
(1946) 10 BOM CK 0001

In the Bombay High Court

Case No : O.C.J. Appeal No. 25 of 1945 and Suit No. 610 of 1944

Hubli Electricity Co., Ltd.

APPELLANT

Vs

Province of Bombay

RESPONDENT

Date of Decision : 01-10-1946

Acts Referred:

Electricity Act, 1910 — Section 4(1)(a)

Citation : AIR 1947 Bom 276 : (1947) 49 BOMLR 92

Hon'ble Judges : Leonard Stone, J;Coyajee, J;Chagla, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

Leonard Stone, Kt., C.J.—This is an appeal by the Hubli Electricity Company, limited, against the judgments of Mr. Justice Blagden, dated March 23, 1945, and April 5, 1945, given in an action, which the appellant as plaintiff brought against the Province of Bombay, claiming declarations that the revocation of the appellant's license to supply electricity to consumers at Hubli is illegal, inoperative and void, and claiming consequential reliefs by way of an injunction and damages and the restoration to the appellant of his property and the electrical plant, which have, as a result of the alleged revocation of the appellant's license, been taken over by the respondent.

2. After close of the pleadings a number of issues were framed and the first five of these were disposed of by the learned Judge's judgment of March 23, 1945, at the hearing of preliminary issues. At the subsequent trial, which lasted eleven days, the parties embarked upon the calling of much evidence, most of which as is now admitted, was wholly irrelevant and unnecessary. If the appellant's memorandum of appeal, which contains no less than sixty-one grounds of appeal, is any guide, the appellant proposed to attempt in this Court also to embark upon much irrelevant matter. But Mr. M.V. Desai, who now appears for the appellant, admits that what is relevant lies within a narrow compass, viz. whether the respondent on April 3, 1943, being the date of the letter, to which I

will presently refer, effectually introduced into the appellant's license for the supply of electrical energy, new conditions, by virtue of Sub-section 4(2) of the Indian Electricity Act, 1910. This question as to the validity of the new conditions involves the basic question whether the respondent's power of revocation under Sub-section 4 (1)(a) of the Act was operative, for if it was not, there was no power or right to impose the new conditions under Sub-section 4(2).

3. If the answer to this question is in the negative, that would be an end of the case in favour of the appellant, but if an affirmative answer is given, the respondent would be entitled to have this appeal dismissed; since it cannot be, and is not now disputed, that if the new conditions were validly imposed, they have not been complied with, so that, the subsequent revocation by the letter dated January 28, 1944, which is based thereon, would be valid and effective.

4. We are told that this is the first case which has come before this Court under these sections of the Indian Electricity Act, and it is with much regret that I find myself unable to agree with the opinions of my learned brethren upon them, for the importance of these sections concerning the revocation and alteration of licenses for the supply of electricity cannot be denied, and unless the view which I take upon the questions of construction prevails, a position of much hardship must arise.

5. The question which I have described as basic raises questions of fact and law, but the first matter upon which I differ from my learned brethren touches the competence of the appellant, having regard to its pleadings, to raise the second limb of his contention, that the powers of the respondent to revoke a license must be exercised judicially, and that the respondent did not so exercise them. The other matter upon which we are not of the same opinion concerns the construction of Sub-sections 4(1)(a) and 4(2) of the Act. Sub-section 4(1) (a), it seems to me, postulates a condition precedent, viz. the existence of an obligation on the licensee to do something "by or under" the Act, to the formation of an opinion by the licensing authority that the licensee has made a wilful and unreasonably prolonged default of the obligation in question.

6. The Indian Electricity Act, 1910, which came into force on January 1, 1911, is an Act of the Central Government and applies to the whole of British India. The Act constitutes the local Governments, now the Provincial Governments, the licensing: authorities to issue licenses for the supply of electrical energy, and Section 28(1) provides:-

No person, other than a licensee, shall engage in the business of supplying energy except with the previous sanction of the Provincial Government and in accordance with such conditions as the Provincial Government may fix in this behalf, and any agreement to the contrary shall be void.

7. The sections which deal with licenses are contained in Part II of the Act, and it is Section 3 which provides, that "the Provincial Government may, on application made in the prescribed form and on payment of the prescribed fee (if any), grant

to any person a license to supply energy in any specified area" The section makes it compulsory for the applicant for a license to publish a notice of his application, "in the prescribed manner and with the prescribed particulars", and for the Provincial Government to receive objections within three months from the first publication of the notice. By Section 3(2) (b) the Provincial Government, in respect of an objection which has been received from any local authority, "shall, if in its opinion the objection is insufficient, record in writing, and communicate to such local authority its reasons for such opinion". It is not seriously disputed by Sir Jamshedji Kanga, on behalf of the respondent, that the Provincial Government in coming to a decision whether a license should be granted or not, must exercise its functions in a judicial manner.

8. Having granted a license, it is Section 4 of the Act which invests the Provincial Government, as the licensing authority, with the power to effect its revocation, alteration and extension, and it would, in my opinion, need precise and unambiguous language if the licensing authority's function was to be shifted from acting judicially u/s 3 to making a decision arbitrarily or capriciously u/s 4, particularly when, as in this case, the licensee has incurred substantial expenditure in setting up and in the equipment of its power station. It is suggested on behalf of the respondent that the object of the Act is to benefit consumers, but it cannot be to the consumers' benefit that those on whom they depend for their supply should be arbitrarily treated.

9. Section 4 of the Act is as follows:-

4 (1) The Provincial Government may, if in its opinion the public interest so requires, revoke a license in any of the following cases, namely :-

(a) where the licensee, in the opinion of the Provincial Government, makes wilful and unreasonably prolonged default in doing anything required of him by or under this Act;

(b) where the licensee breaks any of the terms or conditions of his license the breach of which is expressly declared by such license to render it liable to revocation;

(c) where the licensee fails, within the period fixed in this behalf by his license or any longer period which the Provincial Government may substitute therefore by order under Sub-section (3), Clause (6), and before exercising any of the powers conferred on him thereby in relation to the execution of works,

(i) to show, to the satisfaction of the Provincial Government, that he is in a position fully and efficiently to discharge the duties and obligations imposed on him by his license,

(ii) to make the deposit or furnish the security required by his license;

(d) where the licensee is, in the opinion of the Provincial Government, unable, by reason of his insolvency, fully and efficiently to discharge the duty and

obligations imposed on him by his license.

(2) Where the Provincial Government might, under Sub-section (1), revoke a license, it may, instead of revoking the license, permit it to remain in force subject to such further terms and conditions as it thinks fit to impose, and any further terms or conditions so imposed shall be binding upon, and be observed by, the licensee, and shall be of like force and effect as if they were contained in the license,

(3) Where in its opinion the public interest so permits the Provincial Government may, on the application or with the consent of the licensee, and, if the licensee is not a local authority, after consulting the local authority (if any) concerned,-

(a) revoke a license as to the whole or any part of the area of supply upon such terms and conditions as it thinks fit, or

(b) make such alterations or amendments in the terms and conditions of a license, including the provisions specified in Section 3, Sub-section (2), Clause (f), as it thinks fit.

10. Section 5 forms a material part of the scheme for granting and revoking licenses by it, notice of revocation must be served on the licensee and in certain circumstances on the local authority. The licensee does not get any compensation for the damage, which may be inflicted if an established electrical undertaking has to close down because its license is revoked. What Section 5 provides is for purchase, and options are given in the first place to the local authority, in the second place to any other person and in the third place to the Provincial Government, to purchase the undertaking; but, as I read this section, the purchase price will not be for the undertaking as a going concern, and it is only if none of the three options are exercised, that the former licensee: "shall have the option of disposing of all lands, buildings, works, materials and plant belonging to the undertaking in such manner as he may think fit".

11. The only other section of the Act to which I think it is necessary to refer is Sub-section 3(2) (f), by which the contents to the first schedule to the Act are to be deemed to be Incorporated with and form part of every license; and it is el. (vi) of the schedule, which requires the licensee to supply, and, "save in so far as he is prevented from doing so by cyclones, floods, storms or other occurrences beyond his control", to continue to supply electrical energy in accordance with the requisition of the owners or occupiers of premises situated within the area of supply.

12. Although the Act empowers the making of rules, we are informed that no rules have ever been made.

13. The relevant facts are as follows:-The license of the appellant is an old one, having been granted on June 26, 1924, to the appellant's predecessors-in-title and transferred to the appellant in January 1925 with the consent of the licensing authority. In December 1942 the appellant sent a circular to its "Esteemed

Consumers", which is dated December 18, 1942, and is in these terms:-

In order to avoid the irritating Inconvenience that is being caused due to unavoidable interruptions in the continuous supply of energy, some of our consumers have suggested and experts have also recommended the advisability of a thorough overhaul of all our engines instead of attempting only the hurried patch works we could do in the past few months. Accordingly, we have considered it to be in the best interests of our consumers to undertake such overhaul, which when completed would assure of satisfactory supply, though this would involve stoppage of supply for some days. This would facilitate our replacing certain worn-out parts by new ones that have fortunately arrived from England. We anticipate to resume supply by the 1st proximo.

We feel sure that our esteemed consumers will no doubt appreciate the present abnormal conditions under which such temporary inconvenience to them is necessitated."

14. On the same day the appellant sent a copy of this circular to the Electrical Inspector of the Province of Bombay and in the covering letter it said:-

We request that we may kindly be excused from such interruption of supply necessitated by circumstances quite beyond our control under the present abnormal conditions.

15. On December 23, 1942, the Personal Assistant to the Electrical Inspector wrote the following minute on that letter :

I think the Electrical Co's proposal is the best way to meet the situation and so long as consumers are not seriously handicapped no action is called for by this department.

16. But the Inspector himself took a sterner view, and on the day following he wrote this minute:-

It is extremely regrettable that S. Co. should be forced to close down completely for so many days. The matter should be reported to Government immediately.

17. In spite of this minute no reply was sent to the appellant by the Provincial Government to its covering letter of December 18, 1942, enclosing the circular and no communication was it seems made to the appellant by Government until February 10, 1943, when Mr. Nadkarni, who is the Electrical Inspector, arrived at the appellant's works on a visit of inspection. Mr. Amte, who is the managing agent of the appellant, says of this visit :

He did not come personally to conduct the annual inspection. He came some time in February 1943-about the 10th. He saw me at the power house. He said he had come to Dharwar, 12 miles from us, casually. He said nothing to me about the object of his visit. He went round the power house and left after five or ten minutes. He asked me who was in charge. The Engineer had gone, and his assistant, Mr. G.S. Kulkarni, was in charge. Mr. Nadkarni did not express any

desire to see Mr. Kulkarni. I cannot remember any further talk on this occasion. From that day till April 1943, we received no communication from anybody in connection with the power house.

18. Mr. Nadkarni's version is somewhat different and in his evidence he says:-

On February 10, 1943, I went to the plaintiff's power house. I inspected the machines there. I saw Mr. R.L. Amte and made enquiries of him. Altogether I was there for about two hours. I went to see the conditions myself before reporting to Government because of something Mr. Postwala had told me. I did not tell Mr. Amte that I was there on a mere casual visit. It is not correct to say that I was there only for five or ten minutes. Mr. Amte was with me "practically the whole time".

19. Apart from this visit no further communication was made or sent by the Provincial Government to the appellant until the letter of April 3, 1943, which is of the utmost importance in this case. The letter is signed by Mr. Kale, the Deputy Secretary to the Government of Bombay in the Public Works Department, and is in these terms:-

Dear Sirs,

The Electrical Inspector, Bombay Province, who recently visited your Company reports as under :

There is no qualified Engineer or other person in charge of the supply Company's station and works, either electrical or mechanical. There are six generating sets in the power house :

Description of the Sets. Conditions of the sets. 1. 750 B.H.P. engine with 600 KVA generator Unserviceable owing to broken crankshaft.

2. 480 B.H.P. engine with 296 KVA generator. Unserviceable owing to broken crankshaft.

3. 350 B.H.P. engine with 275 KVA generator Unserviceable, cylinder heads and piston heads cracked.

4. 150 B.H.P. engine with 180 KVA generator Has been dismantled and new parts are being fitted from the. Railway workshop.

5. 330 B.H.P. engine with 130 KVA generator. The engine is in such bad condition that not more than 60 K.W. load can be put on the generator.

6. 115 B.H.P. engine with 82 KVA generator. The set is in a very bad condition and repairs are badly needed.

It will be seen from the above that only one set. No. (5), can be used for obtaining power, the maximum being 60 KW against the company's average peak load of 180 KW.

2. Government is satisfied that there are sufficient ground for revoking your license u/s 4(1) of the Indian Electricity Act but it is pleased to permit this license to remain in force u/s 4(2) of the Act, subject to the following conditions :-

(a) that within a period of six months from the date of their letter you recondition your plant and put the same in proper working order for the purpose of ensuring a continuous and efficient supply to all consumers connected to the system and in order to fulfil the obligations imposed on you by virtue of the contract with the consumers as laid down in Clause VI of the Schedule to the I. 10. Act, 1810, subject to the limitations imposed by the orders issued under the Defence Of India Rules, and

(b) that you make proper arrangements for the maintenance of the plant immediately.

3. Should you fail to take necessary steps to fulfil the above conditions your license will be revoked.

20. The subsequent history, with which the time of the trial Court was taken up, is, as I have already stated, now admitted to be irrelevant. Since the letter of alleged revocation of January 28, 1944, is based solely upon failure, "to comply with the requirements communicated to you in Government Letter No. 5660/36-M, dated April 3, 1943" What are called requirements in this letter are the "conditions" which the respondent sought to impose under Sub-section 4(2) of the Act, by the letter of April 3, 1943, and unless they were validly imposed, the letter of January 28, 1944, is ineffectual as a notice of revocation. That is the basis on which all the arguments in this Court have proceeded.

21. It will be convenient to deal at once with the contentions upon the pleadings. No one could suggest that the appellant's plaint is a well drawn document having regard to the points which the appellant seeks to raise. But in para. 5 it sets out sufficiently the letter of April 3, 1943, which under O. VII, Rules 9 and 11, of the Civil Procedure Code, has been annexed to the plaint. Para. 6 is as follows:-

The plaintiffs state that the allegation that there were sufficient grounds for revoking the License of the plaintiffs u/s 4(1) of the Indian Electricity Act 1910 was entirely unfounded.

22. Para. 7 denies the allegation in the letter that there was no qualified engineer or other person in charge of the supply station and works and continues :-

At the time when the said letter was received by the plaintiffs they had a qualified mechanical and electrical Engineer in their service to supervise their supply station and works.

The paragraph then points out, and points out correctly, that neither under its license nor under the Electricity Act is there any provision "that a qualified Engineer must be in charge of the supply station and works."

23. In answer to paragraph 6 of the plaint the respondent by paragraph 2 of its

written statement says:-

With reference to para a of the plaint the defendant denies that the statement that there were sufficient grounds for revoking the license of the plaintiffs u/s 4(1) of the Indian Electricity Act IX of 1910 was unfounded. The defendant submits that it was the sole judge to decide whether there was wilful and unreasonably prolonged default on the part of the plaintiffs in doing what was required of them by or under the Act and whether the public interest required the revocation of the plaintiffs' license. The defendant says that it had clear grounds for being of opinion and was in fact of opinion that the plaintiffs had made a wilful and unreasonably prolonged default in doing what was required of them under the Act and that public interest required the revocation of their license. The defendant submits that this Hon'ble Court has no power to inquire into the grounds on which it could reasonably form such opinion.

24. In this state of the pleadings it is, in my opinion, open to the appellant to say that the respondent must exercise the functions u/s 4 of the Act in a judicial manner, because that is purely a question of law, and it is also open to the appellant to contend that ex facie the letter of April 3, 1943, shows that the respondent did not do so. But further than that it cannot go, the appellant cannot be heard to contend, as it wished to do, that the respondent did not exercise its function judicially, because it did not give the appellant an opportunity of being heard. That depends on a question of fact, which is not pleaded.

25. Limited in this way the appellant's contentions are as follows:-

(1) That the respondent must exercise its functions u/s 4 in a judicial manner and that the letter of April 3, 1943, shows that it did not do so.

(2) That the breach or default must, on the true construction of Section 4(2) of the Act, be subsisting at the time of the notice of revocation and that a license cannot be revoked in respect of some past breach or default which is not then continuing.

(3) As the respondent by its written statement has now grounded its right to impose new conditions u/s 4(2) on its right to revoke under sub-s. (1)(a), that that latter sub-section imports a condition precedent, viz. the existence of an obligation of something required of the appellant to be done "by or under this Act", to the formation of an opinion that there has been a "wilful and unreasonable prolonged default" of such obligation, and to the further opinion that it is in the public interest to revoke the license, and that at the material time there was no obligation in respect of which a default could be suggested, or in fact subsisted.

26. With regard to the first contention. Sir Jamshedji Kanga on behalf of the respondent has urged that as the licensing authority is the Provincial Government, it has some elevated status to that of any other licensing authority, I gather that the suggestion is that a Government can do no wrong, and is all-

powerful, and that accordingly none of its actions can be called in question. But this argument seems to me to mix up the legislative and the executive functions of Government. In arriving at the conclusion whether a license Should be revoked the action of the Provincial Government is purely executive in character, but being executive in character it does not follow, as the respondent suggests, that the Provincial Government need not act in a judicial manner or that questions challenging its conclusions cannot be investigated by the) Court: see *Eshugbayi Eleko v. Government of Nigeria (Officer Administering)* [1931] A.C. 662. In my opinion the Provincial Government in considering whether u/s 3 of the Act a license should be granted must act in a judicial manner. Indeed the contrary has not been seriously pressed, and I find nothing in the language of Section 4 of the Act to suggest that the same principle does not apply. Upon matters which rest on opinion only, it may be however far more difficult to show that the licensing authority did not come to such an opinion, or that it came to it for reasons open to challenge. In a case dealing with the discretion of licensing justices to renew a license for the sale of intoxicating liquors it was said by Lord Halsbury (see *Sharp v. Wakefield*, [1891] A.C. 173 :-

An extensive power is confided to the justices in their capacity as justices to be exercised judicially; and "discretion" means when it is said that something is to be done within the discretion of the authorities that that something is to be done according to the rules of reason and justice, not according to private opinion : *Rooke's case* : according to law, and not humour. It is to be, not arbitrary, vague, and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man competent to the discharge of his office ought to confine himself.

27. In *Rex v. Electricity Commissioners*, [1924] 1 K.B. 171 Lord Atkin in giving examples of cases in which writs of prohibition, and certiorari will be granted said (p. 205) :

Wherever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs. Thus certiorari lies to justices of the peace of a county in respect of a statutory duty to fix a rate for the repair of a county bridge : *Rex v. Inhabitants in Glamorganshire* (1792) 1 Ld. R. 580; and to Poor Law Commissioners acting under the Poor Law Amendment Act, 1834, in prescribing the constitution of a board of guardians in a parish where there was an existing poor law authority; *Rex v. The Poor Law Commissioners*. (1837) 6 Ad. & E.I . In that case it may be noted that the Attorney General had obtained a rule for mandamus to the new board of guardians to obey the order of the Commissioners and Sir Frederick Pollock subsequently obtained a rule for a certiorari to bring up the order to be quashed; and by agreement the question was argued on the rule for a certiorari. So certiorari has gone to the Board of Education to bring up and quash their determination u/s 7, Sub-section 3, of the

Education Act, 1902, on a question arising between the local education authority and the managers of a non-provided school; Board of Education v. Rice [1911] A.C. 179. Also to justices acting under the Licensing Act, and not in the strict sense as a Court: Rex v. Woodhouse. [1906] 2 K.B. 501 Similarly prohibition has gone to the Tithe Commissioner, and an assistant Tithe Commissioner, to prevent them from making an award as to the Tithes in a particular parish : Re. Crosby; Tithes, (1849) 13 Q.B. 761 and to the Inclosure Commissioners from reporting the proposed inclosure of a common; in the parish of Action, and from taking any further step towards the inclosure of the common; Church v. The Inclosure Commissioners. (1862) 11 C.B. (N.S.) 664 So it has gone against the Light Railway Commissioners to restrain them from proceeding with an inquiry remitted to them by the Board of Trade after an appeal which it was held did not lie : Rex v. Board of Trade. [1915] 3 K.B. 536"

28. It is to be noted that under Sub-section 4(1) of the Act it is only, "in the following cases", that the opinion of the Provincial Government with regard to the public interest becomes material, and that these "cases" are not of the same character. Cases (b) and (c) (ii) are purely factual and case (c) (i) is factual except in so far as what the licensee has to do must be done to the satisfaction of the Provincial Government. Cases (a) and (d) depend on the opinion of the Provincial Government, but the basic ingredients "default" of an obligation in the former case and "insolvency" in the latter are matters of fact, which must be determined by the Provincial Government by the same process as case (b). In arriving at its factual decisions, not only must the Provincial Government act in a judicial manner, but the manner of its acting is open to investigation by the Court. In principle the formation of its opinion on the requirements of public policy stands on the same footing, though such an opinion would be very difficult to challenge, because its formation must depend on questions of expediency and general policy with which the Court would not lightly interfere.

29. In giving its notice of revocation pursuant to Sub-section 5(a), or notice imposing new conditions under Sub-section 4(2), the Provincial Government must in my opinion in order to act judicially specify in the notice the default complained of. This was not done, and the appellant was, until delivery of the written statement in this suit, wholly unaware which was the "case" upon which the letter of April 3, 1943, alleges that "Government is satisfied that there are sufficient grounds for revoking your lincense under Sub-section 4.(1) ". If of a speculative frame of mind, the licensee will have searched in vain to find the statutory obligation he has broken. The letter alleges that he has not a qualified engineer in charge of the supply station and that it can only generate 60 kilowatts. But there is nothing "by or under the Act" as to a qualified engineer or the number of kilowatts a licensee is to generate. In my opinion the notice by the letter of April 3, 1943, is bad, because as the respondent must act in a judicial manner, it must inform the licensee of the breach on which his license could be revoked so as to impose new conditions under Sub-section 4(2). If what the letter calls "sufficient grounds" are the two matters of complaint, which the letter

indicates are to be discovered in the Inspector's report, not only would neither of them arise from an obligation "by or under this Act", but the letter has confused reasons for revocation under Sub-section 4(1) (a), with the imposition of new conditions under Sub-section 4(2). There is no suggestion that the default of an obligation was the suspension of the supply between December 18, 1942, and January 1, 1943, which being an interruption in the continuity of the supply might have been a default under el. VI of the schedule to the Act upon which the respondent might at the right time have set in motion the mental process of considering whether, in its opinion, it was a "wilful and unreasonably prolonged default".

30. That brings me to the appellant's second contention, that the default of the obligation breached must be continuing at the date of the exercise of the licensing authorities' power to revoke under Sub-section 4(2) (a) or to act in the alternative by imposing new conditions under Sub-section 4(2). The language of Sub-section 4(1)(a) is couched in the present tense: "makes wilful and unreasonably prolonged default in doing anything required of him." In my opinion this language shows that the prolonged default must be a continuing default and not one which has ceased. The Inspector's visit on which his report was based took place on February 10, 1943, nearly two months before the letter of April 3, 1943, by which date the whole position was capable of change, e.g. set No. 4 which was out of use at the date of the Inspector's visit was, to quote from the letter: "dismantled and new parts are being fitted from the railway workshop". There is no suggestion that the appellant's sets could only generate 60 kilowatts on April 3, 1943. Accordingly in my opinion the appellant succeeds on this contention also.

31. With regard to the third contention. Case (a) of Sub-section 4(2) of the Act postulates three contingencies, (1) an obligation in the licensee to do something "required of him by or under the Act", (2) a default of that obligation and (3) that the default is "wilful and unreasonably prolonged". All] these three are no doubt introduced by the words "where... in the opinion of the Provincial Government"; but there is considerable difference in the nature and character of the process to be employed with regard to them, No. 8 is governed by an opinion in the strict sense of the word, whereas Nos. 1 and are decisions on a question of fact.

32. Opinions are formed on speculative matters, which fall short of certain knowledge, by inference or deduction, and are arrived at by the application of personal experience and reflection; whereas a decision on a question of fact is impersonal, in the sense, that it must be made from an examination of circumstances which may be wholly beyond the knowledge or experience of the adjudicator, and which are usually conveyed to him by evidence.

33. Where the problem to be adjudged involves a mixed question of opinion and decisions on facts, the factual data must be determined before an opinion on the ultimate result can be pronounced. In such cases the existence of the factual

data is a condition precedent to the application of the mental processes summoned to action to form the opinion.

34. In the case of *Ormerod v. Todmorden Mill Co.* (1882) 8 Q.B.D. 664 the words of Section 57 of the Judicature Act, 1873, which came before the Court for construction were :

...in any such cause or matter requiring any prolonged examination of documents or accounts, or any scientific or local examination, which cannot in the opinion of the Court or a Judge conveniently be made before a jury, or conducted by the Court through its other ordinary officers, the Court or a Judge may...order any question or issue of fact, or any question of account arising therein, to be tried..before an official referee.

And Lord Coleridge said (p. 670) :-

The statute lays down that the cause or matter as to which the opinion of the Judge is to be formed, must be one which requires, in fact, a prolonged examination of documents or accounts, or a Scientific or local investigation. It is this examination or investigation on Which the Judge is to form his opinion, and the existence of the necessity for such examination or investigation in fact is a condition precedent to the Judge having the right to form such opinion. However inconvenient he may think the trial before a jury on other grounds, he cannot, at least under this section, interfere. If there were no documents or accounts, no scientific or local investigation, the Judge would have no right to make such an order as has been made here, however expedient it might be on other grounds to make it.

35. In my judgment the words of Lord Coleridge apply to the true construction of Sub-section 4(1)(a) of the Act we have to consider, for until there is an obligation, breach of which is called in question, the Provincial Government as the licensing authority has not the right to consider whether there has been "a wilful or unreasonably prolonged default". No obligation is suggested, far less is any disclosed by the letter of April 3, 1943, and in my opinion the appellant has successfully challenged the fact, that on April 3, 1943, there was no obligation "by or under this Act" of which he was in default.

36. Lastly, there is a submission of Sir Jamshedji Kanga, on behalf of the respondent, that the decision of the Provincial Government cannot be investigated by the Court. Not only do the cases of *Sharp v. Wakefield*, *Rex v. Electricity Commissioners* and *Eshugbayi Eleko v. Government of Nigeria*, to which I have already referred, show that such is not the case, but the Indian Electricity Act itself points strongly in that direction, because there are no words of finality incorporated in Section 4, whereas by contrast, as was pointed out by the learned Judge in the Court below, it is significant that Sub-section 13(1)(b), Sub-section 26(4) and (6) and Sub-section 28(2) of the same Act do provide in the case of the first and third sub-sections that the decision of the Provincial Government "shall be final" and in the case of the second sub-section that the

decision of the Electrical Inspector is to have the same finality. In my opinion this submission of the respondent is not well founded.

37. In the result, in my judgment, this appeal should be allowed, and the order which I would propose would be, that the appellant is entitled to the two declarations for which he asks by the prayer to his plaint. As Government is the respondent, an injunction would not be necessary, but I think that the appellant is also entitled to a declaration or to an order with regard to the restoration of its works and plant. However, as the majority opinion is in favour of the appeal being dismissed with costs, that is the order which will be made.

Chagla, J.

38. This appeal raises a very important question relating to the power of the Provincial Government to revoke a license granted to a licensee under the Indian Electricity Act (IX of 1910). The decision of that question turns upon the proper construction of Section 4 of the Act under which the Province of Bombay have purported to revoke the license of the appellants.

39. The material facts which may be briefly stated are not in dispute. The license was granted on June 26, 1924, and it is necessary to note that u/s 3, Sub-section (2), Sub-clause (f), of the Act, the provisions contained in the schedule to the Act are deemed to be incorporated with, and to form part, of every license granted under the Act. The material clause in the schedule is cl. 6 which casts upon the licensee an obligation after a requisition is made by the owner or occupier of any premises within one month to give a continuous supply of electrical energy to the consumer unless and in so far as he is prevented from doing so by cyclones, floods, storms or other occurrences beyond his control. The appellants worked the license and supplied electrical energy to the area set out in the license and situate within the town of Hubli. On December 18, 1942, the appellants suspended the supply of electrical energy as the engines required overhaul and this continued till January 1, 1943. On February 10, 1943, Mr. S.G. Nadkarni, Electrical Inspector to Government, went to Hubli to inspect the appellants' power house and he made a report to Government. On April 3, 1943, Government wrote to the appellants setting out excerpts from the report of the Electrical Inspector which complained of there being no qualified Engineer or other person in charge of the appellants' supply station and works either electrical or mechanical, and also that there was only one engine which could be used for obtaining power, the maximum being 60 k.w. against the appellants' average peak load of 180 k.w. Then Government go on to say that they are satisfied that there are sufficient grounds for revoking the appellants' license u/s 4(1) of the Act but they permit it to remain in force u/s 4(2) of the Act subject to the following conditions: (i) that within six months the plant was reconditioned and (ii) that proper arrangements were made for the maintenance of the plant immediately; and the letter ended by warning the appellants that should they fail to take necessary steps to fulfil the above conditions, their license would be revoked. On January 28, 1944, the Government served a notice of revocation

upon the appellants alleging that they had failed to comply with the requirements communicated to them in Government letter of April 3, 1943. The plaintiffs filed the suit for a declaration that the revocation of the license was illegal, inoperative and void in law and that the plaintiffs were entitled to retain and act under the license as if the notice of revocation had not been given, and for an injunction restraining the Government from interfering with the plaintiffs' possession and enjoyment of the undertaking carried on under the license and also claiming damages in the sum of Rs. 20,00,000 in the alternative.

40. u/s 4(1) of the Act power is given to the Provincial Government to revoke a license if in its opinion the public interest so requires in four cases enumerated in Sub-clauses (a), (b), (c) and (d). In this case we are concerned with sub-clauses (a) and (b). Sub-clause (a) deals with the case where the licensee, in the opinion of the Provincial Government, makes wilful and unreasonably prolonged default in doing anything required of him by or under this Act; and Sub-clause (b) deals with the case where the licensee breaks any of the terms or conditions of his license, the breach of which is expressly declared by such license to render it liable to revocation. Under Sub-section (2) of Section 4 it is open to the Provincial Government, instead of revoking the license under Sub-section (1), to permit it to remain in force subject to such further terms and conditions as it thinks fit to impose, and any further terms or conditions so imposed shall be binding upon, and be observed by the licensee, and shall be of like force and effect as if they were contained in the license.

41. Now the case for the Government shortly as this: that in their opinion the licensee had made wilful and unreasonably prolonged default in carrying out his obligations under the Act and in the opinion of the Government public interest required that the license should be revoked; but instead of doing so, on April 3, 1943, under Sub-section (2) of Section 4 Government imposed further terms and conditions upon the licensee. The licensee failed to carry out those terms and conditions, and Government revoked the license u/s 4, Sub-section (1), Sub-clause (b), of the Act. On the other hand it is contended on behalf of the licensee that the conditions contained in Section 4(1)(a) were not complied with and, therefore, the Government were not entitled to impose any condition under Sub-section (2) of Section 4 and, therefore, the revocation of the license for a breach of the imposed conditions was unjustified.

42. The question that arises for determination is whether the conditions laid down in Section 4(1)(a) of the Act which have to be complied with before Government could exercise their right to revoke the license are subjective or objective conditions. In other words, is it a question of fact or a question of the opinion of the Government first that the public interest requires the revocation of the license; second that the licensee has committed default in discharging his obligations under the Act; and third whether that default is wilful and unreasonably prolonged: In my opinion the Government have not to establish these facts in a Court of law. All that they have to establish is that they formed

the opinion with regard to these facts. The Court cannot investigate the grounds on which the Government arrived at their opinion. The Legislature constitutes the Government the sole judge for forming an opinion as to the existence of these facts. An attempt has been made to distinguish between the opinion that Government have to form with regard to public interest and with regard to the other conditions enumerated in Sub-clause (a). In my opinion the quality, character and the consequence of the opinion formed by Government is the same whether it is with regard to public interest or with regard to a default committed by the licensee. It would be contrary to all canons of construction to attribute to the Legislature an intention to use the same expression with two different meanings in the same section of the Act. Legislatures have been known to suffer from lapses, but the Courts must assume that the Legislature ordinarily, unless the context otherwise indicates, uses an English expression in its natural sense.

43. The striking contrast in the language of Sub-clause (a) of Section 4(2) and Sub-clause (b) should be noted. Whereas in Sub-clause (a) it is the opinion of the Provincial Government with regard to the matters enumerated therein which is the condition precedent to the exercise of the right of Government to revoke the license, in Sub-clause (b) it is not the opinion but the actual fact of a breach of one of the terms and conditions of the license which give that right to Government. Again in Sub-clause (d), which contains the fourth case which would entitle the Government to revoke the license if in its opinion the public interest so required, while the question of the capacity of the licensee to discharge his duties and obligations is left to the opinion of the Government, his insolvency apparently is a question of fact and not the opinion of Government.

44. When the opinion of the Provincial Government is not constituted the sole test as to certain matters, the Legislature has used different language in different sections of the Act. To give three instances-in Section 3, which deals with grant of licenses it is not left to the opinion of Government but a statutory discretion is vested in Government to grant a license. In Section 13(2) (b) of the Act the licensee is given the right to appeal to the Provincial Government from the intimation given to the licensee of the repairing authority's disapproval of any new works which the licensee may want to carry out, and the sub-clause provides that the decision of the Government, after considering the reasons given by the repairing authority for its action, shall be final. So here we have a case of a decision by Government and not the formation of an opinion. Again, in Section 4(1), Sub-clause (c)(i), the licensee has to show to the satisfaction of the Provincial Government that he is in a position fully and efficiently to discharge the duties and obligations imposed on him by his license.

45. It has not been seriously disputed that as Section 4(1) (a) stands, it would not be open to the Court to inquire into the ground of that opinion or to consider the reasonableness or otherwise of the opinion formed by the Government. But it is suggested that in view of the very wide powers that would be conferred upon Government if such a construction were adopted, the Court, if necessary, should

even put upon the sub-clause a strained construction in order to avoid such a consequence. It is always the duty of the Court to protect the subject against an all-powerful Executive. The Court has always looked upon itself as the custodian of the liberty of the subject, and the history of judicial interpretation of statutes both in England and here is full of many bright pages which show how the Courts of Justice time and again have thwarted and defeated attempts of the Executive to deprive the subject either of his liberty or of his property without due process of law. But it is very necessary constantly to bear in mind the object of the Indian Electricity Act as disclosed by its various provisions. As the preamble shows, it was enacted in order that electricity should be supplied to the people of the country. That supply is regulated by the grant of licenses which are controlled and regulated by the Government. Therefore large powers are given to the constituted authority in order that it should safeguard the interests of the consumers. It would be unwarranted to assume that the Legislature did not intend to invest the Government with arbitrary and, one might almost say, with autocratic powers. Apparently the Legislature took the view that in certain matters it was not in the public interest that questions should be litigated in a Court of law but rather that their determination should be left to the sole opinion of the constituted authority..

46. It is not as if the Act ousts the jurisdiction of the Court. If a license is revoked, the licensee has always the right to come to Court to challenge the revocation, and it is incumbent upon the Government to support the legality of their action. They have got to prove that the conditions precedent laid down in the Act have been complied with before they can exercise their power. The only question is: What are those conditions precedent? In my opinion, u/s 1(1)(a) the only condition precedent is that the Provincial Government should come to a certain opinion with regard to the matters enumerated in that sub-clause. It is also not as if that opinion can never be challenged. If it is arrived at mala fide or for a collateral purpose, it would not be the opinion required by the section. But if Government form the opinion honestly and for the purpose specified in the Act, then the law precludes the Court from substituting its own opinion for that of the Government or from inquiring into the validity of the grounds on which that opinion was formed.

47. It has been emphasized before us that it is very unusual that the Legislature should leave it to Government to form an opinion with regard to a pure question of fact. It is argued that it is more logical to assume that Government should form the opinion with regard to the nature or character of a fact but not as to the existence of the fact itself. It is said that in this case the question as to what are the obligations under the Act and whether there is a default or not should be determined by the Court but as to the unreasonableness or the prolonged delay of the default may be left to the opinion of the Government. I cannot accede to that argument. If the Legislature intended what it is suggested it did intend, then the sub-clause would have been drafted in an entirely different manner. It should have read :

where the licensee makes a default in doing anything required of him by or under this Act which, in the opinion of the Provincial Government, was wilful and unreasonably prolonged.

48. There are many instances where the Legislature has chosen to constitute the Executive the sole judge of what the facts are in a particular case. A rather striking instance is to be found in Section 86 of the Civil Procedure Code. That section provides that Princes, Chiefs, Ambassadors and Envoys can only be sued with the consent of the Governor-General; and Sub-section (2) of that section provides under what circumstances the consent of Government can be given. Before that section was amended certain conditions had to be satisfied, and if one looks at those conditions they are all conditions involving questions of fact. By the amendment the words "it appears to the Government that" were added, with the result that it was left to the Government to decide whether those facts existed or not. Therefore the mind to be satisfied about the existence of those facts was the mind of the Government and not the mind of the Court, and the result of the amendment is, as pointed out by Sir Dinshah Mulla in his commentary on the Civil Procedure Code, to make the decision of Government final and not open to question by the Court. Lord Atkin also, in the now celebrated case of *Liversidge v. Sir John Anderson* [1942] A.C. 206 points out the contrast in the Children and Young Persons Act, 1933, Section 13, between the two expressions "a constable may arrest without warrant any person, . . . whom, he has reason to believe has committed an offence if he believes such person will abscond". In the case of the commission of an offence the belief of the constable is not unqualified. He has got to establish as a fact that he has reasonable ground for holding that belief; but in the case of the other belief whether the person will abscond or not, the belief is unqualified. It is his mental act which the Court will not scrutinise. Similarly in the section which we are construing the Legislature has not thought fit to qualify the expression "in the opinion" by the words "has reasonable grounds for" or any similar words and, therefore, the opinion of Government is unqualified and final.

49. I should like to refer to two cases which were cited at the bar in support of the appellants' contention. In my opinion neither really helps the licensee. The first is the case of *Ormerod v. Todmorden Mill Co.* (1882) 8 Q.B.D. 664 In that case the construction of Section 57 of the Judicature Act, 1873, came under consideration. That section empowers a Judge to refer a matter to an official referee if in his opinion owing to the complexity of the matter the question cannot be determined by the jury. Baron Pollock made an order at the Manchester Assizes u/s 57 of the Judicature Act of 1873 and there was an appeal from his order. It was argued before the Court of Appeal that no appeal lay, but the majority of the Court came to the conclusion that it did. It is therefore sought to be argued that although Section 57 left a particular question to be decided according to the opinion of the Judge, still the Court of Appeal went into the grounds of that opinion and in fact came to a contrary conclusion. Now it must be remembered that the opinion which a Judge has to form u/s 57 was a judicial

opinion. It was a judicial discretion that he had to exercise, and it is patent that if an appeal lay from his order, the Court of Appeal would undoubtedly have the right to consider whether the discretion was judicially exercised. If there is an appeal from a decision of a Judge, no opinion that he forms and no judicial discretion that he exercise's can. ever be final. It is. always subject to review by the Court of Appeal. But the opinion that the Provincial Government have to form u/s 4(1) (a) is not as a Judge or as a Court of law but as an Executive, and that opinion is not subject to appeal to this Court, and there is all the difference in the world between the two positions.

50. In *Eshugbayi Eleko v. "Government of Nigeria (Officer Administering)* [1931] A.C. 662 the Privy Council considered the powers of the Governor of a Colony to order the removal of a certain Native Chief from the Colony. The Ordinance which gave that authority to the Governor laid down certain conditions which had to be complied with. The Privy Council held that the Court had the power to investigate into the question whether the conditions in fact existed. Now if one looks at the language of the Ordinance, the conditions precedent are not matters of opinion of the Governor but they are questions of fact and therefore, in order to support the legality of his action, the Governor had to satisfy the Court that those conditions existed as facts.

51. The question whether the Government formed the opinion required u/s 4(1) (a) is a question of fact and has got to be proved like any other fact. An issue to this effect was raised before the trial Court, being issue No. 6. Mr. Maneksha who appeared for the Government proposed to call evidence to prove that fact. The learned Judge ruled that, in view of the letter of April 3, 1943, written by Government to the appellants and also in view of the fact that there was nothing in the evidence led by the appellants to suggest that the statements contained in that letter were not correct, any further evidence was unnecessary and he accordingly answered issue No. 6 in favour of the Government. It is now argued that in fact the letter of April 3, 1943, does not mention that Government had formed any opinion u/s 4(2) (a) of the Act. It is true that the letter does not expressly mention that the Government is acting under Section 4(2) (a). As I have already mentioned, it sets out excerpts from the report of the Electrical Inspector which goes to show that there is a default in making supply to the consumers inasmuch as the licensee's plant could only supply 60 k.w. against the company's average peak load of 130 k.w.; and in one of the new conditions imposed it is clearly stated that it was so being imposed in order to enable the licensees to fulfil the obligations imposed on them by virtue of the contract with the consumers as laid down in el. VI of the Schedule to the Indian Electricity Act. But be that as it may, when the learned Judge gave his ruling and put the construction on the letter which he did, the appellants acquiesced in that ruling and did not state to the learned Judge that they did not accept that construction and that the Government should be asked formally to prove that they had formed the opinion required u/s 4(2) (a). Although the fact of the formation of the opinion might not have been stated in the letter of April 3, 1943, in the

written statement of Government it is so stated in clear and precise terms. It also seems that the appellants themselves understood the Government's letter to mean that the grounds they were relying on were the grounds mentioned u/s 4(2)(a) because in paragraph 11 of the plaint they state that after the letter was written, the plaintiffs interviewed the Deputy Secretary, Public Works Department, and satisfied him that no wilful and/or unreasonably prolonged default was committed by them in carrying out the said requirements mentioned in that letter. It should also be borne in mind that the statute does not cast any obligation upon the Government to state the grounds on which the Government purport to exercise the right to revoke the license. The only obligation upon them is that if the revocation is challenged, they should satisfy the Court that the conditions which are the prerequisite of the right to revoke the license have been satisfied. In my opinion it is not open to the appellants to urge that the Government have failed to prove that they formed the opinion required u/s 4(1) (a) of the Act. I may mention that even in the memorandum of appeal this point is not taken.

52. The other question that arises is whether even assuming that the decision of Government is final and is not open to question by the Court, whether in forming their opinion the Government have to act judicially or the formation of their opinion is a pure ministerial or administrative act. The learned Judge below took the view that it was a purely ministerial act. I do not propose to express my opinion on it for the reason I am about to state. If Government had to act judicially, then they must conform to the rules of natural justice and they must not act in excess of the jurisdiction conferred upon them by the statute. If the appellants had challenged the decision of Government as having been arrived at either in contravention of the rules of natural justice or in excess of jurisdiction, then undoubtedly we would have had to consider whether the Government were acting judicially or not. But to my mind the pleadings and the issues and the judgment of the learned Judge below clearly show that the decision of the Government with regard to Section 4(1) (a) was never challenged on either of these two grounds. In paragraph 6 of the plaint the letter of April 8, 1943, is attacked only on the ground that the allegation that there were sufficient grounds for revoking the license was entirely unfounded. Contrast this with paragraph 15 of the plaint where the notice dated January 28, 1944, revoking the license is challenged on the ground that this action of Government was against the principles of natural justice; and when we turn to the issues, the only issue raised is issue 10(a) and (b), namely, were the defendants before revoking the plaintiffs' license bound to observe the requirements of natural justice? and if so, did they do so? and the learned Judge has dealt with that issue and found it against the appellants.

53. Mr. M.V. Desai has now sought to argue before us that the Government were not justified in imposing new conditions u/s 4(2) of the Act without giving his clients a reasonable opportunity to say what they wanted to say in their defence and thereby contravening the rules of natural justice. I do not think it is open to

Mr. Desai to take up this point in the Court of Appeal. If it was a pure question of law which arises from facts already established or admitted on the record, even though such a point was not urged before the trial Court, it would have been competent to the appellants to do so. But the question that Mr. Desai wants to argue is not a pure question of law. Facts have got to be established and the Government do not admit and there is no such admission on the record that they came to that decision which was communicated to the appellants by their letter of April 3, 1943, without hearing the appellants.

54. I should like to point out that the course which this trial took before the learned Judge below was entirely different from what it has taken before us. In the Court below the right of Government to impose conditions u/s 4, Sub-section (2), was disputed for the reason that there were no grounds for the opinion of the Government that the public interest required the revocation of the plaintiffs' license or that the plaintiffs had made wilful and unreasonably prolonged default in doing what was required of them by or under the Indian Electricity Act, The learned Judge held that the Court had no jurisdiction to inquire into the grounds and that was the end of that matter. What was seriously contested and what was contested at great length was that there was no breach by the appellants u/s 4, Sub-section (1), Sub-clause (b). It was urged by the appellants before the learned Judge that all that was required of them was to use their best endeavour to comply with the conditions contained in the letter of April 3, 1943. This contention was negated by the learned Judge who held as a fact that the appellants had committed a breach of the terms and conditions of the license which were incorporated into the license by the letter of April 3, 1943. Mr. Desai has not challenged before us this decision of the learned Judge. He had admitted that if Section 4(2) applies, then the revocation of the license by the Government was valid. The whole of his argument has been directed to satisfy us that Section 4(2) did not apply as the conditions contained in Section 4(2) (a) were not complied with.

55. I have had the advantage of reading the judgment of the learned Chief Justice which he has just delivered and I very much regret I cannot take the same view of Section 4(1) (a) as he has taken. I hold that the Government have established that they formed the opinion that the appellants made wilful and unreasonably prolonged default in carrying out their obligation under the Act and also that public interest required that the appellants' license should be revoked. Once they formed this opinion, they became entitled to impose further terms upon the appellants u/s 4, Sub-section (2), which they did by their letter of April 3, 1943. It is admitted, as I have pointed out, that the appellants committed a breach of these terms and thereupon the Government became entitled to revoke the license u/s 4(2) (b) of the Act.

56. I, therefore, agree with the learned Judge below that the plaintiffs' suit fails. I would, therefore, dismiss this appeal with costs.

Coyajee, J.

57. The appellants, who were the plaintiffs in the trial Court, are licensees under the Indian Electricity Act, 1910, being the assignee of a license granted on June 26, 1924, to Messrs. Ramkrishna L. Amte and Sidheshwar S. Malinath. The assignment was made on January 28, 1925, under the provisions of Section 9(2) of the Indian Electricity Act, 1910, when the Governor of Bombay consented to the assignment of the said license. The appellants were supplying the city of Hubli with electricity under the said license when on April 3, 1943, the Deputy Secretary, Public Works Department, called upon the plaintiffs to carry out certain requirements mentioned in his letter dated April 3, 1943, which is Ex. B to the plaint. The letter sets out that there was no qualified Engineer or other person in charge of the plaintiffs' supply station and works either electrical or mechanical. Thereafter it sets out the conditions of six machines, the first three being entirely unserviceable for reasons set out on the face of the document, the fourth being dismantled and new parts were being fitted, the fifth being in such a bad condition that not more than 60 k.w. load could be put on the generator, and the sixth being in a very bad condition and repairs were badly needed to it. Thereafter it is set out that only one set could be used for obtaining power out of six engines and the maximum energy generated was 60 k.w. against the company's average peak load of 180 k.w. Thereafter it is set out that Government was satisfied that there were sufficient grounds for revoking the license u/s 4(2) of the Indian Electricity Act. Although it is set out that there are sufficient grounds for revocation it is further added that Government was pleased to permit the license to remain in force u/s 4(2) of the said Act subject to the condition, namely, that within six months of the notice, viz. the letter of April 3, 1943, the licensee should put the same in proper working order for the purpose of ensuring a continuous and efficient supply to all consumers connected to the system and in order to fulfil the obligations imposed on the licensee by virtue of contracts with the consumers as laid down in el. VI of the Schedule to the Indian Electricity Act. Thereafter it is added that in the event of the licensee failing to take necessary steps within six months to fulfil the above condition the license would be revoked.

58. The letter of April 3, 1943, makes it quite clear on the face of it that the generating sets were in a hopelessly bad condition, that there are sufficient grounds for revoking the license u/s 4(2) of the said Act, and further that the licensee should within six months recondition the plant so as to ensure a continuous and efficient supply to all consumers so as to comply with the obligations imposed on them by the contracts with the consumers as provided for under Clause VI of the Schedule.

59. Thereafter correspondence between the licensee and Government followed which has been exhibited, and in the course of that correspondence it appears that two interviews were granted to the representatives of the appellant company and the third was refused. It appears that on January 28, 1944, the Government, namely, the respondent served a notice on the appellants, being Ex. F to the plaint, pointing out that whereas the appellants had failed to comply

with the requirements of the letter of April 3, 1943, namely, to recondition the plant and put the same in proper working order for the purpose of ensuring a continuous and efficient supply to all consumers connected to the system and on account of the said non-compliance the license became liable to revocation under Clause (b) of Section 4(2) of the Indian Electricity Act. The letter further sets out that Government were of opinion that in the public interest the said license should be revoked, and a notice was given u/s 5(a) of the said Act that in exercise of the powers conferred by Section 4 of the said Act the Government of Bombay was pleased to declare that the said Hubli Electric License, 1924, should stand revoked with effect from May 1, 1944.

60. The plaintiffs have filed this suit for the purpose of a declaration that the revocation of the said license was illegal, inoperative and void in law, for a further declaration that the plaintiffs are entitled to retain and act under the said license as if the notice had not been given. The plaint sets out that, the said order of revocation is ultra vires and bad in law inasmuch as Clause (b) of Sub-section (2) of Section 4 had no application to the facts of the case as the plaintiffs have not committed breach of any of the terms and conditions contained in the said license. In paragraph 15 of the plaint the plaintiffs say that in sending the said notice the defendant acted arbitrarily and no reasonable opportunity was given to the plaintiffs to place the real facts before the Government.

61. In the written statement the Province of Bombay says that in the circumstances it was the sole judge to decide whether there was wilful and unreasonably prolonged default on the part of the plaintiffs in doing what was required of them by or under the Act and it was the sole judge to decide whether public interest required revocation of the plaintiffs' license. The defendant says that it had clear grounds for being of opinion and was in fact of opinion that the plaintiffs had made wilful and unreasonably prolonged default in doing what was required of them. The Government further contends that the Court has no jurisdiction to inquire into the grounds on which it could reasonably form such opinion. The defendant further says that it was the duty of the plaintiffs to maintain and ensure an uninterrupted service under the license, that the plaintiffs wilfully failed and neglected to entrust the work for proper reconditioning of the generators to the original makers of the engines with the result that the plant was ultimately in no better condition than it was at the time when the notice of April 3, 1943, was given to the plaintiffs. The defendant further denies that it acted arbitrarily or that no reasonable opportunity was given to the plaintiffs to place the real facts before the defendant and the defendant says that it made proper inquiries as were necessary in the circumstances, and after hearing the plaintiffs as to what they had to say in the matter the defendant formed an opinion and came to the conclusion that public interest required the revocation of the plaintiffs' license. The defendant further submits that this Court has no power to inquire into the grounds of such opinion or to consider whether there did exist grounds on which it could reasonably form

such opinion.

62. Eleven issues were raised before the trial Court and the trial Court tried issues 1, 2 and 4 as preliminary issues and thereafter allowed the plaintiffs to adduce evidence on the merits of the case. Before referring to the issues I may say that issue No. 10 was as follows :

10(a) Were the defendants before revoking the plaintiffs' license bound to observe the requirements of natural justice ?

(b) If so, did they do so ?

The learned trial Judge at p. 108 of the appeal paper book says that issue No. 10 had not been strongly pressed and says that in his opinion the defendant was not bound to observe the requirements of natural justice as it was not acting judicially or quasi-judicially, although the defendant was bound to act honestly and it is not disputed that it did. The learned Judge was of opinion that he did not think the defendant was bound to hear both parties or to do anything which remotely resembles a trial in a Court of justice, and he answered issue 10(6) in the affirmative. It may also be noted that the appellants have not appealed against the finding on issue No. 6.

63. The main question raised in this appeal is whether on a proper construction of Section 4 of the Indian Electricity Act the action of the respondent in revoking the license was valid in law on admitted facts and circumstances of the case. A further question was attempted to be raised in this Court, namely, whether the action taken by the respondent was contrary to the principles of natural justice. On this question the view of the majority of Judges of this Court was that the appellants were precluded from advancing this question in this appeal on the following grounds. Although a reference has been made in the plaint to the arbitrary act of the respondent in paragraph 15 and the same has been traversed, no specific issue has been raised on this point. The question raised is a mixed question of law and fact, and as no issue on this point was joined in the trial Court, the respondent could not have led any evidence on this question, and if raised, the respondent could have in that event adduced evidence to rebut the allegation. Therefore it is not open to the respondent in appeal to argue this question. The only question therefore before this Court is as set out, namely, whether the decision of the respondent is one within its absolute and unqualified discretion or whether the Court is entitled to go behind it and examine the grounds on which the decision was arrived at and review it so as to decide whether the decision was a proper one on the materials available to the respondent at the material time. The question is a narrow one and the answer to it depends entirely on a proper reading and construction of Section 4 of the Indian Electricity Act of 1910. In construing this section it is legitimate to examine other relevant sections of the said Act so as to bear in mind the scheme of the Act and to find out the object and intention with which the Legislature enacted this section. One may also look at the scheme of the Act and examine

Section 4 of the Act giving the words of this section their natural meaning without doing violence to the grammatical structure of the section. One must for this purpose remember that this is peace time legislation and as far as possible not to import into the construction thereof the analogy of the manner in which war time emergency legislation was construed. As contended for by the appellants the Court must approach the subject with due regard to the liberty of the subject and rights to property, and having approached the question with due caution as set out above, the Court must give a natural meaning to the words of the section so as to find out the true meaning of the words in such a manner as to give effect to the object and intention of the Legislature rather than give a meaning to the section which would defeat the true object and intention of the Legislature.

64. Before approaching this question it may be mentioned straight away to clear the ground that there is no allegation whatever that Government acted mala fide or with malice or that Government had any collateral purpose in view when Government took the action complained of.

65. Section 4 of the Indian Electricity Act, 1910, runs as follows :

4. (1). The Provincial Government may, if in its opinion the public interest so requires, revoke a license in any of the following cases, namely:-

(a) where the licensee, in the opinion of the Provincial Government, makes wilful and unreasonably prolonged default in doing anything required of him by or under this Act;

(b) where the licensee breaks any of the terms of the conditions of his license the breach of which is expressly declared by such license to render it liable to revocation;

(c) where the licensee fails, within the period fixed in this behalf by his license or any longer period which the Provincial Government may substitute therefore by order under Sub-section (3), Clause (b) and before exercising any of the powers conferred on him thereby in relation to the execution of works,-

(i) to show, to the satisfaction of the Provincial Government, that he is in a position fully and efficiently to discharge the duties and obligations imposed on him by his license, or

(ii) to make the deposit or furnish the security required by his license;

(d) where the licensee is, in the opinion of the Provincial Government, unable by reason of his insolvency, fully and efficiently to discharge the duties and obligations imposed on him by his license.

(2) Where the Provincial Government might, under Sub-section (1), revoke a license, it may, instead of revoking the license, permit it to remain in force subject to such further terms and conditions as it thinks fit to impose, and any further terms or conditions so imposed shall be binding upon, and be observed

by, the licensee, and shall be of like force and effect as if they were contained in the license.

(3) Where in its opinion the public interest so permits, the Provincial Government, on the application or with the consent of the licensee and, if the licensee is not a local authority, after consulting the local authority (if any) concerned,-

(a) revoke a license as to the whole or any part of the area of supply upon such terms and conditions as it thinks fit, or

(b) make such alterations or amendments in the terms and conditions of the license, including the provisions specified in Section 3, Sub-section (2) Clause (f) as it thinks fit.

66. As I stated above one must look at the scheme of the Act and see the nature of the legislation. The preamble to the Act says that whereas it is expedient to amend the law relating to the supply and use of electrical energy it is hereby enacted as follows. u/s 3 it is plain that the grant of a license is at the discretion of the Provincial Government and el. (f) Sub-section (2) of Section 3 of the Indian Electricity Act says that the provisions contained in the schedule shall be deemed to be incorporated within and form part of every license granted under this Part. In this connection one may refer to Clauses 4 and 6 of the schedule. Under Clause 4 the licensee shall, within a period of three years after the commencement of the license, execute to the satisfaction of the Provincial Government all such works as may be specified in the license in this behalf or, if not so specified, as the Provincial Government may, by order in writing issued within six months of the date of the commencement of the license, direct. Clause 6 is of considerable importance and it refers to requisition for supply by owners or occupiers and the words used are that the licensee shall supply and shall continue to supply energy in accordance with the requisition as set out and provided under Clause 6. The enactment emphasises this aspect by laying down a penalty for failing to supply, namely, prosecution u/s 42 (b) of the Act. This is for the purpose of ensuring a continuous supply of energy, and the penalty is imposed if the supply is not so maintained.

67. Therefore it is clear that the license is granted at the discretion of the Government on the terms and conditions laid down in the license and subject to the provisions of the Indian Electricity Act of 1910, and the Act itself makes an incorporation of clauses under the schedule into the license itself. It is therefore clear that the licensee is fully aware or deemed to be aware of the provisions of the license and of the schedule and of the provisions of the Act, and as remarked by Mr. Justice Blagden

Those who, not out of philanthropy but for business purposes, take the benefit of a license under the Act must also, without grumbling, take the burden... They must take their statutory rights with all the statutory defects, and one of the statutory defects of a license is that it is liable to be revoked u/s 4.

It is clear that grant of a license is the grant of a monopoly to the licensee to serve a particular area and that monopoly is controlled and circumscribed by the provisions of the Act and the terms of the license.

68. Now I come to the narrow question, namely, what is the proper construction of Section 4 of the said Act? The section is 4(2) of the Act and there are subheads (a), (6), (c) and (d). Section 4(2) says that "The Provincial Government may, if in its opinion the public interest so requires, revoke a license in any of the following cases." It is obvious that the section itself is placed there in public interest and it is obvious that here the Legislature intended that what was or was not to be in the public interest was to be determined by the opinion held by the Provincial Government at the material time. u/s 4(2) (a) the words "opinion of the Provincial Government" again occur, but they do not occur in Section 4(1) (b), nor in Section 4(2) (c) but the words occur again in Section 4(2) (d). The question before the Court is whether when the Legislature has used the words "in the opinion of the Provincial Government" the Provincial Government are the sole judges in the absence of lack of bona fides, malice, or collateral purpose and whether they are also sole judges of the existence of public interest or whether the Court is entitled to go behind this and call upon the Provincial Government to set out the grounds and the reasons for forming an opinion and examine the same and come either to a different finding or confirm the same. It is contended on behalf of the appellants that Section 4(2) (a) should be read so as to make the words "in the opinion of the Provincial Government" qualify the words "public interest" and the words "wilful and unreasonably prolonged" and not the words "default in doing anything required of him by or under this Act." It is maintained that Government are the sole judges of the existence of public interest and may be they are sole judges whether the default is wilful or unreasonable, but they are not sole judges of the factum of the default which is a question of fact, and being a question of fact and a condition precedent, it would always be open to an inquiry in a Court of law. On the other hand it is contended on behalf of the respondent that the words "opinion of Government" control and qualify the whole of Section 4(2) (a), that that is the only natural meaning and that the Government are not only sole judges of whether it is in public interest but sole judge of whether a party has made wilful and unreasonably prolonged default in doing anything. It is contended that the formation of the opinion is a mental process embracing what is actually required under the Act, viz. whether the requisition has or has not been complied with or whether there is or there is not a prolonged default. Section 4(2) (b) is purely a factual one, and in the event of there being a default as contemplated within proviso (a) a notice would be served under proviso (b) which would be thereby attracted and would come into operation in the event of a determination that there was a default within the provision of Sub-section (a).

69. In other words the question is whether there was a continuous supply of energy. The Government called upon the appellants to recondition the machines so as to comply with Clause 6 of the schedule and by the letter of April 3, 1943,

sufficiently indicated the nature of the default, and u/s 4(2) of the Act the Government called upon the appellants to recondition the machines within six months, and on January 20, they being of the opinion that default had been committed u/s 4(2) (a), served a notice terminating and revoking the license as of May 1, 1944. It may be mentioned that looking at the record before the Court the letter of April 3, 1943, has not been challenged and the only defence as appearing on the correspondence is that a catalogue of excuses had been advanced.

70. It appears that u/s 4(a) the Government need not assign any reasons or set them out in the notice of revocation, but the act must be justified, and it appears that there has been no appeal on issue No. 6 before the trial Court whereon the finding of the trial Court was that on the face of Ex. B opinion had been formed by the Government and that in fact it did exist at the material time.

71. Reverting now to the construction of Section 4 once more one may note that u/s 4(2), Clauses (a), (b), (c) and (d) are differently worded. Clause (b) is entirely factual and under Clause (c) the party is allowed to show cause. Here there is no question of the opinion of the Government being attracted, but under Clauses (a) and (d) it is clear that the conditions must be such as to satisfy the opinion of the Government, viz. that public interest so requires and there is wilful and unreasonably prolonged default. The construction suggested by the appellants, viz. that the words "opinion of the Provincial Government" must be restricted only to public interest and to the words "unreasonably prolonged" but not to the word "default" seems to me one that does not give the words of the section its natural meaning. To give the construction suggested by the appellants would be to reconstruct the section. The section as it stands does give a plain meaning to the words. The provision itself is expressly there for the protection of public interest and that is why Clauses (a), (b), (c) and (d) are, as indicated above, differently worded. If the appellants' construction is accepted, the result of it would be not only to ignore the natural meaning of the plain words of the section but the necessary result of it would be that it would amount to a substitution of the view taken by the Court for the opinion of the Provincial Government on the question of the factum of the default and would be tantamount to rewriting the section thereby doing violence to the manner in which the legislature has couched the section so as to indicate its real object and intention.

72. It is important to note that there are other sections under this Act as pointed out by the learned trial Judge in which words to the following effect are used "whose decision, after considering the reasons given by the repairing authority for its action, shall be final". That is a decision given by the statutory authority as between the consumers and the licensee. This indicates that the Legislature did not intend when it used the word "opinion" to convey the same meaning as indicated by the word "decision" as set out in the other sections. The opinion of a party is nothing more than a mental process arrived at on certain grounds, but

the opinion of a Judge in similar circumstances must necessarily amount to a decision. The question therefore is whether the word "opinion" of the Government is opinion that is absolute and unqualified or whether it is one that can be called into question in a Court of law and reviewed. The only allegation in the plaint is that the plaintiffs deny that the Provincial Government had "sufficient grounds". That is the only allegation in the plaint. The question of the formation of the opinion has not been challenged in the pleadings.

73. In this connection certain authorities have been referred to and I need only refer to some of them. In the leading case of *Liversidge v. Sir John Anderson* it has been held that (p. 206) :

Where the Secretary of State, acting in good faith under reg. 18B of the Defence (General) Regulations, 1939, makes an order in which he recites that he has reasonable cause to believe a person to be of hostile association and that by reason thereof it is necessary to exercise control over him and directs that that person be detained, a Court of law cannot inquire whether in fact the Secretary of State had reasonable grounds for his belief. The matter is one for the executive discretion of the Secretary of State.

It is true that this was a war time emergency legislation but nonetheless Lord Atkin in his dissenting speech has pointed out that the Legislature has at times used words which imply qualified and at other times used the words which imply unqualified beliefs, and he draws attention to Section 13 of the Children and Young Persons Act where the material words are as follows :

A constable may arrest without warrant any person whom he has reason to believe has committed an offence if he believes such person will abscond.

Here on the face of it one belief is qualified and the other is not. I may here say that I entirely agree with the remark of the trial Judge that if the construction of the section were to be in the manner indicated by the appellants the Legislature would have easily used, if it wanted to, words to the effect, namely, "The Provincial Government may if in its reasonable opinion." In that event, as pointed out by the learned Judge, it would be open, to the Court to inquire whether the opinion was or was not well founded.

74. Therefore, in my opinion, it is clear that the words "if in the opinion of the Government" are used so as to give absolute discretion to Government and the words are used in an unqualified manner. That is to say whether the Government did arrive at the formation of an opinion and whether they are right in their opinion or are in error. I may here refer to the words of Viscount Maugham in the above case of *Liversidge v. Sir John Anderson* [1942] A.C. 206 as follows (p. 219) :

That if there is a reasonable doubt as to the meaning of the words used, we should prefer a construction which will carry into effect the plain intention of those responsible for the Order in Council rather than one which will defeat that

intention.

The learned Law Lord further added as follows (p. 219) :

I am not disposed to deny that, in the absence of context, the prima facie meaning of such a phrase as "if A.B. has reasonable cause to believe" a certain circumstance or thing, it should be construed as meaning "if there is in fact reasonable cause for believing" that thing and if A.B. believes it. But I am quite unable to take the view that the words can only have that meaning. It seems to me reasonably clear that, if the thing to be believed is something which is essentially one within the knowledge of A.B. or one for the exercise of his exclusive discretion, the words might well mean if A.B. acting on what he thinks is reasonable cause (and, of course, acting in good faith) believes the thing in question.

75. I may at this stage refer to the case referred to by the learned Chief Justice on the question of import of the phrase "in the opinion". The case is *Ormerod v. Todmorden Mill Co.* (1882) 8 Q.B.D. 664 where it was held that :

The Court of Appeal has power to review the order made by a Judge u/s 57 of the Judicature Act, 1873, who, having jurisdiction to make such order, has in the exercise of his discretion ordered the issues of fact in an action to be tried by an official referee, on the ground that they required prolonged examination of documents and also scientific and local investigation; but the Court of Appeal, whose discretion in such case is to be substituted for that of the Judge, will not exercise such discretion except in a strong case where it clearly thinks the Judge has wrongly exercised his discretion, and that an injustice has been done by the order he has so made.

It appears that u/s 57 of the Judicature Act, 1873, it is a condition precedent to the jurisdiction of the Judge to make the order under that section, that the matter is one requiring a prolonged examination of documents, or a scientific and local investigation, and the trial Judge Pollock B. exercised his discretion by making a reference to the referee being of the opinion that the matter was one requiring prolonged examination of documents, and also scientific and local investigation. Against that order an appeal was taken to the Court of Appeal. It was argued that the order was wrongly made, or at all events the judicial discretion of the trial Judge was wrongly exercised, and if such orders were upheld the actions in the Queen's Bench Division will be reduced to actions for breach of promise of marriage, slander and libel. On the other hand it was contended that the learned Judge had properly exercised his discretion in making such order, and that the Court had no power to review it. Secondly it was argued that the Act expressly left it to the discretion of the learned Judge to determine whether the matter requiring such examination or investigation could be conveniently gone into by a jury, and that as that was left entirely to his opinion, it was not a matter which the Court of Appeal had power to review.

76. The ease was determined on a proper reading of Section 57 of the Judicature

Act, 1873, which expressly directs that if the Judge is of the opinion that the matter is one such as set out therein then he may refer the matter to a referee. Lord Coleridge did pose the question whether once there was material before the Judge and he did form an opinion, it should be the subject-matter of an appeal. Lord Coleridge did remark that according to his experience at the bar there was no similar application to the Court of Appeal to rescind such an order and he held that even if there was jurisdiction u/s 19 of the Judicature Act, 1873, it is the jurisdiction which ought not to be exercised in that particular case for reasons of convenience of parties as set out by their Lordships at p. 664, and he held that he was of opinion that the discretion of the Judge under this particular section was not intended to be and could not be reviewed. This was a minority judgment. Lord Justice Brett held otherwise on the ground that Section 19 of the Judicature Act, 1873, allows every kind of appeal pursuant to this Act and the only limitation is in the words of Section 19 "save as hereinafter mentioned." He posed the question at p. 678 whether the Court of Appeal had jurisdiction to review that exercise of discretion which the Judge did exercise and stated that the words "in the opinion of the Court or a Judge" seemed to him to be equivalent to "according to the judgment of the Court or a Judge", and inasmuch as there cannot be any positive rule of law applicable to the particular case, for that reason it is that this opinion is an opinion of discretion as distinguished from an absolute rule of law. His Lordship held that Section 57 of the Judicature Act only allowed the Judge to use discretion as regards the procedure to be adopted and that the opinion of the Judge was a decision and as such was open either to appeal or review. Lord Justice Holker delivered judgment to the same effect as Lord Justice Brett. The ratio of the case seems to me to be clear, namely, that where the opinion is based on certain conditions to be exercised by the Judge under the statute that is a decision which can be either taken in appeal or review. The only other case I need refer to is the one cited by Mr. Desai, namely, *Eshugbayi Eleko v. Government of Nigeria (Officer Administering)* [1931] A.C. 662 . In that case the Appeal Court held that the Ordinance laid down certain conditions which were questions of fact and which must exist before the statutory authority could act and therefore the Court was entitled to enquire and find whether those conditions did exist so as to attract the provisions of the Ordinance. In these circumstances that case in my opinion does not avail the appellants.

77. In these circumstances, in my opinion, the proper construction of Section 4(1) (a) is that which has been adopted by the trial Court, namely, that the opinion of the Provincial Government both in Sub-section (1) and (a) is absolute and unqualified and a Court of law cannot enquire into the grounds or reasons which prompted the said authority to arrive at that opinion. It appears from the record that the letter of April 3, 1943, Ex. B, gave the appellants six months" time to recondition the plant and on their failing to do so a notice was served on January 28 indicating the breach u/s 4(1)(b) and terminating the license on May 1, 1944, so that on failure to comply with the conditions which was a requisition

made by the Government u/s 4(2) read with Section 1(1) the provisions of Section 4(1) (b) were attracted and the license was revoked under that part of the section.

78. As regards the argument advanced on the construction of Section 4 of the Indian Electricity Act I have come to the conclusion that the act of the Government is an executive act and the phrase "in the opinion of the Provincial Government" qualifies not only the words "public interest" but also the words "wilful and unreasonably prolonged default in doing anything." It is an executive act and the Province of Bombay has been made under this section the sole judge, in the absence of a pleading to the effect that there was either malice or collateral purpose, and the words "opinion of the Provincial Government" qualify and control the whole of the sub-section.

79. Therefore there is no further point to be considered, but it may be stated that if the act of the Provincial Government was a quasi-judicial one, then the proceedings would be in the nature of an application for writ of certiorari, namely, for the purpose of sending for the proceedings and quashing them not on the ground that the Government was right or Government was wrong in its conclusion and opinion but on the ground that either the action was taken in excess of jurisdiction or that jurisdiction was entertained where there was want of jurisdiction or that the proceedings were contrary to the principles of natural justice. As I have pointed out above the question of the formation of opinion has not been challenged, and therefore even if the discretion exercised was a judicial one no grounds have been set out to challenge that position.

80. As I have stated above this is a narrow question of construction and therefore no further question remains to be considered, but counsel for the appellants emphasised that this amounted to expropriation of property of a subject and the Court will look upon it with disfavour. That position is not a correct one because where the Provincial Government revokes a license under Sub-section (1) of Section 4 the provisions of Section 5 come into operation. Under Sub-section (e) revocation of license extinguishes only the rights, powers, authority, duties, and; obligations of the licensee in favour of the purchaser and under Sub-section (a) the effect of revocation is that from that day all the powers and liabilities of the licensee under this Act shall absolutely cease and determine. The Act provides compensation in the form of valuation of lands, buildings, works, materials and plant at fair market price at the time of the purchase also taking into consideration the circumstances that they are in such a position as to be ready for immediate working, and to the suitability of the same for the purposes of the undertaking. So that, in my opinion, the license remains in full force as provided by Section 5(1) and that the undertaking is taken over at its proper value as a going concern under the proviso to Section 5(b) of the Act save that any extra compensation for compulsory purchase is denied and properly denied inasmuch as revocation is a penalty following upon a default within the Act.

81. I have had the privilege of persuing the two judgments just delivered. For reasons set out above I have come to the conclusion that the judgment of the trial Court is right, that the appeal fails and should be dismissed with costs.