
(1961) 02 MP CK 0033
In the Madhya Pradesh High Court
Case No : C. Rev. No. 74 of 1961

Municipal Council Jaora

APPELLANT

Vs

M.P. Electricity Board

RESPONDENT

Date of Decision : 10-02-1961

Acts Referred:

Electricity (Supply) Act, 1948 — Section 76(1)
Electricity Act, 1910 — Section 28

Citation : (1961) J LJ 754

Hon'ble Judges : H.R. Krishnan, J

Bench : Single Bench

Advocate : M.A. Khan, for the Appellant;

Final Decision : Dismissed

Judgement

H.R. Krishnan, J.—This is an application by the defendant Municipal Council, Jaora, in a suit by the Madhya Pradesh Electricity Board, for the realization of a large sum owned by the defendant as the price of electric energy taken and consumed by it in its office, roads and streets and the like. The defence seems to be that the Board must at its own costs, in other words, at the cost of the other consumers, light the streets and run the office of the Jaora Municipality a bulk consumer, who should get power free of cost. However, a preliminary point was raised on the allegation that Section 76(1) of the Electricity Supply Act of 1948 (54 of 1948) provides that every question arising between the Board, on the one hand, and any person on the other, shall be determined by arbitration and as such the suit does not lie. The trial Court rejected this, on its interpretation that in that Section the "other person" is one who does the duties of the licensee and that Section 76 has no application to a matter arising between the Board and its consumer, whether a private individual or a Corporation or a local or other authority; so, the Board, like any other supplier of energy or other goods, is competent to sue the consumer for the price. Even at this stage, the defendant-applicant has pressed for a decision on this issue; requesting meanwhile for the

stay of further progress in the suit.

2. A mere reading of the sections concerned, in particular, 76 itself, and the other Sections like 77, 55 and parts of 57, 58 and 75 as well as Section 28 of the Indian Electricity Act of 1910, leaves no doubt whatsoever that the words "licensee or other person" in the Act of 1948 mean the category of suppliers of energy, whether under a license proper as provided in Part II of the Indian Electricity Act of 1910, or by special permission of the Government in the manner provided in Section 28 of that Act, the latter, whom we may call the quasi licensee, bracketed in several sections along with the licensee. The same question came before the Mysore High Court in the case reported in the Amalgamated Electricity Co. Ltd., vs. N. S. Bathena AIR 1958 Mys 148 my conclusions are the same, but my approach being slightly different, it is proper to set out the reasoning in extense.

3. The straight contention of the defendant-applicant is that the words "any person" in Section 76 (1) should be understood as everybody other than the licensee obviously, including a consumer of the energy supplied by the Board, any question whatsoever arising between the Board and the consumer or as far that matter, a licensee, and thus, with any person whatsoever, should compulsorily go to arbitration. If this is correct, there will be no question or matter arising between the Board and any person with whom it deals, that would not go to arbitration. The absurdity of this will be clear when we note that Section 76 (2) which immediately follows 76 (1), itself distinguishes between two types of questions and matters, one, requires by the Act to be referred to arbitration, and, the other (by implication) is not so required, and which is obviously left for decision by the usual methods. If indeed "other person" in Section 76 (1) means everybody imaginable other than the licensee, sub-section (2) would have no meaning whatsoever. On the other hand, wherever the phrase "licensee or other person" appears, there is intrinsic evidence in the section itself, that it is a single category of suppliers of electricity in the matters provided in the Indian Electricity Act of 1910. Certainly, this category is expected slowly to decrease in size and number and ultimately even to disappear, when the Board itself takes over all the supply and distribution of energy; but till then this category is likely to exist and continue to work under the combined operation of the two enactments.

4. For example, in Section 75, we have the phrase-"any licensee or person supplying electricity for public or private purpose....."; in Section 76 (1) the wording is-"any licensee or other person...". It is the same wording in Section 77. u/s 75 (3), the Board may demand information and accounts. u/s 77, where the words "other person" are used without the words ""supplying electricity etc...", still, the provision is that he shall comply with or give effect to directions under certain sections such as 55, 57 (2) (c) and 58 (3). All these sections provide for directions issued from time to time by the Board to the licensee for the purpose of maximum economy and efficiency in the operation of the station;

in other words, the "licensee or other person" mentioned in Sections 76 and 77 already explained at slightly greater length in Section 75, is one who is amenable to these directions, that is to say, one who is producing and supplying electricity, whether on a proper licence or the quasi-licence of Government u/s 28 of the Indian Electricity Act of 1910. This view gains support from a reference to the Indian Electricity Act of 1910, which is still in force; subject to special provision made in the later enactment of 1948 governing the supply of electrical energy. The "licensee" is there defined in Section 2 (h) and elaborated in the definition of "licence" in Section 3(1) (d). But in special circumstances, a person (which may be an individual or a company or other juristic person) may engage in the business of supplying electricity, without a licence, but with the sanction of the State Government and in accordance with the conditions imposed by it; such a person would be governed by Section 28 of that Act. Thus, the words "licensee or other person" in Sections 76 and 77 represent the category mentioned in Section 75 (3) of the Electricity Supply Act. As both the licensee the other person-the quasi-licensee, are and two species of the same genus it, may not be incorrect to say, ""the other person" is ejusdem generis of licensee. Generally, this phrase is used only when there are two or more defined things in a provision, and the last is an undefined general mention; but here, for the reason given already, "the other person" is by itself quasi-licensee.

5. It is particularly noted, that the "other person" in these Sections and in particular. Section 76 (1) is not the same as "any person" in Section 26 (4) (1) of the Indian Electricity Act, which provides-

"where any person neglects to pay any charge for energy... .. the licensee may after giving not less than seven days notice... disconnect the supply."

not only is this "any person" who is the defaulting consumer, not of the same genus as the licensee, but just the opposite. He buys and consumes what the licensee produces. The Board itself is the producer and distributor of energy and but for the express mention in Section 2 (6) of the Electricity Supply Act, 1948, would come under the category of licensee. Thus, a dispute between a producer and supplier of energy-whether it is the Board or a licensee properly so called, or a quasi-licensee u/s 28 of the Indian Electricity Act, on the one hand, and a consumer whether it be an individual or a corporation or a local authority on the other, is not a question covered by Section 76(1) of the Electricity Supply Act. The questions for this section will be between these two parties; the first, the State Government, or, if the Board is constituted, the latter; the other, a licensee u/s 24, or a quasi-licensee, (other person) u/s 28 of the Indian Electricity Act.

6. The legal position is quite clear; the Board is certainly competent to sue the defaulting consumer straightway. The application has no force and it is unnecessary to notice the non-applicant. The application is dismissed summarily There is no occasion for the stay of the suit.