(1969) 02 GUJ CK 0003

In the Gujarat High Court

Jindas Oil Mill and Another APPELLANT

Vs

Godhra Electricity Co. Ltd. RESPONDENT

Date of Decision : 20-02-1969

Acts Referred:

Electricity (Supply) Act, 1948 — Section 57(2) , 57(2)(c)
General clauses Act, 1897 — Section 6(c)

Citation : (1969) 10 GLR 1036

Hon'ble Judges : S.M. Sikri, J;R.S. Bachawat, J;K.S. Hegde, J

Bench : Full Bench

Judgement

S.M. Hegde, J.—Common questions of law arise for decision in these appeals, by certificate, The suits from which these appeals arise have been considered together and decided by common judgment both in the High Court as well as in the courts below. It is convenient to do so in this Court as well.

2. The suits in questions are representative suits, The plaintiff''s-appellants who are consumers of electricity in the Godhra area sued the respondent-company on behalf of all the consumers in that area seeking to restrain the respondent from enforcing the enhanced charges sought to be collected from the consumers of powers used for lights and fans as well as of motive power.

3. The facts leading to these may now be stated. On November 19, 1922, the then Government of Bombay granted a licence under the Indian Electricity Act, 1910 to a concern called Lady Sulochna Chinubhai and Co. authorising it to generate and supply electricity to the consumers in Godhra area. Clause 10 of the licence prescribed the maximum charges that the licensee could levy for the power supplied. The respondent is the successor of the said licensee. After the Electricity (Supply) Act, 1948 (to be hereinafter referred to as the Supply Act) came into force, a rating committee was constituted u/s 57(2) of the Supply Act at the request of the respondent on January 19, 1950. On the recommendation of that committee, the Government fixed with effect from February 1, 1952, the following charges for the power supplied:

(i) 0-7-9 pies per unit for the electricity supplied for lights and fans with a minimum of Rs. 3/- per month per installation, and

(ii) for motive power at 4 annas per unit with a minimum of Rs. 4-8-0 per month per installation.

The Supply Act was amended in 1956. The respondent increased the charges for motive power from January 1, 1963 to 35 nP. per unit with a minimum of Rs. 7/- per month for every installation. On June 22, 1963, the rates for lights and fans were increased with effect from July 1, 1963 to 70 nP. per unit with a minimum of Rs. 5/- per month for every installation. The contention of the appellants is that the respondent was not competent to enhance the charges in question without the matter having been considered by a rating committee. Their suits to restrain the respondent from levying the proposed increased charges were decreed by rgw reial Court. Those decrees were affirmed by the first appellate Court as well as by a single judge of the Gujarat High Court in second appeals but the appellate bench of the Gujarat High Court reversed those decrees and dismissed the suits holding that under the Supply Act as amended in 1956 the respondent has a unilateral right to enhance the charges subject to the conditions prescribed in the VI Schedule to that Act. It is as against those decisions these appeals have been brought. Civil Appeal No. 15 of 1969 relates to the enhancement of charges for electricity power for lights and fans and Civil Appeal No. 16 of 1969 relates to the enhancement of charges for the motive power.

4. The only question that arises for decision in these appeals is whether under provision of the Supply Act as amended in 1956, the respondent was competent to unilaterally enhance the charges.

5. In these appeals we are not concerned with the provisions of the Electricity Act, 1910. There is no dispute as regards the charges fixed by the Government with effect from February 1, 1952, u/s 57(2)(c) of the Supply Act on the basis of the recommendation made by the rating committee. The appellants admit their liability to pay enhanced charges that may be fixed by the Government on the basis of any recommendation by a freshly appointed rating committee. They merely challenge the respondent''s right to unilaterally enhance the charges. According to the appellants they have a vested right to be governed by the charges fixed in 1952 unit the same is revised by the Government on the basis of the recommendation of a rating committee. It was urged on their behalf that the amendments made in 1956 do not affect the charges in 1952 and they continue to rule till altered by the Government in accordance with law. The respondent repudiates those contentions. It denies that the appellants have any vested right in the charges fixed. It was urged on its behalf that the amendments made to the Supply Act in 1956 have substantially altered the scheme as regards levying charges; it is now open to a licensee to alter the charges fixed by the Government unilaterally subject to the conditions prescribed in Section 57(A) and in Schedule VI of the Supply Act. We may mention at this stage that even

according to the appellants the charges that may be fixed by the Government now on the basis of the recommendation of a rating committee can be unilaterally altered by the licensee after the period fixed in the Government order in accordance with Clause (e) of Section 57(A)(1) expires.

6. In order to decide the point in controversy, we have to take into consideration the relevant provisions of the Supply Act as it stands now and as it stood prior to its amendment in 1956. For the sake of convenience we shall set out side by side the relevant provisions.

The Supply Act as it stood before 1956. The Supply Act as amended in 1956. Section 57. Licensee''s charges to consumers- Section 57. The provisions of the (1) The provisions of the Sixth Schedule Sixth Schedule and the Seventh Schedule and the Table appended to the Seventh shall be deemed to be incorporated in the chedule shall be deemed tobe incorpora licence of every licensee not being a local ted in the licence of every licensee, not authority-- a local authority, from the date of the (a) in the case of a licence granted mencement of the licensee''s next before the commencement of this Act, succeeding year of account and from from the date of the commencement of the such the date licensee shall comply there licensee''s next succeeding year of account; with according and any provisions of and such licence or of the Indian Electricity (b) in the case of a licence granted Act, 1910 (LX of l910) or any other law after the commencement of this Act, from agreement or instrument applicable to the the date of the commencement of supply, licensee shall, in relation to the licensee and as from the said date, the licensee shall be void and of no effect in so faras they comply with the provisions of the said are inconsistent with the provisions of this Schedules accordingly, and any provisions section and the said Schedule and Table. of the Indian Electricity Act, 1910, and (2) Where the provisions of the the licence granted to him thereunder and Sixth Schedule and the Table appended to the of any other law, agreement or instrument Seven Schedule are under Sub-section (1) applicable to the licensee shall, in relation deemed to be incorporated in the licence to the licensee, be void and of no effect of any licensee, the following provisions in so far as they are inconsistent with the shall have effect in relation to the provisions of Section 57A and the said said licensee, namely:-- Schedules. (a) The Board, or where no Board is Section 57(A)(1): Where the provisions of constituted under this Act, the Provincial of the Sixth Schedule and the Seventh Government may if it is satisfied that the Schedule are u/s 57 deemed to be licensee has failed to comply with any incorporated in the licence of any licensee, provisions of the Sixth Schedule and shall the following provisions shall have effect when requested so to do by the licensee in relation to the said licensee namely: constitute a rating committee to examine (a) the Board or where no Board is stituted the licensee''s charges for the supply of under this Act, the State electricity and to recommend thereon to Government-- the Provincial Government: Provided that rating committee shall (i) may, if satisfied that the licensee be constituted in respect of a licensee has failed to comply with any of the three years from the date on which such provisions of Sixth Schedule; and of that licensee, unless the Provincial (ii) shall, when so requested by the Government declares that in its opinion licensee in writing constitute a rating com- circumstances have arisen rendering the mittee to examine the licensee''s charges order passed on the recommendations of for the supply of electricity and to make the provivous rating committee unfair to recommendations in that behalf to the the licensee 0r any of his consumers. State Government: (b) rating committee shall, after giving Provided that where it is proposed to the licensee a reasonable opportunity of constitute a rating committee under this being heard and after taking into consi- section on account of the failure of the deration the efficiency of operation and licensee to comply with any provisions of management and the potentialities of his the Sixth Schedule, such committee shall under taking, report to the Provincial not be constituted unless the licensee has Government making recommendations been given a notice in writing of thirty (and giving reasons therefor) regarding clear days (which period, if the circums- the charges for electricity which the tances so warrant may be extended from licensee may makes to any class of con- time to time) to show cause against the sumers so however that the recommenda- action proposed to be taken: tions are not likely to prevent the licen- Provided further that no such rating see from earning clear profits sufficient committee shall be constituted if the when taken with the sums available in alleged failure of the licensee to comply the Tariffs and Dividends Control Reser- with any provisions of the Sixth Schedule ve to afford him a reasonable return dur- raises any dispute or difference as to the ing his next succeeding three years of interpretation of the said provisions or account if the potentialities of the under any matter arising there from and such taking of the licensee, with efficient difference or dispute has been referred operation and management, so permit. by the licensee to the arbitration of the Authority under paragraph XVI of that (c) Within one month after the receipt Schedule before the notice referred to in of the report under Clause (b) the Provin- the preceding proviso was given or is so cial Government shall cause the report to referred within the period of the said be published in the Official Gazette, and notice: may at the same time make an order in Provided further that no rating com- accordance therewith fixing the licensee''s mittee shall be constituted in respect of a charges for the supply of electricity with licensee within three years from the date effect from such date, not earlier than on which such a committee has reported two months after the date of publication in respect of that licensee, unless the State of the report, as may be specified in the Government declares that in its opinin order; and the licensee shall forthwith circumstances have arisen rendering the given effct to such order: orders passed on the recommendations of the previous rating committee unfair to the licensee or any of his consumers; Provided that nothing in this clause (b) a rating committee under Clause (a) shall be deemed to prevent a licensee shall,-- reducing at any time any charges, so (i) where such committee is to be fixed. constituted under Sub-clause (i) of that THE SIXTH SCHEDULE clause, be constituted not later man three 1. The

Licensee shall so adjust his rates months after the expiry of the notice refer- for the sale of electricity by periodical red to in the first proviso to that clause; revision that his clear profit in any year (ii) where such committee is to be shall not as far as possible exceed the constituted at the request of the licensee, amount of reasonable return: be constituted withi three months of the date of such request; Provided that the licensee shall not be (c) a rating committee shall, after considered to have failed so to adjust his giving the licensee a reasonable opportu- rate if the clear profit in any year of nity of being heard and after taking into account has not exceeded the amount of consideration the efficiency of operation the reasonable return by more than and management and the potentialities of thirty per centum of the amount of the his undertaking report to the State Govern- reasonable return. ment within three moths from the date II. (1) If the clear profit of a licensee, of its constitution, making recommenda- in any year of account is in exess of the tions with reasons therefor, regarding the amount of reasonable return, one-third charges for electricity which the licemsee of such excess, not exceeding 7 1/2 per may make to any class or classes of con- the amount of reasonable return shall be sumers so, however, that the recommenda- at the disposal of the undertaking. Of the tions are not likely to prevent the licensee balance of the excess, one half shall be from earning clear profit, sufficient when appropriated to a reserve which shall be taken with the sums available in the Tariffs called the Tariffs and Dividends Control and Dividents Control Reserve to afford Reserve and the remaining half shall him a reasonable return as defined in the either be distributed in the form of apro- Sixth Schedule during his next succeeding portionable rebate on the amounts colle- three years of account: cted from the sale of electricity and meter Provided that the State Government rentals or carried forward in the accounts may, if it so deems necessary extend the of the licensee for distribution to the con- said period of three months by a further sumers in future, in such manner as the period not exceeding three months within Provicial Government may direct. which the report of the rating committee (2) The Tariffs and Dividends Control may be submitted to it; Reserve shall be available for disposal by (d) within one month after the receipt the licensee only to the extent by which of the report under Clause (c), the State the clear profit is less than there asonable Government shall cause the report to be return in any year of account. published in the Official Gazette, and may (3)On the purchase of the undertaking at the same time make an order in accord- under the terms of its licence any balance ance therewith fixing the licensees charges remaining in the Tariffs and Dividends for the supply of electricity with effect Control Reserve shall be handed over to from such date not earlier than two months the purchaser and maintained as such or later than three months, after the date Tariffs and Dividents Control Reserve. of publication of the report as may be specified in the order and the licensee shall for the with give effect to such order;

(e) the charges for the supply of electri- city fixed under clause (d) shall be in operation for such period not exceeding three years as the State Government may specify in the order: Provided that nothing in this clause shall be deemed to prevent a licensee from reducing at any time any charges so fixed. THE SIXTH SCHEDULE I. Notwithstanding anything contained in the Indian Electricity Act, 1910 except Sub-section (2) of Section 9 of 1910, 22A, and the provisions in the licence of a licensee, the licensee shall so adjust his (charges) for the sale of electricity whether by enhancing or reducing them that his clear profit in any year of account shall not, as far as possible, exceed the amount of reasonable return; Provided that such (charges) shall not be enhanced more than once in any year of account: Provided further that the licensee shall not be deemed to have failed so to adjust his (charges) if the clear profit in any year of account has not exceeded the amount or reasonable return by (twenty) percen- tum of the amount of reasonable return: Provided further that the licensee shall not enhance the (charges) for the supply of electricity until after the expiry of a notice in writing of not less than sixty clear days of his intention to so enhance the (charges) given by him to the State Government and to the Board: Provided further that if the (charges) of supply fixed in pursuance of the recom- mendations of a rating committee consti- tuted u/s 57A are lower than those notified by the licensee under and in accordance with the preceding proviso, the licensee shall refund to the consumers the excess amount recovered by him from them; Provided also that nothing in this Sche- dule shall be deemed to prevent a licensee from levying with the previous approval of the State Government minimum charges for supply of electricity for any purpose. IA. The notice referred to in the third proviso to paragraph I shall be accompa- nied by such financial and technical data in support of the proposed enhancement of charges as the State Government may, by general or special order, specify. II. (1) If the clear profit of a licensee in any year of account is in excess of the amount of reasonable return, on-third of such excess, not exceeding (five per cent) of the amount of reasonable return, shall be at the disposal of the undertaking. Of the balance of the excess, one-half shall be called the Tariffs and Dividends Control Reserve and the remaining half shall either be distributed in the form of a proportional rebate on the amounts collected from the sale of electricity and meter rentals or carried forward in the accounts of the licensee for distribution to the consumers in future, in such manner as the State Governments may direct. (2) The tariffs and Dividents Control Reserve shall be available for disposal by the clear profit is less than the reasonable return in any year of account. (3) On the purchase of the undertaking under the terms of its licence any balance remaining in the Tariffs and Dividends Control Reserve shall be handed over to the purchaser and maintained as such Tariffs and Dividend Control, Reserve: Provided that where the undertaking is purchased by the Board or the State Government the amount of the Reserve may be deducted from the price payable to the licensee. 7. For an examination of these provisions it would be seen that under the Supply Act prior to its amendment in 1956, the charge fixed by the Government u/s 57(2)(c) remained in force unless reduced by the licensee in the meantime till the same were altered by a subsequent order made by the Government after getting a fresh recommendation from the rating committee but under the law as It now stands the rate fixed by the Government u/s 57(A)(1)(d) would be in operation only for such period not exceeding three years as the State Government may specify In the order. Thereafter it can be enhanced by the licensee in accordance with the provisions contained in Schedule VI. It was urged on behalf of the appellants that the present Section 57(A)(1)(e) can only govern the charges fixed u/s 57(A)(1)(d) and it has no impact on an order made under the old Section 57(2)(c). According to the appellants the charges so fixed can only be modified by the Government after getting a report from the rating committee. Mr. Chagla, learned Counsel for the appellants contended that the consumers who get power from the respondent have a vested right in the charges fixed in 1952 and that vested right cannot be considered to have been taken away by the provision of the Amending Act. He argued that the provisions of the Amending Act are not retrospective in character nor is there any inconsistency between those provisions and the present provisions as the two operate on different fields; hence in view of Section 6 of the General clauses Act, 1897, we must hold that the charges fixed by the Government in 1952 continue to be in operation. In this connection he relied on certain observations made by this Court in State of Punjab Vs. Mohar Singh, , and Deep Chand v. State of U.P. and Ors. (1959) 2, S.C.R. . 8 . On the other hand It was contended by the learned Counsel for the respondent that the rights and liabilities of the respondents at present are exclusively regulated by the provisions of the Supply Act as it stands now; the terms of licence as they originally stood on the coming into force of the Supply Act in 1948 are of no consequence now; they cannot be looked into for finding out the rights or duties of the licensee as at present; for that purpose was must look Into these terms as modified by the provisions of the Supply Act as it is now. It was also urged on its behalf that there is no question of vested rights in these cases; herein we are only concerned with the procedure to be adopted in modifying the charges fixed in 1952.

8. In Mohar Singh''s case this Court laid down that the provisions of Section 6(c), (d) and (e) of the General clauses Act, 1897 relating to the consequence of the repeal of a law are applicable not only when an Act or Regulation is repealed simpliciter but also to a case of repeal and simultaneous enactment renacting all the provisions of the repealed law. In the course of its judgment this Court observed that when the repeal is followed by a fresh legislation on the same subject, the Court has undoubtedly to look into the provisions of the new Act but that only for the purpose of determining whether they indicate a different intention. The line of inquiry would be, not whether the new Act keeps alive the old rights and liabilities but whether it manifests any intention to destroy them. In Deep Chattel''s case this Court was considering the effect of repugnancy between a State Act and a Central Act. The observations made in that context, we think, have no bearing on the point in issue in this case. It is true that when

an existing Statute or Regulation is repealed and the same is replaced by fresh Statute or Regulation unless the new Statute or Regulation specifically or by necessary implication affects rights created under the old law those rights must be held to continue in force even after the new Statute or Regulation comes into force. But in the cases before us there is no question of affecting any vested right. There is no dispute that the charges fixed can be altered. That controversy relates to the procedure to be adopted in altering them. That controversy does not touch any vested right. The procedure in question must necessarily be regulated by the law in force at the time of the alteration of the charges.

9. Section 57 of the Supply Act as it stands now lays down that the provisions of Schedule VI shall be deemed to be incorporated in the licence of every licensee not being a local authority, in the case of a licence granted before the commencement of the Act from the date of the commencement of the licensee''s next succeeding year of account. Admittedly the licence with which we are concerned in these cases was granted even before the Supply Act was enacted. Therefore quite clearly the licence in question is governed by the present Section 57. Hence we have to read into that licence the provisions contained in Schedule VI. If any of the earlier provisions in the licence either as they stood when the licence was originally granted or as they stood modified as per the provisions of the Supply Act prior to its amendment in 1956 are inconsistent with the provisions of Schedule VI or Section 57(A) as they are now they must be held to be void and of no effect. In other words we must read into the licence the provisions of Schedule VI and strike out there form such terms as are inconsistent with those provisions and thereafter give effect to the same. For determining the rights and duties of the licensee as at present we have only to look into the terms of the licence as modified by Schedule VI. We cannot go behind them. That much is clear from the language of the Supply Act. The intention of the Legislature is clear and unambiguous. Therefore there is no need to call into and any rule of statutory construction or any legal presumption. Further no reason was advanced before us, nor can we conceive of any why those who obtained licences prior to the amendment of Supply Act in 1956 should be in a more disadvantageous position than those who got their licenses thereafter. Correspondingly we fail to see why those who are served by licensees who obtained their licences prior to the amendment of the Supply Act in 1956 should be placed in a better position than those served by licensees who obtained their licences thereafter. After all, every law has some reason behind it. Section 57(A)(2)(c) was intended to meet the changing economic circumstances. The purpose behind the new provisions appear to be to permit the licensees to so adjust their charges as to get reasonable profits. But at the same time a machinery has been provided to see whether any excess charges have been levied and if levied, get the same refunded to the consumers.

10. The law declared by the Amending Act does not affect any right or privilege, accrued under the repealed provision. It merely prescribes as to what could or should be done In future. Therefore there is no basis for saying that it affects

vested rights. For finding out the power of the licensee to alter the charges one has to look to the terms of the licence in the light of the law as it stands, the past history of that law being wholly irrelevant. If the terms of the licence, including the deemed terms permit him to unilaterally alter the charges then he has that right. If we merely look at those terms, as we think we ought to, then there is no dispute that the respondent was within its rights in enhancing the charges as admittedly it had followed the procedure prescribed by law.

11. We also do not agree with Mr. Chagla in his contention that there is no inconsistency between the present scheme relating to the enhancement of charges vis-a-vis the scheme provided under the Supply Act prior to its amendment in 1956. The two schemes are substantially different. Under the former scheme once the Government fixes the charges the, licensee cannot alter it but at present at the end of the period fixed in the Government order the licensee has a unilateral right to enhance the charges in accordance with the conditions prescribed in the VI Schedule. Therefore in view of Section 57 the provisions contained in that scheme have an overriding effect.

12. In Amalgamated Electricity Co. Ltd. v. N.S. Bhathena and Anr. (1964) 7 S.C.R.. 603, this Court was called upon to consider the scope of Section 57(A) and the Schedule VI as it stands now. Therein the controversy was whether the appellant therein was entitled to levy charges more than the maximum charges prescribed in its licence issued in 1932. It may be noted that in that case the notice of enhancement of the charge was given on September 25, 1958. This Court held that the maximum stipulated in the licence no longer governed the right of the licensee to enhance the charges; his rights were exclusively governed by the provisions contained in paragraph I of Schedule VI of the Supply Act. It is true that In that case this Court was considering the right of the licensee under the Supply Act vis-a-vis his right under the licence granted under the Indian Electricity Act, 1910 but that difference is not material. What this Court in fact considered was the right of the licensee under the exiting law to enhance the charges. Dealing with the scope of paragraph I of Schedule VI. Ayyanger J. who spoke for the majority observed thus: "Para I of Schedule VI both as it originally stood and as amended, as seen already, empowered the licensee "to adjust his rates, so that his clear profit in any year shall not, as far as possible, exceed the amount of reasonable return. "We shall reserve for later consideration the meaning of the expression "so adjust his rates." But one thing is clear and that is that the adjustment is unilateral and that the licensee has a statutory right to adjust his rates provided he conforms to the requirements of that paragraph viz,, the rate charged does not yield a profit exceeding the amount of reasonable return. The conclusion is therefore irresistible that the maxima prescribed by the State Government which bound the licensee under the Electricity Act of 1910 no longer limited the amount which a licensee could charge after the Supply Act, 1948 came into force since the "clear profit" and "reasonable return" which determined the rate to be charged was to be computed on the basis of very different criteria and factors than what obtained

under the Electricity Act."

13. For the reasons mentioned above, these appeals fail and they are dismissed with costs. One hearing fee.

