
(1965) 07 AHC CK 0026
In the Allahabad High Court
Case No : Second Appeal No. 1024 of 1955

Jangpal Sharma

APPELLANT

Vs

The Western U.P. Electric Power and Supply Co.

RESPONDENT

Date of Decision : 21-07-1965

Acts Referred:

Contract Act, 1872 — Section 73
Electricity Act, 1910 — Section 24, 3, 3(2)
Specific Relief Act, 1877 — Section 55

Citation : AIR 1966 All 117

Hon'ble Judges : D.P. Uniyal, J

Bench : Single Bench

Advocate : Gopal Behari, for the Appellant; Ambika Prasad and S.D. Agarwal, for the Respondent

Final Decision : Dismissed

Judgement

D.P. Uniyal, J.—This appeal from the decree of the Civil Judge dismissing the suit for mandatory injunction has been filed by the plaintiff. The plaintiff took out an electric connection S. C. No. 218 for power and S. C. No. 332 for light and fan from the defendant Electric Supply Company, Firozabad for running a factory under an agreement Ex. 1, dated 20-12-1945. In 1951 the plaintiff leased out the said factory to one Ram Dayal and let out the service connections also to him without the permission of the defendant Company. Acting under paragraph 13 of the agreement aforesaid the defendant Company cut off the electric power of the factory on 7-7-1952, treating the agreement as being at an end. Hence the suit.

2. The main defence of the Electric Supply Company was that the electric power was not transferable under the terms and conditions of the agreement and the plaintiff having let out the said electric connections to a third party without their consent they were justified in terminating the agreement. It was also contended on behalf of the defendant that the plaintiff had himself intimated to the defendant Company by his letter, dated 10-6-1962 to disconnect the electric

connections as the lessee, Ram Dayal had failed to pay up the arrears of electric charges.

3. It was contended on behalf of the appellant that there was no provision in the agreement that breach of any of the conditions mentioned therein shall entail disconnection of power by the licensee. Secondly, it was urged that the agreement in question had not been approved by the State Government in accordance with paragraph VI of the Schedule of the Indian Electricity Act; and lastly, that Paragraph 13 of the agreement was ultra vires of the Act.

3a. Paragraph 13 of the agreement reads as follows:--

"This agreement and/or benefits and obligations thereof, shall not be transferable".

It was said that although under the agreement the plaintiff had no right to transfer the electric connections to a third party the defendant was not empowered to disconnect the service connections and stop the supply of energy. It seems to me that the contention of the learned counsel is based on a misreading of the Act. Section 3(2)(f) of the Indian Electricity Act provides-

"The provisions contained in the Schedule shall be deemed to be incorporated with, and form part of, every licence granted under this part, save in so far as they are expressly added to, varied or excepted by the licence and shall, subject to any such additions, variations or exceptions which the Provincial Government is hereby empowered to make, apply to the undertaking authorised by the licence."

Paragraph VI (1) (a) of the Schedule provides-

"Where a requisition is made by an owner or occupier of any premises requiring the licensee to supply energy for such premises, the occupier shall within 14 days after the service on him by the licensee in writing in this behalf, tender to the licensee a written contract, in a form approved by the Provincial Government, duly executed and with sufficient security, binding himself to take a supply of energy for not less than two years to such amount as will assure, at current rates charged by the licensee, a reasonable return to the licensee."

Thus the contract Ex. A-1 entered into by A the plaintiff with the licensee constituted the terms and conditions upon which supply of power was agreed to be made by the defendant Company to the plaintiff. Any breach committed by the plaintiff of any of the terms and conditions of the said contract would be a breach of the provisions of the Act. Inasmuch as A the plaintiff let out the electric connections, without the permission of the Electric Company, the latter could enforce the terms of the contract and terminate the agreement.

4. The second argument that the Provincial Government had not approved the agreement form Ex. A-1 is not open to the appellant. No such plea was raised by him in the plaint, nor was the point taken in the trial Court. It being a pure

question of fact, the lower appellate Court was, in my opinion, justified in rejecting it.

5. The last contention that Paragraph VI of the Schedule was ultra vires of the Act is equally untenable. It has been pointed out above that Paragraph VI of the Schedule forms part of the Act and cannot be considered in isolation, divorced from the provisions of Section 3.

6. It was also urged that the defendant Company was under an obligation to supply energy to the plaintiff and could not cut off the power on the ground that the plaintiff had committed breach of the agreement. It was said that the Company had no power to discontinue supply of energy except in accordance with the provisions of Section 24 of the Act, namely, where the owner or occupier neglects to pay any charge for energy due from him to a licensee in respect of supply of energy to him. It is difficult to appreciate this contention because it is an admitted fact that Ram Dayal had failed to pay the arrears of electric bills outstanding against him. When the Company made a demand from the plaintiff the latter wrote to say that the defendant Company may disconnect the electric connections if the electricity bills were not paid by Ram Dayal. It was only when the Company was unable to realise the arrears from Ram Dayal that they disconnected the power. Therefore, on this ground also the plaintiff's case fails because there was a breach of the obligation committed by the occupier to pay the electric charges due to the Company as required by Section 24.

7. The power to discontinue supply of energy to the premises is a power given in addition to the right to realise the arrears. The consumer having failed to pay the arrears the Company was entitled to disconnect the supply of power.

8. It may be added that the injunction sought by the plaintiff in the suit was a personal right. The plaintiff having leased out the factory to a stranger he had no personal interest left in the supply of power and could not, therefore seek an injunction against the defendant Company. For this reason also the suit was liable to be thrown out.

9. In my opinion the decree passed by the lower Court is legally sound and must be upheld. I accordingly dismiss this appeal with costs.