delivery of, or use the electrical energy covered by the contract, the company is entitled to recover the minimum charge which the consumer agreed to pay, and that a statute providing that the measure of damages on breach of an agreement of sale of personal property is the difference between the net proceeds received on a resale of the property and the contract price is not applicable (see 29 Corpus Juris Secundum, Section 28 and -- "San Joaquin Light and Power Corporation v. Costaloupes 274 P. 84; 96 Cal App 322 (C)). In the present case the monetary value of the loss accruing to the Company from an infringement of the contract was calculated at the time of making the contract the correctness of this estimate was not challenged by either of the parties, the matter was not referred to an arbitrator as required by Section 22 of the Electricity Act, the amount fixed by the parties was a reasonable forecast of the harm that was likely to be caused by the breach, and, having regard to the expenditure incurred by the Company in preparation for the performance of the contract, the harm that has been caused by the breach cannot be calculated with precision. On these grounds alone, I would uphold the claim preferred by the Company and dismiss the plaintiffs' suit.

14. But there are other grounds also for making the same order. When a person enters into a contract with another he usually does so with the object of making a profit for himself. If the contract is broken, he is entitled to bring an action either for damages or in certain cases for specific performance of the contract. The measure of damages is the pecuniary value of the performance promised by the wrong-doer less the costs of the performance by the injured party. In other words, the injured party is entitled to claim compensation for the net amount of the loss caused and the gains prevented by the breach of the contract. The rule as to the expenditure incurred by the injured party has been stated thus:

"The amount of the plaintiff's expenditure, reasonably made in performance of the contract or in necessary preparation therefor, is included in compensatory damages, with the, following limitations:

- (a) Such expenditures are not recoverable in excess of the full contract price promised by the defendant.
- (b) Expenditures in preparation are not recoverable unless they can fairly be regarded as part of the cost of performance in estimating profit and loss.
- (c) Instalments of the contract price already received and the value of materials on hand that would have been consumed in completion must be deducted.
- (d) If full performance would have resulted in a net loss to the plaintiff, the amount of this loss must be deducted, the burden of proof being on the defendant."

15. Now, what exactly was the Company's expenditure reasonably made for the performance of the contract or in necessary preparation therefor? According to

Mr. Mohan Lal, Electrical Engineer, to whose statement, a reference has already been made, and the documents which have been produced in this case, the income and expenditure of the Company in connection with this contract was as follows:

INCOME: Price of 1,60,000 units at 15 pies per unit Rs. 12,484/- The amount which the Company was required to pay to the Hydro Electric Branch of the Punjab Government at 9.8 pies per unit Rs. 8,000/- Gross profit to the Company in a period of two years Rs. 4,484/- Gross profit for one year Rs. 2,242/- EXPENDITURE: Capital expenditure for the provisions of mains and the construction of a new sub station Rs. 14,170/-/4 Three switch board attendants at Rs. 30/- or Rs. 35/- per head per month for two years -- 3x30x12x2 Rs. 2,160/- Or per year Rs. 1,080/- DEPRECIATION: At the rate of 10 per cent, to 15 per cent.

16. It will be seen from the above that the Company was to make a gross profit of Rs. 2,242/- per year against out of pocket expenses of Rs. 1,080/- per year and the capital expenditure of over Rs. 14,000/-. The Company did not ask the plaintiffs to pay the costs amounting to Rs. 8,000/- of the service line although this is a legitimate charge under Clause 6 of the schedule to Electricity Act. The expenditures in preparation mentioned above were clearly a part of the cost of performance. I am of the opinion that having regard to all the circumstances of the case the sum of Rs. 7,000/-odd which was paid by the plaintiffs under protest must be regarded as reasonable compensation for the loss or damage caused by the plaintiffs who were clearly responsible for having broken the contract.

17. The objections raised by the learned counsel for the plaintiffs may now be disposed of. It is contended in the first place that although it was the duty of the Company to prove the damage that was sustained by it by reason of the failure of the plaintiffs to fulfil their part of the contract, they have failed to show that they have lost a sum of Rs. 7,897/6/-. The Company has produced oral and documentary evidence which has been examined in an earlier paragraph and which shows the extent of the damage caused by the failure of the defendants to fulfil their part of the contract.

18. The second objection is that the expenditure of Rs. 14,170/-/4 which is said to have been incurred in connection with the construction of the sub-station was not incurred for the benefit of the plaintiffs alone but for the benefit of all the consumers residing in or carrying on business on the Tanda Road and the neighbouring localities. This objection is wholly devoid of force. L. Madan Lal, Electrical Engineer of the Company, deposes that prior to the construction of the new sub-station electric energy to consumers on the Tanda Road was supplied by means of low tension lines from the old station or from the Grand Trunk Road station. When the plaintiffs asked for the supply of a concentrated load of 133 Kilowatts of electric energy which could not be transmitted from the existing low tension lines or from the existing sub-stations it became necessary to draw high

tension lines from the power house to the sub-station and to construct a new substation at an aggregate cost of about Rs. 14,000/-. Three switch board attendants each drawing a salary of Rs. 30/- or Rs. 35/- per mensem and working in shifts of eight hours were engaged. The witness states that the consumers who were receiving energy from the old sub-stations were connected with the new sub-station not because the old sub-station was inadequate for their needs but because a new sub-station had to be constructed for the benefit of the plaintiffs and it was considered convenient to connect the other consumers with the new sub-station.

The witness states on oath that if the plaintiffs had not demanded energy exceeding 25 H.P. at a particular point and had not agreed to guarantee a minimum consumption, the Company would not have gone to the trouble and expense of constructing a new sub-station. No reason has been shown why the statement of this witness which is supported by documentary evidence should not be accepted at its face value. The fact that other consumers are also deriving benefit from this sub-station is purely incidental. If the new sub-station had not been constructed these consumers would have been served from the sub-stations which were already in existence. So long as the Company watered to the demands of the plaintiffs, it was not open to them to complain that certain other consumers were also connected to the new sub-station.

19. The third objection is that the Company included in its account of expenditure certain items concerning the construction of the substation which were spent even before the agreement was executed on 10-3-1941. This is so, but it must be remembered that the plaintiffs had applied for the supply of a large quantity of electrical energy and it was in compliance with their request that the new sub-station was constructed. The mere fact, therefore, that the formal agreement was executed at a later date would not make any difference provided it can be established, as has been established in the present case, that the construction of the substation was taken in hand after the plaintiffs had applied to the defendant Company.

20. The fourth objection that no material loss or damage has been caused to the Company by reason of the failure of the plaintiffs to fulfil their part of the contract is equally untenable. The Company undertook to draw high tension lines and to construct a new sub-station purely for the benefit of the plaintiffs and on the distinct understanding that a minimum consumption of energy would be guaranteed by them. The Company is thus entitled to reasonable compensation for the loss sustained by them.

21. The fifth objection is that as the Company was purchasing energy from the Punjab Government at 9.8 pies per unit and was selling it to the plaintiffs at 15 pies per unit it was deriving a benefit of 5.2 pies per unit and that it is inequitable that it should require the plaintiffs to pay at the rate of 15 pies per unit! particularly when the plaintiffs have not used the energy for which the excess payment was made. There is a certain amount of force in this contention

but the contract must be read as a whole and adequate compensation must be given for the capital expenditure, of Rs. 14,000/- incurred by the Company. The plaintiffs had guaranteed to consume a particular quantity of energy and can be required to pay compensation not exceeding the price of the energy in respect of which the guarantee had been given.

22. Sixthly, it is contended that the Company is not justified in including any items of expenditure and overhead charges which are said to amount to 50 per cent. In other words, the learned counsel for the plaintiffs contends that half of 5.2 pies should be excluded. There is no reason why reasonable overhead charges should not be taken into account.

23. The Company appears to me to have been most reasonable in its demands. It could have insisted on the fulfilment of the minimum guarantee clause with effect from 4-6-1941 when the first connection was given, but it actually claimed fulfilment with effect from 5-6-1942 when the full supply of electric energy was taken by the plaintiffs. Again, the Company could have demanded Rs. 8000/- on account of the cost of service lines but no such demand was made. Both these concessions have resulted in a considerable saving to the plaintiffs and they cannot be allowed to complain that the Company has been unfair in its dealings with them.

24. The allegation that the breach of the contract, if any, on the part of the plaintiffs was due to causes beyond their control cannot bear a moment's scrutiny. While there can be no manner of doubt that controls had been imposed by Government on the supply of iron and coal and that transport facilities were not readily available, there is no evidence on the record to show the quantities which were required by the plaintiffs and the quantities which the plaintiffs were permitted to purchase. The evidence produced by the witnesses is hopelessly vague and unconvincing and it is impossible to determine whether the failure on the part of the plaintiffs to make use of the requisite amount of electrical energy was due to their failure to obtain iron and coal. L. Bhola Nath plaintiff admitted that stock registers of iron and coal were being maintained by his firm, but those registers have not been produced. I accordingly find myself in complete agreement with the trial Court that there is no force in the objection.

25. A faint-hearted argument was addressed to us in regard to Section 24, Electricity Act, and it was contended that it was not within the competence of the Company to disconnect or to threaten to disconnect the premises of the defendants on the ground only that the amounts due to the Company under the contract had not been paid. It was accordingly argued that the plaintiffs were entitled to recover the money which they had been compelled to pay on pain of being disconnected. This point has been discussed at some length in the judgment of the trial Court. On 19-6-1944 the Company addressed a communication to the plaintiffs requesting them to arrange payment of the arrears within a period of 15 days from the receipt of that letter. The plaintiffs took no notice of this communication and the Company accordingly referred the

matter to the Inspector. The latter wrote to the plaintiffs and asked them to make a deposit in accordance with the Electricity Rules but they made no reply and on 28-10-1944 the Inspector again asked them to make the deposit within a period of seven days failing which he would inform the Company that they would be within their rights to take action u/s 24(2), Electricity Act, (vide Ex. P. 2).

The plaintiffs replied to this letter on 4-11-1944 and enclosed a cheque for Rs. 7,424/12/3, but pointed out that the provisions of Section 24(2) were not applicable to the case. On the 22nd November the Company sent a notice demanding their dues and threatening disconnection if payment was not made by the 30th November. On 30th November, the plaintiffs informed the defendant that they had already sent a cheque for the amount under protest to the Electrical Inspector. On 22-1-1945, the Inspector returned the cheque with his letter Ex. P. 1 in which he accepted the contention of the plaintiffs that the relations between the parties were regulated by the agreement Ex. D. 30 and not by the Electricity Act. The plaintiffs got back the cheque and sent it to the defendant Company.

The trial Court has come to the conclusion, with which I find myself in agreement, that although the relations of the parties are regulated by the agreement, clause 11 of the agreement makes the provisions of the Act a part of the agreement. This clause runs as follows:

"This agreement shall" be read and construed as subject in all respects to the provisions of the Jullundur Electric License 1921, and to the provisions of the Indian Electricity Act, 1910, and of any modification or re-enactment thereof for the time being in force thereunder so far as the same respectively may be applicable. The supply of electrical energy under this agreement is subject to the following among other provisions of law, namely: "The company shall be entitled to discontinue such supply" * * * ."

26. In view of the provisions of Clause 11 of the agreement it is not in my opinion open to the plaintiffs to contend that the Company acted in excess of the powers conferred upon them in threatening to discontinue the supply of electrical energy. No Court is bound by an interpretation placed by an Inspector in regard to the terms of an agreement.

27. The only other point on which arguments were addressed to us was that in the event of the plaintiffs' claim being decreed they should be awarded future interest at the rate of 6 per cent per annum from the date of the institution of the suit till the realization of the amount. This question, however, does not arise in the present case as I find that there is no substance whatsoever in the claim preferred by the plaintiffs in regard to the refund of the money which was paid by them under protest to the Company.

28. I am of the opinion that the Company was fully justified in recovering the money which it has recovered (a) because the parties had voluntarily and of their own accord agreed upon the minimum guarantee term and had themselves made

an estimate in advance in regard to the monetary value of the loss and (b) because the Company had incurred a heavy expenditure) in preparation for the performance of the contract. The order of the trial Court must therefore be upheld and the appeal dismissed with costs. I would order accordingly,

Soni, J.

29. I agree.