

(1966) 04 GUJ CK 0004

In the Gujarat High Court

Case No : Second Appeal No's. 16 and 17 of 1966

Godhra Electricity Co. Ltd.

APPELLANT

Vs

Somalal Nathji Shiroiya and Others

RESPONDENT

Date of Decision : 11-04-1966

Acts Referred:

Electricity (Supply) (Amendment) Act, 1956 — Section 57, 57(A)

Electricity (Supply) Act, 1948 — Section 57(2)

General Clauses Act, 1897 — Section 24, 6, 6(B)

Citation : AIR 1967 Guj 172 : (1967) 8 GLR 686

Hon'ble Judges : J.B. Mehta, J

Bench : Single Bench

Advocate : J.M. Thakore, General and K.M. Kaji, for the Appellant; C.T. Daru, B.G. Thakore and J.C. Sheth, for the Respondent

Judgement

(1) These two Second Appeals have been filed by the Godhra Electricity Company Ltd. (Hereinafter referred to as 'the company'), as both the Courts had decreed the suits filed by the consumers. Both these appeals raise common questions of law and so they are disposed of by me by this common judgment.

(2) The short facts which have given rise to these appeals are as under:

(2a) The Godhra Electricity Company was issued a licence on 17th October 1922 by the Government under the Indian Electricity Act, 1910, hereinafter referred to as "the Electricity Act", to Lady Sulochana Chinubhai. The present company is the successor of the said licensee. It appears that after the Electricity (Supply) Act, 1948, hereinafter referred to as "the Supply Act", had come into force, a rating committee was constituted at the request of the company on 19th January 1950 under S. 57(2) of the supply Act. The rating committee had submitted its report on 5th November, 1951 at Ex.42 and thereafter an order was issued by the Government under S. 57(2)(c) fixing the charges to be made for the supply of electricity from the consumers with effect from 1st February 1952. No time limit was specified in the said order as there was no provision for fixing any time

limit u/s 57(2)(c), as it stood before its amendment in 1956, hereinafter referred to as "1956 amendment". Under the said order, the company was to charge 0-7-9 per unit for the electric energy supplied for the purposes of lights and fans in the area of supply with minimum installation charges of Rs. 3/- per month. As for energy supplied for motive power, the charge fixed was to charge 0-4-0 per unit with minimum installation charge of Rs. 4-8-0 per month for each installation. It appears that thereafter it was the case of the plaintiffs consumers that in January 1963 a pamphlet was issued on 1st January 1963 intimating the consumers about the intention of the company to increase the rate for the purpose of lights and fans and for the purpose of motive power. It was the case of the plaintiff s that that this pamphlet was withdrawn, while it was the case of the company that it was not implemented in respect of lights and fans but for motive power the increase was made from 1st January 1963. Finally, the company by another pamphlet dated 29th June, 1963 announced new rate with effect from 1st July 1963. The rates for lights and fans were increased with effect from 1st July 1963 at the rate of 0-70 Np. per unit and the minimum charge per installation was increased from Rs. 3/- to Rs.5/- per month. The charges for motive power were already increased as per the first pamphlet with effect from 1-1-1963 and the rate was increased to 0-35 Np. Per unit for the motive power and the minimum charge per installation was increased from Rs. 4-8-0 per month to Rs. 7/-. The plaintiffs thereafter gave notices to the company protesting against this unilateral increase of rates, notwithstanding the operation of the Government order fixing the charges for electrical energy. Thereafter the plaintiffs filed two representative suits for declaration that the defendant company was not entitled to increase the rates beyond the rates fixed by the Government in 1951 November on the recommendations of the rating committee and they also prayed for a permanent injunction restraining the company from cutting off any connection so long as the consumers were ready and willing to pay the rates as fixed by the Government on the recommendations of the rating committee. Appeal No. 16 of 1966 deals with the suit in which the questions was regarding the increase of rates for lights and fans while appeal No. 17 of 1966 arises from the suit in which the question raised was as regards the increase in respect of the charges for motive power. In both these suits, both the lower Courts came to the conclusion that the company was not entitled to increase these rates unilaterally so long as the order of the Government issued in November 1951 continued to remain in force as it was clearly for an indefinite period. The plaintiffs' representative suits under O.1 R. 8 were, therefore, decreed by both the Courts. Therefore, the company has filed the present two appeals.

(3) As far as the scheme of the two Acts is concerned as regards the increase or fixation of rates, I need not consider the whole scheme elaborately as the relevant sections have been considered by the Supreme Court in *The Amalgamated Electricity Co. Ltd. Vs. N.S. Bhatena and Another*, . His Lordship Ayyangar J., speaking for himself and Dasgupta j had observed that they were

unable to agree with the decision of the Bombay High Court in Babulal Chhaganlal Gujerathi Vs. Chopda Electric Supply Co. Ltd., . Their Lordships had observed that it was clear from Para 1 of Schedule VI of the Supply Act, as it originally stood and as amended, that the adjustment rates might be unilateral and that the licensee had a statutory right to adjust his rates provided he conformed to the requirements of that paragraph viz. The rate charged did not yield a profit exceeding 5 p.c., and the amount of reasonable return. In their Lordships' opinion, the provisions of the Supply Act were too strong to permit the construction, that the maximum prescribed under the Electricity Act of 1910 survived as a fetter on the rights of the licensee under paragraph I of the VIth Schedule. It was further held that if there was any room for any argument of that kind on the terms of Para I of the VI Schedule as originally enacted, the matter was placed beyond possibility of dispute by the 1956 amendment by the use of non obstinate clause as the opening paragraph provided that "notwithstanding anything contained in the Indian Electricity Act and the provisions in the licence of a licensee", the licensee could adjust the rates. It was, therefore, held that the provisions of paragraphs 1 and 2 of VI Schedule gave a unilateral power to the licensee to adjust the rates and the only obligation which, was imposed was the one in the proviso (4) under which if the licensee took a risk and it was ultimately found that the rates of supply fixed in pursuance of the recommendation of the rating committee constituted under S. 57A were lower than those notified by the licensee the licensee was bound to refund to the consumer the excess amount recovered by him from them. The third Judge His Lordship Sarkar J. (as he then was) took the same view of this non obstinate clause in the commencement of Para 1. As the Bombay decision was prior to this amendment, it was not considered necessary to express any opinion as regards the said decision. The settled position of law, therefore in view of this decision is that if there was any restriction or a fetter in any of the provisions of the Electricity Act by reason of the maximum prescribed in the licence or by reason of some conditions imposed by an order issued under the Electricity Act, those restrictions no longer operated after the Supply Act. All those restrictions deemed to be incorporated in the licences granted under the Electricity Act, 1910, which were inconsistent with the rate which a licensee could charge under Para 1 of Schedule VI of the Supply Act would be superseded and the provisions of the Supply Act would prevail. This decision only settles the questions of the rights of the licensee for making a unilateral increase in accordance with Para 1 of Schedule VI, notwithstanding any fetter imposed by the Electricity Act. The question which still remains for consideration and which has arisen in these appeals is as to whether the licensee is still bound by the fetter imposed by S. 57 or the newly substituted S. 57A of the Supply Act itself, under which the Government is empowered to fix the charges to be made by the licensee on the recommendations of the rating committee.

(4) Before 1956 amendment section 57 was as under:

(1) The provisions of the Sixth Schedule and the table appended to the Seventh

Schedule shall be deemed to be incorporated in the licence of every licensee, not being a local authority, from the date of the commencement of the licensee's next succeeding year of account, and from such date the licensee shall comply therewith accordingly and any provisions of such licence or of the Indian Electricity Act, 1910 (IX of 1910), or any other law, agreement or instrument applicable to the licence shall, in relation to the licensee, be void and of no effect in so far as they are inconsistent with the provisions of this section and the said Schedule and Table.

(2) Where the provisions of the Sixth Schedule and the Table appended to the Seventh Schedule are under sub-section (1) deemed to be incorporated in the licence of any licensee, the following provisions shall have effect in relation to the said licensee, namely -

(a) The Board, or where no Board is constituted under this Act the Provincial Government, may, if it is satisfied that the licensee has failed to comply with any provision of the Sixth Schedule, and shall when requested so to do by the licensee, constitute a rating committee to examine the licensee's charges for the supply of electricity and to recommend thereon to the Provincial Government.

Provided that no rating committee shall be constituted in respect of a licensee within three years from the date on which such a committee has reported in respect of that licensee, unless the Provincial Government declares that in its opinion circumstances have arisen rendering the orders passed or the recommendations of the previous rating committee unfair to the licensee or any of the consumers.

(b) The rating committee shall, after giving the licensee a reasonable opportunity of being heard and after taking into consideration the efficiency of operation and management and the potentialities of his undertaking report to the Provincial Government making recommendations (and giving reasons therefor) regarding the charge for electricity which the licensee may make to any class or classes of consumers so however that the recommendations are not likely to prevent the licensee from earning clear profits sufficient when taken with the sums available in the Tariffs and Dividends Control Reserve to afford him a reasonable return during his next succeeding three years of account if the potentialities of the undertaking of the licensee, with efficient operation and management, so permit.

(c) Within one month after the receipt of the report under clause (b) the Provincial Government shall cause the report to be published in the official Gazette, and may at the same time make an order in accordance therewith fixing the licensee's charges for the supply of electricity with effect from such date, not earlier than two months or later than three months, after the date of publication of the report as may be specified in the order and the licensee shall forthwith give effect to such order - - -

Provided that nothing in this clause shall be deemed to prevent a licensee from reducing at any time the charges so fixed."

(5) This section was substituted by a new S. 57 by 1956 amendment with effect from 30th December, 1956. Section 57 as it now stands runs as under:

"The provisions of the Sixth Schedule and the Seventh Schedule shall be deemed to be incorporated in the licence of every licensee, not being a local authority -

(a) in the case of a licence granted before the commencement of this Act, from the date of the commencement of the licensee's next succeeding year of account; and

(b) in the case of a licence granted before the commencement of this Act, from the date of the commencement of supply, and as from the said date the licensee shall comply with the provisions of the Indian Electricity Act, 1910 (9 of 1910) and the licence granted to him thereunder and of any other law, agreement or instrument applicable to the licensee shall, in relation to the licensee, be void and of no effect in so far as they are inconsistent with the provisions of Section 57A and the said Schedules."

Section 57A provides for rating committees as under:

"(1) Where the provisions of the Sixth Schedule and the Seventh Schedule are under S. 57 deemed to be incorporated in the licence, of any licensee, the following provisions shall have effect in relation to the said licensee, namely:-

(a) the Board or where no Board is constituted under this Act, the State Government -

(i) may, if satisfied that the licensee has failed to comply with any of the provisions of the Sixth Schedule and

(b) shall when so requested by the licensee in writing, constitute a rating committee to examine the licensee's charges for the supply of electricity and to make recommendations in that behalf to the State Government - - - - -

XX XX XX XX XX XX XX XX XX (c) a rating committee shall, after giving the licensee a reasonable opportunity of being heard and after taking into consideration the efficiency of operation and management and the potentialities of his undertaking, report to the State Government within three months from the date of its constitution, making recommendations with reasons therefor, regarding the charges for electricity which the licensee may make to any class or classes of consumers so, however, that the recommendations are not likely to prevent the licensee from earning clear profit sufficient when taken with the sum available in the Tariff and Dividends Control Reserve to afford him a reasonable return as defined in the Sixth Schedule during his next succeeding three years of account

(d) within one month after the receipt of the report under Clause (C) the State Government shall cause the report to be published in the official Gazette, and may at the same time make an order in accordance therewith fixing the licensee's charges for the supply of electricity with effect from such date, not

earlier than two months or later than three months, after the date of publication of the report as may be specified in the order and the licensee shall forthwith give effect to such order.

(e) the charges for the supply of electricity fixed under (d) shall be in operation for such period not exceeding three years as the State Government may specify in the order:

Provided that nothing in this clause shall be deemed to prevent a licensee from reducing at any time any charges so fixed."

From a bare perusal of S. 57 as it stood before amendment in 1956 and the new S. 57 and S. 57A which have taken place of the said section, it is clear that those provisions have been substantially re-enacted. The only important change in the introduction of a new clause (e) in S. 57A under which the charges for the supply of electricity which are to be fixed by the Government under S. 57-A(d) after the receipt of the report of the rating committee, are to be in operation for such period not exceeding three years as the State Government might specify in that order. There was no such provision for fixing the time limit under the original S. 57. The rest of the provisions have been substantially re-enacted. It should also be noted that the provisions of the Sixth Schedule are deemed to be incorporated in the licence of the licensee from the date of the commencement of the licensee's next succeeding year of account. In the case of a licence granted before the Supply Act and from the said date the licensee has to comply with the provisions of the said Schedule and the provisions of the Electricity Act and the licences granted thereunder and of any other law agreement or instrument applicable to the licensee are deemed to be void and of no effect in so far as they are inconsistent with the provisions of S. 57 and the said Schedule or after the 1956 amendment with S. 57A and the said schedule. Similarly, S. 57(c) as it originally stood also provided that after the provisions of VI Schedule were deemed to be incorporated in the license of the licensee the provisions mentioned in the said sub section were to have effect in relation to the said licence. Under S. 57(2)(c) it was further provided that if the rates were fixed by the Government after the report of the rating committee the licensee should forthwith give effect to such order. The same is the provision of the re-enacted section 57A. It is, therefore, clear that even though the licensee has in view of the incorporation of Para I of the VIth Schedule in his licence a right to make unilateral adjustment of the rates in conformation with its provisions there is a further obligation cast under old Section 57(2)(a) or the new Section 57A that the licensee shall give effect to any order issued by the State Government fixing the licensee's charges for the supply of electricity after recommendations of the rating committee. Even though, therefore, the licensee is free from the restrictions imposed by the Electricity Act or from the provisions of any other law, agreement or instrument which are inconsistent with the rights of the licensee to make unilateral increase in the rate and all those provisions are treated as void in so far as they are inconsistent with the rights given to the

licensee by the VIth Schedule of the Supply Act, the licensee is still under a fetter so far as the same is created either by section 57(2) as it originally stood or by section 57A and he is bound to give effect to any order which was issued by the State Government on a report of the rating committee. This obligation flows from the scheme of section 57 as it originally stood or sections 57 and 57A after the 1956 amendment. While creating this obligation the Legislature has also created corresponding right in the licensee u/s 57(2)(a), as it originally stood, or u/s 57(a)(1)(ii) under which on the request of the licensee in writing the State Government is bound to constitute a rating committee to examine the licensee's charges for the supply of electricity and to make recommendation in that behalf to the State Government so that the old order issued by the State Government would be altered after the new recommendations of the rating committee. It should be also noted at this stage that the new section 57-A(1)(e) which provides for a time limit in respect of orders issued by the State Government, fixing the charges to be made by the licensee, operates only in respect of the charges which have been fixed under clause (d) of section 57A. This section 57A was prospective in operation and was not given any retrospective effect by the Legislature and it had come into operation from 30-12-56. The special clause (e) fixing the time limit, therefore, applies only to an order issued by the Government after the said provision in clause (d) came into force and charges were fixed by the Government by the order issued u/s 57A(d). There is no provision in the newly enacted section 57 to 57(b) to give any retrospective effect to these new provisions nor there is any provision for creating fiction that the orders issued under the old section 57(2)(c) were to be deemed to be or issued u/s 57A(d). There is, therefore, *prima facie*, no inconsistency whatsoever between the two sets of the provisions. The old section 57 would apply to the orders made by the Government fixing the charges under the old section 57(2) (e) while the new section 57A(e) would apply to the orders issued by the State Government fixing the charges under the new section 57(d) and in which cases the Government must specify the time limit which should not exceed three years. It is, therefore, contended by the consumers that the order issued in 1951 under old section 57(2)(c) continues to have legal effect even after the amendment of the said section 57 and its substitution by the new section 57A in view of section 6 of the General Clauses Act, 1897. The company, however, contends that the said section 6 has no application and could not save future operation of the order issued by the Government in 1951 and that in any case, there is a clear intention to the contrary under the provisions of new sections 57A and 57A and the old order which was to operate for an indefinite length of time which had clearly become void as it was inconsistent with section 57A clause (e) under which the maximum period of operation of such order could not exceed three years.

(6) Section 6 of the General Clauses Act, in so far as it is material for the decision of the present question, provides that where this Act or repeals an enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not, (b) after the previous

operation of any enactment so repealed or anything duly done or suffered thereunder, or (c) after any right privilege, obligation or liability acquired, accused or incurred under any enactment so repealed. u/s 3 u/s 3 (19) of the General Clauses Act "enactment" is defined to include any provision of an Act. Section 6 would, therefore, apply to a case where not only the entire Act is repealed but also where any provision of any section of an Act is repealed, this section came up for interpretation in *State of Punjab v. Mohar Singh* AIR 1955 SC 84 . Their Lordships of the Supreme Court at page 88 in terms overruled the decision of the Allahabad High Court in *(Firm) Danmal Parshotam Dass Vs. (Firm) Babu Ram-Chhote Lal*, where there was a new law which not only repealed the old law but was substituted in the place of the old law and that the Court in such cases must fall back on the provisions of the new Act itself. The Supreme Court pointed out that even though normally the effect of a repealing Act was to obliterate repealed Act completely from the records of Parliament as if it had never been passed except for the purpose of those actions which were commenced, prosecuted and concluded while it was an existing law, a practice had grown up to insert a saving clause in the repealing statute with a view to preserve rights and liabilities already accrued or incurred under the repealed enactment. Section 6 of the General Clauses Act was similar and on the same lines as section 38(2) of the Interpretation Act of England. Their Lordships further observed that they did not subscribe to the broad proposition that application of s. 6 of the General Clauses Act was ruled out when there was repeal of an enactment followed by a fresh legislation. Section 6 would be applicable in such cases also unless the new legislation manifested an intention incompatible with or contrary to the provisions of the section and the mere absence of a saving clause was by itself not material. In the case of a simple repeal there was scarcely any room for expression of a contrary opinion. But when repeal was followed by fresh legislation, the provisions of the new Act have to be looked into. The time of enquiry in such cases however would not be whether the new Act expressly kept alive old rights and liabilities but whether it manifested an intention to destroy them. The same principle was reiterated by the Supreme Court in case of *Bishambar Nath Kohli and Others Vs. State of Uttar Pradesh and Others*, their Lordships of the Supreme Court observed that such saving provisions are enacted with a view to avoid the possible application of the rule of interpretation that where a statute expired or was repealed, in the absence of a provision to the contrary, it was regarded as having never existed except as to matters and transactions past and closed. In that particular case their Lordships had to consider the effect of section 58(3) of the Administration of Evacuee Property Act, 1950, which was different in language from S. 6 of the General Clauses Act. The first part of section 58(3) provided that the repeal by the Act of the earlier Ordinance would not affect the provisions operation of the said ordinance. But the second part provided that anything done or any action taken in the exercise of any power conferred by or under that Ordinance should be deemed to have been done or taken in the exercise of the powers conferred by or under that Act as if that Act were in force on the day on which such thing

was done or action taken. This second part was expressly made subject to the first part. It was, therefore, pointed out that by enacting section 58(3) the Parliament had expressed a different intention and so the rule contained in section 6 did not apply. The distinction between the two cases was that section 6 of the General Clauses Act kept alive the previous operation of the enactment repealed and things done and duly suffered, the rights, privileges, obligations or liabilities acquired or incurred and authorised the investigation, legal proceeding and remedies in respect of rights, privileges, obligations, liabilities penalties, forfeiture and punishment as if the repealing Act had not been passed, while S. 58(3) on the other hand, made a clear departure from the rule enacted in section 6 of the General Clauses Act, as it directed that things done or actions taken in exercise of the powers conferred by the repealing statute shall be deemed to be done or action was taken. By reason of the first part of section 58(3), which was in terms negative, the previous operation of the repealed statute survived the repeal and so the matter and transactions past and closed remained operative and so did the previous operation of the repealed statute. In view of the second part which was positive in terms, however, it was held that the previous law stood repealed and for the future it had no partial operation as prescribed even by section 6 because a fiction was created for actions taken under the repealed statute and things done as deemed to be done or taken under the new Act as if the new Act was in force on the day on which the action was taken or thing was done. That is why full effect was given to the fiction created by the second part. It is, therefore, clearly settled that u/s 6 of the General Clauses Act, the previous operation of the old enactment or things done and actions taken under the said enactment would always survive unless a contrary intention was expressed or necessarily implied in the new provision to destroy the same. Such a result can be achieved even by a deeming fiction which brought the new Act into force retrospectively even on the date on which the action was taken or the thing was done under the old enactment. In the present case, however, as I have already pointed out there is no deeming fiction and the provisions of the section 57A are clearly prospective with effect from 30th December 1956 and they are not deemed to have been in force in November 1951 when the State Government had issued the order under the old section 57(2)(c). In the absence of such a deeming provision, the order which was issued by the State Government under the old S. 57(2)(c) when the said enactment was in operation could not be said to have been made under the new section 57A(d) and there would be no question of time limit as under the old enactment there was no provision for any time limit for such order which was for the first time introduced in respect of the order to be made under S. 57A(d) and which could only apply to orders made after 1956 amendment came into force and on 30th December, 1956. The learned advocate General, however argued that I was bound by the decision of the Divisional Bench of the Bombay High Court in *State of Bombay v. Heman Santilal Alreja* AIR 1952 Bom 16 consisting of Chagla, C.J. (as he then was) for the interpretation of the effect of a saving provision at the time when the old enactment was repealed. In that case the question had arisen in the context of a

temporary Act, Bombay Land Requisition Act, 1948, which was a temporary statute which expired by lapse of time. The life of the said Requisition Act, 1948, was extended from time to time, by the same being reenacted by amending statutes. Section 3(2) of the Act which provided that Section 7 of the Bombay General Clauses Act, 1905, shall apply upon the expiry of the Act. Section 7(b) of the Bombay General Clauses Act was in the same terms as section 6(b) of the General Clauses Act and it provided that the repeal of any Act shall not affect the previous operation of any enactment so repealed, or anything duly done or suffered thereunder. Relying on this fiction created by section 3(2) which introduced a saving provisions even in this temporary statute and which treated the case as one of repeal, it was argued that any requisition order made under the said Act which although of a temporary duration would continue in effect even after the lapse of the said Act indefinitely and the said Act, therefore, gave power of indefinitely requisitioning property which was equivalent to compulsory acquisition. This argument was accepted by Tendolkar J., in appeal, however, the Division Bench at page 849 observed that it was well settled that when a temporary act lapses, the rules and orders made thereunder also expire. The Act in question was a temporary Act which expired on 31-3-52. The Division Bench held that S. 7 of the Bombay General Clauses Act which applied because of fiction created by S. 3(2) of the Act did not authorise the Government to continue in force the orders of the Government made under the said Act even after the expiry of that because the power of the Government for requisitioning the property which sprang from the provisions of the said Act clearly lapsed when those provisions ceased to exist. This decision is clearly a decision as to the effect of a notional saving provision in the case of a temporary statute which was an expiring statute and it would be dead automatically on the expiry of its term. In the context of such a temporary statute it was held that the notional savings provision of section 7 corresponding to S. 6 of the general Clauses Act, would not continue in force, the orders passed under the expiring statute. The decision could have no application to the facts of the present case where I am not concerned with any temporary statute which expires with any notional repeal. It is, therefore, not necessary for me to express any opinion as to the correctness of the said decision in view of the subsequent decisions of the Supreme Court. In *The State of Uttar Pradesh Vs. Seth Jagamander Das and Others*, the distinction between a repealing statute and an expiring statute was clearly pointed out. In Para 7 it was observed that where a statute was repealed or came to an automatic end by efflux of time, no prosecution for acts done during the continuance of expired Act could be commenced after the date of its repeal or expiry because that would amount to the enforcement of a repealed or a dead Act. Thus rule, however, stood modified by reason of the saving provision in s. 6 of the General Clauses Act. The expiring statute was not however governed by the rule enunciated in the said section. Where the Legislature had introduced a fiction of a repeal even in cases of a temporary statute it was held that saving provision in section 6 would be clearly attracted. In *State of Orissa Vs. Bhupendra Kumar Bose*, the Supreme Court approved the observations of Parke,

B. In the case of *Stevenson v. Oliver* (1841) 151 FB 1024 at pp. 1026-1027, where even in a temporary statute under which an apothecary was entitled to practice under the Act in question it was held that even though there was no saving provision in the statute, there was no deprivation of his right to practice after the expiry of the said temporary statute. It was therefore, held that there was no inflexible and universal rule as to the effect of expiration of a temporary statute and that it would depend upon the nature of the right or obligations resulting from the provisions of the temporary statute and upon their character, whether the said right and liability were enduring or not. In this view of the matter I cannot agree with the learned advocate General that the provisions of section 6 were inapplicable even to a case of an actual repeal on the said analogy of an expiring Act, even though in terms S. 6 of the General Clauses Act applied to such a situation. The learned Advocate General also relied upon the decision of the Division Bench of the Rajasthan High Court consisting of Wanchoo C.J. (as he then was) and Bapna J. In *Surajmal Vs. The Rajasthan State*, . In that case the Rajasthan Public Security ordinance which was a temporary statute had expired on 9-9-51. The State Government had by the order dated 29-8-51 directed the electric company to carry on the working of the power house until further orders and to abstain from closing the same. On 14-9-51, the Government passed another order as the company had disobeyed the order issued and had threatened to close down the undertaking for assuming control of the undertaking under S. 33 (1) (a) of the said Ordinance. In that case also at page 80 it was held that section 6 of the General Clauses Act had no application to the case for the obligation to obey continued as long as the Ordinance was in force and there was no obligation to obey the order under particular law continued even after the law itself had come to an end. It was held that the obligation to obey an order was not something duly done or suffered, which would not be affected by the repeal. The obligation to obey the order arose from day-to-day and so long as the law was in force that obligation was there. But when the law had come to an end, the obligation also, came to an end. The learned Advocate General strongly relied upon those observations and contended that a continuous obligation of this character as was expected from the present company also came to an end when S. 57(2)(c) under which the order was issued by the Government itself came to an end. The learned Advocate General, however, misses the important distinction between the expiring statute and a repealing statute. The case which arose before the Rajasthan High Court was also one of an expiring statute and that is why it was held that as soon as the law came to an end, the obligation imposed by the law also came to an end. S. 6 was held inapplicable to the case of such an expiring statute. That is why in AIR 1955 SC 84 at p. 87, it was in terms held that the consequences laid down in S. 6 of the General Clauses Act would apply only when a statute was actually repealed. It had no application when a statute, which was of a temporary nature, automatically expired by efflux of time. In that case the Ordinance was undoubtedly a temporary statute but it was found by their Lordships that the period during which it was to continue had not expired when the Repealing Act was passed. The repealing Act having thus

effectively cut short the life of the statute, it was held that the case would attract the operation of section 6 of the General Clauses Act. In view of this settled position as to the distinction between the actually repealing statute and expiring statute, I cannot accept the argument of the learned Advocate General that the analogy of the expiring statute would at all apply to the facts of the present case. The present case is of an amendment of a section where the old section is repealed and re-enacted with some modification and which is in terms held to be governed by the provisions of section 6 of the General Clauses Act.

(7) The learned Advocate General then relied upon the fact that the latter part of the new section 57 in terms provided that any provision of the Indian Electricity Act, 1910, and the licences granted thereunder and of any other law, agreement or instrument applicable to the licensee was in relation to the licence void and of no effect and in so far as they were inconsistent with the provisions of section 57A and the said VIth schedule, the order issued by the Government in November 1951 was contended to be an instrument as it is provided for an indefinite duration in the absence of any time limit, it was argued that such an order or instrument was clearly inconsistent with the provisions of section 57(A) (c), which clearly provided a maximum period of three years. It should be noted that under the old section 57(1) the same phraseology was used with the only difference that the inconsistency contemplated was with the entire old s. 57 instead of section 57A. It is therefore, clear that section 57 whether before or after the 1956 amendment gives overriding effect to the provisions of the VIth Schedule which are deemed to be incorporated in every licence. This overriding effect is given only as against the provisions of the Electricity Act and the licence issued thereunder and the provisions of any other law, agreement or instrument applicable to the licensee, if the same contains something inconsistent with the provisions of section 57 or 57A and the said Schedule. It is, therefore, clear that so far as the restrictions under old section 57 or new section 57A are concerned, the provisions of the Schedule VI have no overriding effect because any such interpretation would clearly make the entire section unworkable. When the provisions of S. 57(2) and S. 57A clearly contemplate charges being fixed by the order of the State Government, they should be given effect to by the licenses during the period when the order remained in operation and it would not be open to the licensees to resort to power of unilateral increase of the charges under Para 1 of VIth Schedule Section 57 would only mean that the power conferred by Para 1 Schedule VI could be exercised by the license, subject to the fetter imposed either under the old S. 57 or under the new S. 57A as the case may be, and in accordance with the requirements of the said Schedule VI. Assuming however, that the term, "instrument" was capable of the construction urged by the learned advocate General so as to cover an order issued by the Government in November 1951 under the old Section 57, even then, the said order would become void only if it was shown to be inconsistent with the provisions of S. 57A and not otherwise. The old S. 57 deals with the orders which were made u/s 57(2)(c) which did not provide for any time limit being introduced by the State

Government and the orders continued in operation, until they were replaced by fresh orders after the report of the new rating committee and the licensee was bound to give effect to the said order. The new section 57A(e) which provides for a time limit is only applicable to the charges fixed under new S. 57A(d) and which could only be fixed after the amending provisions came into force from 30-12-56. In the absence of a deeming fiction which treated the old orders issued in 1951 as if they were issued under the amended S 57A, it would be clearly giving retrospective effect to the new provision by treating the old order issued under old S. 57(2) as the order issued under the new S. 57A(d). In that view of the matter, there is no inconsistency whatever as both the sections refer to different periods. There is, therefore, no substance in this contention of the learned Advocate General that the old order was inconsistent with section 57A as it was never issued nor deemed to have been issued under S. 57A. The learned Advocate General in this connection further urged that to continue the old order made in 1951 even after the 1956 amendment would be permitting future operation of the old section. This argument is also equally misconceived. The old order issued in November 1951 was issued at a time when the old section 57 was clearly in operation. It was a thing done or action taken under the old enactment. Section 6(b) of the General Clauses Act in terms provides that past operation of the repealed enactment and things done or actions undertaken during the past would be saved notwithstanding the repeal of the old enactment. This old section 57 has continued partial operation because of the saving clause and there is no question of any future operation, which would only arise when the new order was issued by the Government after 30-12-56. What I am concerned with is the order issued in November 1951 and not the order issued after 30-12-56. Such an order was clearly saved under S. 6(B) of the General Clauses Act as there is nothing pointed out in the provision of the new section which takes place of the old section 57 which would show any intention to destroy these old orders. The very fact that the old section 57 stands substantially re-enacted and what is void is only what is inconsistent with the new section 57A would itself indicate that if there was no inconsistency, the old order clearly survived and there was no intention to avoid such an order. In fact the wordings of the latter part of Section 57 would thus indicate that when there was no such inconsistency the old orders or instruments had not become void and they would continue to have full legal effect as the past operation of the repealed S. 57 was clearly saved by section 6(b) of the General Clauses Act. Mr. Daru in this connection rightly relied upon an apposite decision of the Supreme Court in *Deep Chand Vs. The State of Uttar Pradesh and Others*, . In that case their Lordships of the Supreme Court at page 667 had held that the provisions of the U.P. Transport Service (Development) Act, 1955 were inconsistent with Chapter IV-A brought by subsequent 1956 Amending Act in the Motor Vehicles Act, 1939. Under Art. 254(1) the State law would be void to the extent of repugnancy which would be complete only when there would be identity not only of the pith and substance of the subject matter but also the period of operation. It was held that the operation of the Union law was prospective and so the State law would continue and would remain effective

in regard to things already done. As the new sections 68C, 68D and 68E inserted by the amending Central Act was concerned with schemes initiated after the Amending Act came into force and as there was nothing in those sections which either expressly or necessarily implied that the scheme already finalised should be reopened and fresh scheme should be framed. It was held that under Art. 254(1) the State law subsisted to support the schemes framed thereunder and had become void only in respect of the schemes framed under the Amending Central Act. A specific contention was clearly raised in that case as contention No. 2 at page 654 that the scheme framed under the State Act being one made to operate in future and from day to day, was an instrumental within the meaning of S 68B of the Amending Act, and therefore, the provisions of the Amending Act, would prevail over those of the scheme, and after the Amending Act came into force, it would have no operative force. This contention was repelled at page 668 and 669 by relying upon the provisions of section 6 of the General Clauses Act which were held to be directly attracted even to a case of such an implied repeal under Art. 254(1) and it was held that the scheme already framed subsisted and the State Law existed to sustain it even after the Parliament made the subsequent law at p. 669 it was also that the scheme framed under the State law was a thing done under the repealed Act and was clearly saved by S. 6. It was also urged in that case that section 68B of the amending Central Act provided that the provisions of old Chapter and Rules would have effect notwithstanding anything inconsistent therewith contained in Chapter IV of the Act or in any other law for the time being in force or any instrument having effect by virtue of any such law. In repelling this contention their Lordships observed that the provisions of that Act were prospective in operation and, therefore, nothing in those sections was inconsistent with the provisions of the State law in regard to its operation, with respect to transactions completed thereunder. It was further observed that assuming without deciding that the word "instrument" in S. 68B included a scheme, there was nothing in the provision of the Act which was inconsistent with the scheme framed under the State Act. Because the provisions starting from S. 68C only contemplated a scheme initiated after the Amending Act came into force and, therefore, they could not be obviously inconsistent with a scheme already framed under the State Act before the Amending Act came into force. It was, therefore, held that S 6 of the General Clauses Act saved the scheme framed under the State law. In Para 37 at p. 669 it was also observed that there was no substance in the contention that the scheme being a prescription for the future, it had a continuous operation even after the Amending Act became law, with the result that there was no valid law to sustain the same, as it was in terms held that even after the Amending Act the State law subsisted to sustain all the things done under the former Act. This decision is a complete answer to the arguments advanced by the learned Advocate General. The learned Advocate General, therefore, urged that that decision was an interpretation of Article 254(1) and applied to the case of an implied repeal only to the extent of inconsistency. Once it is held that the doctrine of actual repeal applies even to a case arising under

Art. 254(1) of the Constitution and when their Lordships in terms invoked section 6 of the General Clauses Act for considering the effect of such a repeal, it would not be open to the learned Advocate General to contend that that decision was not concerned with the effect of S. 6 on the ground that it was not the case of an actual repeal. This decision in terms holds that so far as past operation of a repealed statute is concerned, all the things or orders or schemes issued under the repealed enactment would always survive after the repeal of the said enactment by reason of the saving provision embodied in section 6 of the General Clauses Act, and that there would be no inconsistency, if the new provisions applied to schemes initiated after the new Act came into force as the old schemes were governed by the old law which would still continue. The only difference in the present case is that instead of the scheme I have the order issued by the Government and so on a party of reasoning the said order shall continue to have legal effect day-to-day even after the old section 57 has ceased to exist as that is exactly what is intended to be achieved by S. 6 of the General Clauses Act.

(8) The learned Advocate General next argued that u/s 24 of the General Clauses Act where any Central Act was after the commencement of that Act, repealed and re-enacted with or without modification then unless it was otherwise provided, any order issued under the repealed Act shall so far as it is not inconsistent with the provisions re-enacted continued in force and be deemed to have been made or issued under the provisions so re-enacted unless and until it is superseded by any order made or issued under the provisions so re-enacted. The learned Advocate General argued that even if the old order continued by reason of section 24 of the General Clauses Act, which would also be deemed to have been written in any Central Act, the order issued under the old section 57 would be continued in force and deemed to have been issued under the re-enacted provision in Section 57A and even then it would be clearly avoided, either by reason of the latter part of S. 57 or because of S. 24. The object of sections 6 and 24 are however different. Section 6 continues past operation of the repealed Act and things done and actions taken under the repealed Act and saves past operation of the repealed enactment for sustaining the orders passed under the repealed enactment. S. 24 on the other hand continues orders and actions which are not inconsistent with the re-enacted provisions by introducing a fiction that they would be deemed to be issued under the re-enacted provisions and would, therefore, be continued in force not by the operation of the repealed enactment but by the operation of the new Act. It should also be kept in mind that unlike section 6 which specifically dealt with the case of repeal of any enactment which includes even the section of Act, section 24 deals with the repeal and re-enactment of the entire Act with or without modification. The present case, therefore, clearly falls u/s 6, as it, per the decision of the Supreme Court in AIR 1955 SC 84 (Supra) and section 24, could not be invoked unless the Legislature had in terms created a deeming fiction that all the orders passed under the repealed section 57 were deemed to have been passed u/s 57A.

Besides the deeming fiction u/s 24 would arise only if the old order was continued as being not inconsistent with the provisions re-enacted. In the present case, there is no provision in new S. 57A corresponding in old section 57 clause (2)(c) which provided for orders without any time limit. If those orders were deemed to be orders u/s 57A clause (d) they would be clearly inconsistent with section 57(A)(e) and would be destroyed which would be contrary to the object of section 24 which provided for continuance of those orders in force by deeming them to have been made or issued under the new Act. In *The Brihan Maharashtra Sugar Syndicate Ltd. Vs. Janardan Ramchandra Kulkarni and Others*, a question had arisen before the Supreme Court as to whether a notification which was issued under the old Companies Act, 1913, empowering the District Judge to entertain the proceedings under that Act survived after the new Companies Act, 1956, which did not contain any corresponding provisions investing the District Court to exercise the said jurisdiction. At page 796 their Lordships pointed out that under the new section 10 of the Act, 1956, the District Courts could not be empowered to deal with the application under the Act of 1956 in respect of matters contemplated by S. 153C of the Act of 1913 but that did not indicate that the rights created by the old section were to be destroyed. Such notifications were saved by section 6 of the General Clauses Act. A contention was raised that u/s 24 of the General Clauses Act such a notification empowering the District Judge was clearly inconsistent with section 10 and was therefore, destroyed by the said section 24. In repelling this contention their Lordships in terms observed that section 24 did not purport to put an end to any notification. It was not intended to terminate any notification. All it did was to continue the notification in force under the stated circumstances after the Act under which it was issued was repealed. It was, therefore, clear that section 24 could not at all apply and even after the repeal of the Act of 1913 the District Judge continued to have jurisdiction to entertain those applications because if it were not so then section 6 would become infructuous. This decision would be clearly applicable to the facts of the present case as the learned Advocate General wanted to invoke section 24 only for the purpose of getting the old order destroyed which is not the object of section 24.

(9) Finally, the learned Advocate General faintly argued that even under the old section 57 the time limit could not be more than 3 years, as the rating committee was to consider the effect for the next three succeeding years of account. There is no substance in this contention. Merely because the rating committee was to consider a period of 3 years for the purposes of recommending rates to be fixed, it did not mean that the State Government could not fix any period for more than 3 years for the orders issued by the State Government, in the absence of anything in the section enacting any time limit. In fact, no such time limit could be imposed by the State Government. There is no substance even in this contention of the learned Advocate General.

(10) In the result, both the Courts were right in holding that the old order issued in November 1951 continued to remain in force and the company was bound to

give legal effect to the said order and it could not unilaterally increase its charges in violation of the said order which was sustained by the old section 57 which continued in operation u/s 6 of the General Clauses Act. Both the Courts were therefore right in decreeing the plaintiffs' suits in both the cases.

(11) In the result, both these appeals fail and they are dismissed with costs.

(12) Mr. Kaji at this stage applied for the certificate being issued for Letters Patent Appeal. As this is a question of great public importance, I order that the certificate be issued.

(13) Appeals dismissed.