

(1971) 11 RAJ CK 0015
In the Rajasthan High Court
Case No : First Appeal No. 21 of 1968

Firm Sadul Shahr Cotton Ginning and Pressing Factory	APPELLANT
Vs	
The Rajasthan State Electricity Board	RESPONDENT

Date of Decision : 12-11-1971

Acts Referred:

Electricity (Supply) Act, 1948 — Section 18, 82
Electricity Act, 1910 — Section 42, 56

Citation : AIR 1972 Raj 40 : (1972) RLW 1

Hon'ble Judges : C.B. Bhargava, J

Bench : Single Bench

Advocate : L.R. Mehta, for the Appellant; M.C. Bhandari, for the Respondent

Final Decision : Allowed

Judgement

C.B. Bhargava, J.—This appeal is directed against the judgment and decree dated 10th February, 1968, of the Senior Civil Judge, Ganganagar.

2. Firm Sadul Shahr Cotton Ginning and Pressing Factory Sadulshahr whose supply of electricity for the purpose of running the factory remained disconnected from 28th March, 1965, to 15th April, 1965, instituted the present suit against the Rajasthan State Electricity Board (hereinafter to be referred as the Board) for recovery of Rs. 10,993/- as damages. The suit is founded both on tort and on contract, but the lower court has found that no agreement was executed between the parties, although plaintiff's case was that it had submitted the agreement to the defendant but the same was not returned after completion. The ground on the basis of contract is not pressed in this Court. It was also alleged in the court below that the disconnection was due to the malicious action of Shri Prishan Singh, Assistant Engineer of the Board, who wanted to disconnect the plaintiff's supply of energy on 8-2-1965 also but it could not be done then due to the intervention of the Additional Chief Engineer who happened to be there on that date. However supply of energy was disconnected on 28th March, 1965, without any legal justification. Due to the aforesaid disconnection, the

plaintiff could not fulfil the commitments which he had made with third parties and thus suffered a loss of Rs. 10,993/-.

3. It is not disputed that in the first instance, plaintiff was supplied 100 H. P. energy which was increased to 125 H. P. on 16-1-1965. Though the case of the defendant in the lower court was that connection was given to the plaintiff temporarily on his request for testing the machinery, there is no substance in this plea because in paragraph 14 of the written statement it is admitted that the power supplied to the plaintiff was given to run the factory. Again this plea is not borne out by the letters which were exchanged between the parties when connection was given.

3-A. It is admitted that the plaintiff was disconnected from 28th March, 1965, to 15th April, 1965, though it is denied that it was due to any malicious act on the part of the employees of the Board including Shri Prishan Singh. It was also denied that the plaintiff suffered damages due to the disconnection. The plea of the defendant is that the disconnection was effected in order to make it convenient for the railway authorities to inspect the over-head electric crossing and the overhead electric crossing could not have been energised unless the permission of the railway authorities was obtained. The railway authorities characterised the action of the Board in energising the over-head high tension crossing as unauthorised and so the Divisional Superintendent, Northern Railway Bikaner demanded that the crossing should be de-energised for inspection. It was also stated that Section 82 of the Electricity (Supply) Act, 1948, is a bar to the suit.

4. The trial court framed 15 issues of which issues Nos. 2, 3, 4, 5, 6, 8, 10 and 14 are as follows:--

"2. Whether the Deft. sanctioned 125 H. P. power and a contract was executed between the parties to continue the same for 5 years ?

3. Whether Prishan Singh Assistant Engineer with a mala fide intention to cause harassment to the plaintiff discontinued the power supply to the plaintiff factory on 28-3-65 ?

4. Whether the plaintiff factory remained closed for 19 days due to the illegal disconnection of power by defendant ?

5. Whether the plaintiff has suffered Rs. 10,993/- as damages and loss and the plaintiff is entitled to recover the same from the Rajasthan State Electricity Board Deft.?

6. Was there any contractual or legal obligation on the defendant to supply power to the plaintiff without interruption ?

8. Whether the defendant is liable for the mala fide actions of Prishansingh A. E. N.

10. Whether the suit is barred by Section 82 of the Electricity (Supply) Act, 1948?

11. Whether the suit is barred by Section 56 of the Indian Electricity Act ?"

5. After trial, the suit was dismissed because of the findings on issues Nos. 2, 3, 4, 6 and 8 adverse to the plaintiff. The main reason which influenced the court to dismiss the plaintiff's suit appears to be from the judgment that there was no contractual obligation between the parties and that no malice could be attributed to Shri Pri-shan Singh, Assistant Engineer of the Board. The question that there was a breach of the statutory obligation also on the part of the Board giving rise to the present action was not considered by the lower court. No doubt the court found that the suit was not barred either u/s 82 of the Electricity (Supply) Act of 1948 or u/s 56 of the Indian Electricity Act, 1910.

6. In this Court it is conceded that the claim is not sustainable for breach of contractual obligation because plaintiff has not succeeded in proving the agreement. The other ground that the disconnection was due to malicious act of Shri Prishan Singh is also not pressed in this Court. Here the main point which has been canvassed is whether the plaintiff can bring an action for damages for breach of statutory duty when the Electricity Act lays down a penalty for non-performance of that duty.

7. The first controversy on this question is whether there is any obligation on the Board to supply energy to the plaintiff and if no such obligation exists, no question of its breach can arise. It is admitted on behalf of the appellant that Section 22 of the Indian Electricity Act, 1910 relating to the obligation of the licensee to supply energy is not applicable to the Board as is provided u/s 26 of the Act of 1948, which is as follows:--

"26. Board to have powers and obligations of licensee under Act 9 of 1910.-

Subject to the provisions of this Act, the Board shall, in respect of the whole State, have all the powers and obligations of a licensee under the Indian Electricity Act, 1910 (9 of 1910), and this Act shall be deemed to be the licence of the Board for the purposes of that Act.

Provided that nothing in Sections 3 to 11 Sub-sections (2) and (3) of Section 21 and Section 22, Sub-section (2) of Section 22A and Sections 23 and 271 of that Act or in Clauses I to V, Clause VII and Clauses IX to XIII of the Schedule to that Act relating to the duties and obligations of a licensee shall apply to the Board:

Provided further that the provisions of Clause VI of the Schedule to that Act shall apply to the Board in respect of that area only where distribution mains have been laid by the Board and the supply of energy through any of them has commenced."

8. It would be seen that by virtue of Section 26, the Board in respect of the whole State have all the powers and obligations of a licensee under the Indian Electricity Act, 1910, but certain provisions of the Act of 1910 including Section 22 is not applicable to the Board. However, the second proviso to Section 26 makes the provisions of Clause (6) of the Schedule of the Act of 1910 applicable

to the Board in respect of that area only where distribution mains have been laid by the Board and the supply of energy through any of them has commenced. Mr. Bhandari, learned counsel for the respondent vehemently urged that Clause (6) of the Schedule can be applicable to the Board only if the conditions laid down in the proviso are satisfied. In the present case there is no material to hold that distribution mains had been laid by the Board and the supply of energy through any of them has commenced. In my view, it is too late in the day to urge that provisions of Clause (6) of the Schedule to the Act of 1910 are not applicable to the Board on the aforesaid grounds. It is not in dispute that the energy was supplied to the plaintiff through the mains. Although the plaintiff had based his cause of action on breach of statutory obligation also, but it was not pleaded by the defendant that Clause (6) of the Schedule was not applicable to it because the distribution mains had not been laid by it.

9. In firm Nagori Cotton Ginning and Pressing Factory Sadulshahr v. Assistant Engineer, Rajasthan State Electricity Board, Shri Ganganagar (Civil Writ Petn. No. 97 of 1965 D/- 8-9-1965 (Raj)) it was also held by a Division Bench of this Court that Clause (6) of the Schedule of the Act of 1910 is applicable to the Board, and u/s 18 of the Act of 1948 it is the bounden duty of the Board to supply electricity to the persons who are in genuine need of it. Section 18 which describes the general duties of the Board and on which reliance is placed by the plaintiff, in so far as it is relevant is as under:--

18. General Duties of the Board: Subject to the provisions of this Act, the Board shall be charged with the general duty of promoting the coordinated development of the generation supply and distribution of electricity within the State in the most efficient and economical manner, with particular reference to such development in areas not for the time being served or adequately served by any licensee, and without prejudice to the generality of the foregoing provisions it shall be the duty of the Board-

(a)

(b)

(c) to supply electricity as soon as practicable to any other licensees or persons requiring such supply and whom the Board may be competent under this Act so to supply."

10. Thus there is no room for doubt that Section 18 read with Clause (6) of the Schedule to the Act of 1910 makes it incumbent upon the Board as licensee to supply electricity to persons requiring such supply provided the Board is competent to supply it under the Act.

11. Now the second question which is rather ticklish relates to the maintainability of a civil action for the breach of the statutory duty when u/s 42 of the Act of 1910 a penalty is provided for illegal or defective supply or for non-compliance with the order.

12. At one time, the view prevailed that where a statutory duty is imposed upon a person or body of persons and that duty is broken, liability to the penalty under the statute is of course Incurred and that an action in tort may be brought by any one who is injured by its breach. But with the vast increase in the legislative activity, it was thought that the above rule might lead to unjust results in creating liabilities wider than the legislature might possibly have intended. In *Atkinson v. Newcastle Waterworks Co.* (1877) 2 Ex D 441 the old rule was doubted so strongly as to amount to its disapproval. Where by a statute itself a common law right is extinguished, there can be no doubt that there is no separate remedy by a civil action. But where the statute does not expressly or by necessary implication extinguish the common law right, there is no presumption that the civil remedy is barred. The difficulty arises in cases where the statute provides a penalty for breach of the duty and is silent on the question whether a civil remedy for breach is intended to exist and the general rule which is followed is this: In each case one must look to the whole statute and all its provisions as to what was the intention of the legislature. This is, however, well settled that when a duty is imposed for the benefit of particular persons, there arises a correlative right in those persons who may be injured by its contravention which is sometimes called the absolute liability or strict liability in tort. Instances of this kind can be found in Acts like the Factory Act and Mines Act etc. Even regarding the rule that whether a right of action exists in any given case must depend upon the construction of the statute in question, it was observed by Lord du Parc in *Cutler v. Wandsworth Stadium Ltd.* 1949 AC 398 p 411 that "it can scarcely be maintained that this is a satisfactory situation." Winfield on Tort Eighth Edition at page 134 says:

"In the prevailing state of the law, therefore, there is little if any principle beyond the vague invocation of the intention of Parliament, but there have been numerous decisions on particular statutes so that in many cases it is already settled that a right of action does or does not exist." Professor Glaville Williams in the Article "The effect of penal legislation in the Law of Tort" published in the "Modern Law Review" Vol. 23 page 233 has summarised the position thus:

"The present position of penal legislation in the civil law may be over-simplified into two generalisations. When it concerns industrial welfare such legislation results in absolute liability in tort. In all other cases it is ignored. There are exceptions both ways but, broadly speaking, that is how the law appears from the current decisions."

In the same article, the learned Professor has suggested a more fruitful line of approach to the problem of introducing statutory duty into law of torts. This question came up for consideration in *Municipal Committee, Amritsar v. Shankardas* AIR 1926 Lah 349 and *Dr. jairaj Behari Vs. U.P. Electric Supply Co. Ltd.*, In both these cases, the court was concerned with the provisions of the Electricity Act of 1910. In the first case, Cambell, J., with reference to the English case 1877-2 Ex D 441 (*Supra*) observed that this is scarcely of more assistance

and does not lay down the rule that when a statutory duty is created a person alleging inquiry for non-performance of that duty cannot bring an action for damages against the person on whom the duty is imposed if the statute lays down a penalty to be exacted on conviction for non-performance of that duty. The learned Judge then referred to Section 9, Civil P. C. and held that there was nothing in the Indian Electricity Act which barred, either expressly or impliedly, a suit for damages against a licensee for breach of duty under the said Act.

13. In the second case, the learned Judges after reviewing the English cases on the subject including 1877-2 Ex D 441 (Supra) and noticing the various provisions of the Electricity Act of 1910 came to the same conclusion and held that:

"A person entitled to supply of energy u/s 22 has a cause of action for a suit for damages on account of the licensee's failure to supply energy according to Section 22 and paragraph 6 to the schedule. The Civil Court has jurisdiction to entertain such a suit inasmuch as the Act does not provide a remedy for the breach of Section 22." The decision of the Lahore High Court in AIR 1926 Lah 349 (Supra) was followed.

14. In this connection, the following passage from the judgment of Stable J., in *Read v. Croydon Corporation* 1938-4 All ER 631 may be usefully extracted:--

"There are a number of statutes by which duties are imposed and remedies provided for the breach in relation to which it has been held that the remedy is exclusive, while in others it has been held that there is in addition to the statutory remedy, a right of action to recover damages resulting from the breach of the statutory duty. Here, again, the difficulty is to discover the principle which determines where the line is to be drawn. One statement of the principle appears in *Phillips v. Britannia Hygienic Laundry Co.* ((1923) 2 KB 382) where Atkin. L. J. says at pages 840, 841:

The question is whether they (the statutory regulations) were intended to be enforced only by the special penalty attached to them in the Act. In my opinion, when an Act imposes a duty of commission or omission, the question whether a person aggrieved by a breach of the duty has a right of action depends on the intention of the Act. Was it intended to make the duty one which was owed to the party aggrieved as well as to the State, or was it a public duty only ? That depends on the construction of the Act and the circumstances in which it was made and to which it relates. One question to be considered is. Does the Act contain reference to a remedy for breach of it ? Prima facie if it does that is the only remedy, but that is not conclusive. The intention as disclosed by its scope and wording must still be regarded and it may still be that, though the statute creates the duty and provides a penalty, the duty is nevertheless owed to individual.

This passage, in my judgment Indicates that the dividing line is to be found in the intention of the Act of Parliament, and that one of the means of determining

what that intention is is to ascertain whether the duty is a duty owed primarily to the State or community, and only incidentally to the individual, or primarily to the individual or class of individuals, and only incidentally to the State or community. Adopting that statement of principle, while there is no doubt that, for breaches of some of the statutory duties imposed by the Waterworks Clauses Act, the penalty is exclusive, it is difficult to believe that the legislature intended that it should be exclusive in the case of every breach of every duty under the Act."

Now, if we examine Section 18 of the Act of 1948 and Clause 6 of the Schedule to the Act of 1910, and the schemes of the two Acts, it would be clear that they are for the benefit of the private individuals who for their own convenience make a requisition for the supply of energy, and there is a corresponding obligation on the defendant to supply the energy. No doubt there are some provisions in the Electricity Act which are for the benefit of the public and it may be that in such cases the penalty provided u/s 42 of the Act of 1910 may be the exclusive remedy but where as in the present case the duty is owed primarily to the individual and not incidentally, it could not have been the intention of the Legislature that a breach of the obligation is exclusive and no separate action in a civil court is maintainable. This was the broad ground on which *Stable J.* distinguished the decision in 1877-2 Ex. D. 441 (*supra*) and held that "although Waterworks Clauses Act, 1947, provides a penalty for a breach of a statutory duty, upon the proper construction of that Act, this is not an exclusive remedy, and an action for damages can also be brought in respect of a breach of that duty." For the same reason, remedy by a separate civil action cannot be denied to the plaintiff. In the present case, Besides this, though Section 42 of the Act of 1910 provides a penalty to be imposed by a Magistrate on prosecution where the licensee without reasonable excuse the burden of proving which shall lie on him, discontinues the supply of energy or fails to supply energy, but this is of little consolation to the individual like the plaintiff who cannot be adequately compensated for the loss suffered by him even if some compensation is allowed to him by the Magistrate. Further the Electricity Act of 1910 and the Act of 1948 do not contain any provision which expressly or impliedly bar the jurisdiction of the civil court to entertain a suit of the present nature.

15. For the aforesaid reasons in my view action for damages in a civil court by the injured person against the Board for its breach of statutory duty is maintainable in spite of the penalty provided in Section 42 of the Act of 1910.

16. The next question is whether Section 56 of the Act of 1910 and Section 82 of the Act 1948 give any protection to the defendant. Section 56 is as under:

"Protection for acts done in good faith.-

(1) No suit, prosecution or other proceeding shall lie against any public officer or any servant of a local authority, for anything done, or in good faith purporting to be done, under this Act.

(2) No court shall take cognizance of an offence under this Act, by a public officer except with the sanction.

(a) in the case of a person employed in connection with the affairs of the Union, of the Central Government; and

(b) in any other case, of the State Govt."

It would appear from the above that the only protection under Clause (1) is to a public officer or any servant of a local authority and that too for acts done or purporting to have been done in good faith. Clause (1) does not cover the case of a licensee or Board as it is neither a public officer nor servant of a local authority.

17. Now by virtue of Section 26 of the Act of 1948, the Board constituted under this Act has all the powers and obligations of a licensee under the Indian Electricity Act of 1910. The question then is whether by virtue of Section 82 of the Act of 1948, the Legislature intended to extend the protection to the Board also. Section 82 as it stood before the amendment of 1966 was as follows:--

"Protection to persons acting under this Act.-

No suit, prosecution or other legal proceedings shall lie against any person for anything which is done in good faith or Intended to be done under this Act."

NO doubt as urged by learned counsel for the respondent the word "person" can apply to natural as well as juristic person. But the question is whether the word "person" used in Section 82 was intended to apply to corporate body like the Board also. As held in *Bharat Abhyudoy Cotton Mills Ltd. Vs. Maharajadhiraj Sir Kameswar Singh and Another*, To decide whether in particular instance "person" includes artificial person, corporation or company, regard must be had to setting in which it is placed."

18. Section 81 of the Act of 1948 declares that "all members, officials and servants of the Board shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of Section 21 of the Indian Penal Code (45 of 1860)." Section 82 which immediately follows Section 81 was, in my view, intended to protect only the persons which are mentioned in Section 81 and who have a physical entity and not the Board, which is a person only in the eye of law. The Board is required to discharge various duties under the Act and keeping in view those functions and duties it cannot be held that the protection against suit and prosecution was intended to be given to the Board also. This section has been amended in 1966 and in place of the word "any person" the words "any member, officer or servant of the Board" have been substituted. It is, therefore, clear that both u/s 56 of the Act of 1910 and u/s 82 as amended by Act of 1966, protection against suit and prosecution is not given to the Board itself. I am, therefore, unable to accept that simply by the use of the words "any person" in Section 82 as it stood before the amendment of 1966, the scope of protection was wide so as to include the Board

also- That being so, the present suit cannot fail on the ground that the plaintiff was disconnected in good faith by the Board. Since the lower court has not determined the question of damages alleged to have been suffered by the plaintiff as a result of the disconnection, the case will have to go back to the lower court for determination of that question.

19. As a result, the appeal Is allowed, the judgment and decree of the lower court are set aside and the case is remanded to that court for deciding issue No. 5 regarding the quantum of damages said to have been suffered by the plaintiff. Costs of this appeal shall abide the result of the suit in the lower court.