

(1969) 10 GUJ CK 0005

In the Gujarat High Court

Case No : Letters Patent Appeal No. 11 of 1963

Nadiad Electric Co. Ltd.

APPELLANT

Vs

The Nadiad Borough Municipality, Nadiad

RESPONDENT

Date of Decision : 14-10-1969

Acts Referred:

Constitution of India, 1950 — Article 133(1)
Electricity Act, 1910 — Section 22

Citation : AIR 1970 Guj 194

Hon'ble Judges : S.N. Patel, J;J.B. Mehta, J

Bench : Division Bench

Advocate : I.M. Nanavati, for the Appellant; Shantilal M. Shah and M.C. Shah, for the Respondent

Judgement

Mehta, J.—This appeal raises a short question as to whether u/s 22-A(3) of the Indian Electricity Act, 1910, hereinafter referred to as "the Act", a local authority is entitled to continuance of supply of electrical energy on the same terms and conditions even when its agreement expires. After the earlier agreement, dated April 3, 1937, was declared by the Civil Court as per the decree, date November 17, 1939, to be null and void in a suit filed by the ratepayer, the present agreement between the licensee company and the plaintiff municipality, the local authority, was entered into on August 14, 1940 for a period of 20 years for supply of electrical energy to this local authority on terms specified therein. The said agreement was to expire on August 13, 1960. The licensee company by the letter, dated May 10, 1960, intimated the local authority that on the expiry of the said agreement the company would have no obligation to supply electrical energy on the same terms, but that they would charge increased rates. The Municipal Board passed a resolution on August 6, 1960 to file a suit as they were of the view that they were entitled to renewal of the agreement, or in any event, to have the supply continued to them on the same terms by the licensee company. The plaintiff Municipality, therefore, filed the present suit. Both the trial Court as well as the first appellate Court dismissed the plaintiff's suit on the ground that

there was no covenant providing for any implied renewal of the agreement in question, and that Section 22-A(3) could not help the plaintiff in the present case. When the matter came up before our learned brother Bhagwati, J., (as he then was) in Second Appeal, our learned brother also took the same view that the relevant Cls. 14 and 15 could not be pressed in aid to spell out any implied renewal of the agreement in question. As regards the applicability of Section 22-A(3), however, our learned brother reversed the decision of the two lower Courts as he came to the conclusion that Section 22-A(3) created an obligation on the licensee to continue the supply of electrical energy on the same terms even after the expiry of the said agreement. On that footing our learned brothers allowed the appeal and granted a declaration to the plaintiff-Municipality that the defendant company was bound u/s 22-A(3) to continue to supply electrical energy to the plaintiff on the same rates and on the same terms and conditions as specified in the agreement, dated August 14, 1940, so long as the plaintiff continued their establishment used or intended to be used for maintaining supplies and services essential to the community until the defendant received a notice in writing from the plaintiff requiring them to discontinue the supply. Our learned brother made it clear that this obligation was subject to the other provisions of the Act and also the Electricity (supply) Act, 1948 including Sections 57, 57A and VI and VII Schedules of that Act. No injunction was granted by him as the defendant company raised only the contention that the agreement was not automatically renewed and they were not bound to continue the supply on the same terms and conditions as envisaged u/s 22-A(3) of the Act and they had not refused to supply electrical energy to the plaintiff on any other grounds. The question regarding the automatic renewal is not raised in this appeal. This appeal is only confined to the question as regards the true interpretation of Section 22-A(3) of the Act. The licensee company has come in this appeal on the certificate being issued by our learned brother.

2. For a proper interpretation of Section 22-A(3), it would be proper to consider its entire setting and background especially as both Section 22-A and Section 22-B were introduced in that Act by the Amending Act 32 of 1959 which came into force, on September 5, 1959. Section 22 of the Act provides that where energy is supplied by a licensee, every person within the area of supply shall except in so far as is otherwise provided by the terms and conditions of the license, be entitled on application, to a supply on the same terms as those on which any other person in the same area is entitled in similar circumstances to a corresponding supply. The proviso is not material for our purpose. Section 23(1) provides that a licensee shall not, in making any agreement for the supply of energy, show undue preference to any person. Thus before the amended Section 22-A and Section 22-B were inserted, the scheme of Sections 22 and 23 made it clear that every consumer was entitled to a supply without any discrimination with any other person similarly situated on the same terms and without any discrimination and the licensee company on the making any agreement for the supply of electric energy could not show any undue preference to any person. It

is, therefore, by way of an exception to the scheme of Sections 22 and 23 that preferential supply could be permitted and that is why Section 22-A(1) has been now introduced. The two newly inserted provisions Sections 22-A and 22-B are as under:-

"22-A (1) The State Government may, if in its opinion it is necessary in the public interest so to do, direct any licensee to supply, in preference to any other consumer, energy required by any establishment which being in the opinion of the State Government an establishment used or intended to be used for maintaining supplies and services essential to the community, is notified by that Government in the Official Gazette in this behalf.

(2) Where any direction is issued under sub-section (1) requiring a licensee to supply energy to any establishment and any difference or dispute arises as to the price or other terms and conditions relating to the supply of energy, the licensee shall not by reason only of such difference or dispute be entitled to refuse to supply energy but such difference or dispute shall be determined by arbitration.

(3) Where any agreement by a licensee, whether made before or after the commencement of the Indian Electricity (Amendment) Act, 1959, for the supply of energy with any establishment referred to in sub-section (1) expires, the licensee shall continue to supply energy to such establishment on the same terms and conditions as are specified in the agreement until he receives a notice in writing from the establishment requiring him to discontinue the supply.

(4) Notwithstanding anything contained in this Act, or in the Electricity (Supply) Act 1948, or in his license or in any agreement entered into by him for the supply of energy, a licensee shall be bound to comply with any direction given to him under sub-section (1) and any action taken by him in pursuance of any such direction shall not be deemed to be a contravention of Section 23.

22-B (1) If the State Government is of opinion that it is necessary or expedient so to do, for maintaining the supply and securing the equitable distribution of energy it may by order provide for regulating the supply, distribution, consumption or use thereof.

(2) Without prejudice to the generality of the powers conferred by sub-section (1) an order made thereunder may direct the licensee not to comply, except with the permission of the State Government with-

(i) the provisions of any contract, agreement, or requisition whether made before or after the commencement of the Indian Electricity (Amendment) Act, 1959, for the supply (other than the resumption of a supply) or an increase in the supply of energy to any person, or

(ii) any requisition for the resumption of supply of energy to a consumer after a period of six months from the date of its discontinuance, or

(iii) any requisition for the resumption of supply of energy made within six

months of this discontinuance, where the requisitioning consumer was not himself the consumer of the supply at the time of its discontinuance."

3. On a perusal of these two newly introduced Section 22-A and 22-B, it is obvious that there are three different concepts introduced in these two relevant provisions. Section 22-A(1) deals with preferential supply in case of a certain class of consumers who could be preferred to any other consumer in the supply by the licensee. Section 22-A(3), however, had nothing to do with any preferential supply. It only provides for continuance of supply on the same terms and conditions when the previous agreement expires. The last Section 22-B, however, enables the State to pass orders in general for maintaining supply and securing equitable distribution of energy, and in particular, the said order could direct any licensee, even not to comply except with the permission of the State Government, with its existing contracts and agreements for supply to another consumer. Thus, the scheme of the newly introduced sections 22-A and 22-B is an integrated scheme even though its different provisions operate in three different fields. The preferential treatment which could be given under direction u/s 22-A(1), as well as the continuance of supply on the same terms even after the expiry of the contractual agreement by reason of the statutory obligation enacted u/s 22-A(3) have reference to establishments used or intended to be used for maintaining supplies and services essential to the community. As regards Section 22-B, however, it deals with a different problem of controlled distribution and consumption of electrical energy being to secure an equitable distribution and maintain the supply when it becomes necessary or expedient. Therefore, all these three provisions show an important nexus or interdependence as they are all intended to achieve the contemplated end in their wider public interest. Of course, all the three operate in the different perspective or the fields. But they all form part of an integrated scheme as aforesaid. In this context, Mr. Shah rightly pointed out that the legislature must be conscious of the fact that especially in case of a local authority which formed a large bulk of such establishments used or intended to be used for maintaining supplies and services essential to the community, the Legislature knew that their agreements were not on the usual pattern, which were applicable to other consumers, where the agreement for supply of energy would not get terminated on the expiry of the period specified. In this connection, Mr. Shah drew our attention to Section 3(2)(f) which provides that the provisions contained in the Schedule to the Act shall be deemed to be incorporated with, and to form part of every license granted under this Part. In the Schedule to the Act, Part V (1) provides that where a requisition is made by two or more owners or occupiers of premises in or upon any street within the area of supply or by the State Government or a local authority, charged with the public lighting thereof, requiring the licensee to provide distributing mains throughout such street or part thereof, the licensee shall comply within six months with the requisition unless:-

(a) where it is made by such owners or occupiers as aforesaid, the owners or

occupiers making it do not, within fourteen clear days after the service on them by the licensee of a notice in writing in this behalf, tender to the licensee a written contract in a form approved by the State Government duly executed and with sufficient security binding themselves to take or guaranteeing that there shall be taken, a supply of energy for not less than two years to such amount as will in the aggregate assure to the licensee at the current rates charged by him, an annual revenue not exceeding fifteen per centum of the cost of the distributing mains (not including transformers and other sub-station equipment) required to comply with the requisition; or

(b) where it is made by the State Government or a local authority, the State Government or local authority, as the case may be, does not, within the like period, tender a like contract binding itself to take a supply of energy for not less than seven years for the public lamps in such street or part thereof."

Similarly Part VI deals with requisition for supply to owners or occupiers in vicinity and in that case also Cl (a) to the first proviso makes it clear that the owners or occupiers must on receiving a notice of the licensee execute a written contract in a form approved by the State Government. The provision of Cl (a) of the first proviso is not applicable in the case of the State Government or local authority as can be seen from Part VIII (2). Mr. Shah in this connection pointed out that the terms of the relevant licence of the licensee company Ex. 48 in which Cl 7 provides that no supply of energy shall be commenced to be given by the licensee to any owner or occupier or private premises until the State has approved the form of requisition as well as the form of the written contract or agreement for the licensee for supply of electrical energy. Under Cl 7(2) Paras V, VI, VII and VIII of the Schedule to the Act are to be necessarily read as expressly added to or varied to the extent set out in the proviso in sub-clause (1). Mr. Shah also pointed out the relevant approved form. There are conditions for the supply of electrical energy laid down by the State as per the letter, dated February 1, 1948 As Ex. 49. In the approved form at Annexure B regarding the written contract, the Clause 8 provides that the agreement shall be in force for a period of not less than 2 years in the first instance from the date of the commencement of the supply in Cl (1) and thereafter shall continue from year to year until the agreement is determined as hereinafter provided Clause 9 provides that the consumer shall not be at liberty save with the consent of the licensee to determine this agreement before the expiration of two years from the date of commencement of the supply of energy hereunder. The consumer may determine this agreement at any time after the said period on giving to the licensee not less than one calendar month previous notice in writing in that behalf and upon the expiration of the period of such notice this agreement shall cease therefore, the ordinary consumer would have even after the two years period their supply continued until they terminate the agreement by the requisite notice. As these relevant clauses of approved form of contract were not applicable to agreements with the local authority, the plaintiff's agreement. Ex. 47, dated August 14, 1940, on the expiry of that period, Clause 15 in terms stipulates that if the

agreement was not renewed, the licensee would be entitled to remove the street light installation. The effect of this CI 15 would be disastrous if the licensee removed the street lighting installation on the expiry of the term of the agreement, if it was not renewed. Being conscious of all these considerations, the legislature when it sought to amend the Act by introducing the Sections 22-A and 22-B also introduced Section 22-A(3), which would provide for continuance of supply on the same terms and conditions in case of such establishment used or intended to be used for maintaining supplies and services essential to the community on the same terms and conditions even if the stipulated period of agreement expires. Mr. Nanavati no doubt vehemently argued that the local authority was not the only class which would contemplate to get the benefit of Section 22-A(3). But he even not only disputed the fact that the local authorities would form a very substantial class of these consumers which maintains and supplies services essential to the community and he conceded that ex facio those would be the class of establishments used or who intended to be used for maintaining supplies and services essential to the community. Even if a private consumer may have some special agreement as contended by Mr. Nanavati, from the language of Section 23(1), other than the usual agreements contemplated to be entered into in the approved form it could be well considered that the legislature had in mind those contingencies that in cases of such consumers which maintain supplies and services essential to the community, they should no longer be left at the mercy of the licensee. Therefore, irrespective of the fact that the period under the agreement and the contractual obligation came to an end, and that there was not automatic renewal clause which would ensure continuance of the supply, the legislature intervened by creating this statutory obligation as envisaged u/s 22-A(3) Even in the case of preference clause u/s 22-A(1). Such preference is permitted, by way of an exception to the general scheme which was in existence prior to the new amendment under which there could be no preferential supply whatever, and all the consumers had to be given equal treatment by reason of the guarantee enshrined in Sections 22(1), 22-A(3) and 23(1) of the Act. Looking to the nature of the essential establishments and the public interest which would be served, the legislature intervened by providing for a preferential supply over other consumers by enacting Section 22-A(1). Even u/s 22-B for the purpose of securing equitable distribution of energy the provision was made even of such drastic orders which would interfere with other private contracts so that the licensee would be required not to comply with those contracts for achieving this end. Therefore, all these three provisions do interfere with the rights of other consumers or secure preferential rights to the establishments in question by giving them undue preference and even in the case of expired contracts, the obligation to supply energy on the same terms and conditions is sought to be continued. All this has its justification in the wider public interest. It is in the light of this background that we must now resolve this vexed question of interpretation.

4. As regards Section 22-A(1) Mr. Shah rightly urged that the section has both an

operative part as well as a descriptive part. If the State Government forms its opinion that it is necessary in the public interest to direct any licensee to give preferential supply, over any other consumer, in respect of the energy required by any establishment described therein, the State Government is conferred power to issue such a direction. The nature of the establishment in respect of which such a direction can be issued is described in the latter part of S. 22-A(1). The latter part in terms States that the establishment must be one (1) which being in the opinion of the State Government, (2) and establishment used or intended to be used for maintaining supplies and services essential to the community, (3) is notified by the Government in the Official Gazette in this behalf. What is the establishment in its essential being is in terms mentioned by specifying the character of this establishment. The criterion, the characteristic or the test by which such an establishment can be picked out from the other establishments has been referred to in Section 22-A(1) in the following words "an establishment used or intended to be used for maintaining supplies and services essential to the community." The existence or being of the establishment as such an establishment possessing these characteristics or criterion is not envisaged to be proved as an objective fact. The existence must only be proved for the purposes of Section 22-A(1) only by way of subjective existence or as a mental fact in the mind of the State Government. The process for determining this characteristic or the criterion of the establishment is thus only a subjective process and the opinion of the State Government that such criterion is satisfied is made conclusive and it is not necessary for the purposes of Section 22-A(1) that such existence or being must be shown to be an objective fact. The bona fide opinion of the State Government would be conclusive but that is only as regards the process by which the criterion test or the relevant (sic) is to be applied by the State Government or for determining the application of Section 22-A(1). Similarly, the other step of notification of the establishment is also a mechanical part of the process so that the opinion formed by the State Government would become known. The establishment which is subjectively found to possess the requisite characteristic is notified by the Government in the Gazette for the purpose of exercising the powers u/s 22-A(1) of issuing necessary directions in respect of such establishment. The expression "in this behalf" at the end of Section 22-A(1) would show that the final process of notification which is contemplated is for the purpose of issuing the direction for preferential supply u/s 22-A(1). Therefore, shorn of all the verbiage the characteristic which determines the establishment in Section 22-A(1) or by the help of which such establishment can be picked out by making a particular reference is in its character that it is an establishment used or intended to be used for maintaining supplies and services essential to the community irrespective of the fact that for the purposes of Section 22-A(1) the determination process envisaged is one by way of a subjective opinion, and that the establishment in question has to be notified in that behalf in the Official Gazette. It should also be kept in mind that wide powers are conferred on the State Government to issue directions u/s 22-A(1) once the necessary opinion is

formed of the necessity to issue such direction in the public interest, for the supply can be directed to be given in preference to any other consumers. The legislature has not fettered the discretion of the State Government as to the nature of the preference but has conferred the widest discretion to give preference. Such preference may be in the quantity or a kind of the electric energy to be supplied or even as regards the prices to be charged. But in any event, the nature of preference which can be so directed over other consumers is not sought to be limited by any kind of limitations. The power being of such a wide amplitude and as it seeks to give such a preference over other consumers by means of a statutory direction, the legislature has provided various safeguards.

5. u/s 22-A(2) when any direction is issued u/s 22-A(1) for the preferential supply to any such establishment, if any dispute or difference arises as to the price or other terms and conditions relating to the supply of electrical energy, such dispute or difference shall be determined by arbitration. The legislature has , however, made it clear that by reason only of the difference or dispute, the licensee shall not be entitled to refuse to supply electrical energy. Therefore, a special machinery of arbitration is created which would impartially resolve any such difference or dispute regarding the terms and conditions relating to the supply which is directed u/s 22-A(1) including the price of the energy to be so supplied. In this context, it should be kept in mind that at the time of the same amendment the legislature had amended Sixth Schedule in the Electricity (Supply) Act, 1948, which lays down the financial principles and their application in the context of Sections 57, 57-A of the Supply Act. Section 57 provides that the provisions of the Sixth Schedule and the Seventh Schedule shall be deemed to be incorporated in the licence of every licensee, not being a local authority-

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

.....

.....

and as from the said date the licensee shall comply with the provisions of the said Schedule accordingly and any provisions of the Indian Electricity Act, 1910, and the licence granted to him thereunder and of any other law, agreement or instrument applicable to the licensee shall, in relation to the licensee, be void and of no effect in so far as they are inconsistent with the provisions of Section 57-A and the said Schedules. Section 57-A provides that - (1) where the provisions of the Sixth Schedule and the Seventh Schedule are u/s 57 deemed to be incorporated in the licence of any licensee, the following provisions shall have effect in relation to the said licensee, namely

(a) the Board or where no Board is constituted under this Act, the State Government- (i) may, if satisfied that the licensee has failed to comply with any of the provisions of the Sixth Schedule; and (ii) shall, when so requested by the

licenses in writing

constitute a rating committee to examine the licensee's charges for the supply of electricity and to make recommendations in that behalf to the State Government:

The first part of the Sixth Schedule as now amended at the same time in 1959 runs as under:-

"1. Notwithstanding anything contained in the Indian Electricity Act, 1910, except sub-section (2) of Section 22-A, and the provisions in the licence of a licensee, the licensee shall so adjust his rates 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."

The provisos lay down the conditions and procedure for enhancement of the rates and the third proviso in terms provides that the licensee shall not enhance rates until after expiry of a notice in writing of not less than sixty clear days of his intention to so enhance the rates, given, by him to the State Government and to the Board. The fourth proviso states that if the rates of supply fixed in pursuance of the recommendations of a rating committee constituted u/s 57-A 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. Therefore, in view of the amendment in Para 1, it is obvious that Section 22-A(2) is in terms excepted so that the licensee could get relief in case of such preferential direction issued u/s 22-A(1) by resorting to the special arbitration remedy u/s 22-A(2) of the act. Further protection is also given to the licensee in Section 22-A(4) which provides that-

" (4) Notwithstanding anything contained in this Act or in the Electricity (Supply) Act, 1948, or in his licence or in any agreement entered into by him for the supply of energy, a licensee shall be bound to comply with any direction given to him under sub-section (1) and any action taken by him in pursuance of any such direction shall not be deemed to be a contravention of Section 23."

Therefore, even though by reason of the direction u/s 22-A(1) in licensee gives undue preference even in the rates, his action is not to be deemed to be a contravention of Section 23. In addition to these provisions which protect the licensee by enabling him to avail of this special arbitration and by giving the licensee an immunity from clause of other consumers by reason of contravention of Section 23, the legislature has also provided adequate penalties to see that the licensee carries out these obligations Section 22-A(4) in terms provides that the licensee shall be bound to carry out the directions u/s 22-A(1) Section 4(1) provides that the State Government may, if in its opinion the public interest so requires, and after consulting the State Electricity Board, revoke a licence in any of the following cases:

"(e) where a licensee, in the opinion of the State Government has made default in complying with any direction issued u/s 22-A."

Similarly Section 42(d) provides for the penalty if default is made in complying with the direction issued under S. 22-A. Therefore, the Section 22-A(1) in the light of these provisions in sub-cl. (2) and (4) of Section 22-A when read with these other two provisions completes the entire scheme relating to these preferential directions.

6. Similarly, the power given to the State u/s 22-B for maintaining supplies and securing equitable distribution of energy enables the State when it is necessary or expedient, to issue the orders for regulating supplies or distribution or use of the electrical energy. Section 22-B(1) is a general provision and without prejudice to the generality of those powers, u/s 22-B(2) orders can be issued directing the licensee not to comply except with the permission of the State Government with:-

(i) the provisions of any contract, agreement or requisition whether made before or after the commencement of the Indian Electricity (Amendment) Act, 1959, for the supply other than the resumption or a supply or an increase in the supply of energy to any person, or

(ii) any requisition for the resumption of supply of energy to a consumer after a period of six months, from the date of its discontinuance, or

(iii) any requisition for the resumption of supply of energy made within six months of its discontinuance where the requisitioning consumer was not himself the consumer of the supply at the time of its discontinuance.

Even for the non-compliance with this section, the penalty of revocation of the licence would follow from Section 4(1)(a) which provides for the case where the licensee in the opinion of the State makes wilful and unreasonable prolonged default in doing anything required of him by or under the Act. Section 42(e) also provides the specific penalty for the default in complying with the order issued u/s 22-B. For the purposes of the present dispute Section 22-B is not material except in so far as it discloses the entire, integrated scheme in that it also confers by the same amendment powers on the State to issue orders for maintaining supplies and equitable distribution of the energy and while issuing such orders the licensee can be directed not to comply with his contract or agreement with the other consumers as provided therein.

7. Turning now to the material provision before us viz., Section 22-A(3) it runs as under:-

"(3) Where any agreement by a licensee, whether made before or after the commencement of the Indian Electricity (Amendment) Act, 1959, for the supply of energy with any establishment referred to in sub-section (1) expires, the licensee shall continue to supply energy to such establishment on the same terms and conditions as are specified in the agreement until he receives a notice in writing from the establishment requiring to discontinue the supply."

On a bare perusal, it is obvious that it operates to a totally different field than

the one in which Section 22-A(1) operates. As we have already mentioned Section 22-A(1) envisages a preferential supply over other consumers. There is no question of any preferential supply whatever in Section 22-A(3). It merely provides of a statutory obligation to continue supply for an electrical energy to the establishments mentioned therein on the same terms and conditions notwithstanding that the agreement with such establishment, whether made before or after the Amendment Act, 1959, expires. Such obligation continues until the licensee receives notice from the establishment requiring him to discontinue the supply. Looking to the aforesaid background in which these sub-sections came to be enacted, it is obvious that the legislature intended that such essential establishments which are covered u/s 22-A(3) must have their supply continued notwithstanding the expiry of their agreement with the licensee on the same terms and conditions as before. The nature of establishment which is entitled to this benefit is specified by the words "any establishment referred to in sub-section (1)." We will, presently consider the various interpretations which are canvassed as to the term "referred to" in sub-section (1). The term must have a descriptive reference by which such an establishment which is envisaged as being eligible for this statutory benefit could be picked out from the other establishments. Therefore, the reference must be by some criterion of characteristic as it must satisfy, that descriptive test. When we turn to Section 22-A(1), the reference we have already pointed out is to an establishment used or intended to be used for maintaining supplies and services essential to the community. That is the only definition characteristic or criterion by which such an establishment could be picked out from others irrespective of the fact as to the subjective process by way of the opinion of the State Government or the objective process which the Court would apply, and whether it is notified for the purpose of issuance of direction u/s 22-A(1) or not. Therefore, on a plain literal construction, the benefit of Section 22-A(1) (sic (3)?) of continuance of supply on the same terms and conditions even after the expiry of the previous agreement would be available only to establishments which satisfy this criterion viz. that they are establishments which are used or intended to be used for maintaining supplies and services essential to the community.

8. Mr. Nanavati, however, vehemently argued that it is a settled principle of construction as laid down in *Madanlal v. S. Changdeo Sugar Mills Ltd.*, AIR 1962 SC 1541 at p. 1551, that the two sub-sections must be constructed as a whole "each portion throwing light if need be, on the rest." The two sub-sections must be read as parts of an integral whole one as being interdependent and an attempt should be made in construing them to reconcile them if it is reasonably possible to do so and to avoid repugnancy. If repugnancy cannot possibly be avoided, then a question may arise as to which of the two should prevail. But that question can arise only if repugnancy cannot be avoided. Mr. Nanavati, therefore, argued that when the three clauses of Section 22-A viz 22-A(1), 22-A(2) and 22-A(4) all relating (sic) to the question of preferential supply under a direction of the State Government in case of an establishment specified in

Section 22-A(1), sub-clause (3) of Section 22-A must also be deemed to be forming part of the same whole scheme of Section 22-A of issuing direction for supply. In that context Mr. Nanavati argued that Section 22-A(3) should not be interpreted as having its own different perspective or operating in a different field as if it was a separate section which deals with a different situation. Mr. Nanavati also vehemently relied upon the marginal note to Section 22A which labels it as "powers of State Government to give directions to a licensee in regard to the supply of energy to certain class of consumers." Now, it is well settled that the marginal note could never be invoked so as to limit the plain words of the statute. Mr. Nanavati is right in his argument that the various sub-sections must be read as interdependent so as to bring out the whole scheme. The material question which arises as to what is the scheme and where there could be any clue to the scheme merely from the marginal note. The label may be a wrong label and we are concerned only with what is actually enacted by the legislature. If the language were to be any guide, it is obvious that in all the other three sub-sections 22-A(1), 22-A(2) and 22-A(4), the legislature in terms has used appropriate language to show that it was dealing with those cases where the direction for preferential supply of energy was issued u/s 22-A(1). That is why in Section 22-A(2), the opening words in terms state:- "Where any direction is issued under sub-section (1)." Similarly, in section 22-A(4) it is said that the licensee shall be bound to comply with any direction given under sub-section (1). The legislature, however, departed from that phraseology when it enacted Section 22-A(3) by providing that when there is an agreement by a licensee with any establishment referred to in sub-section (1), whether before or after the amendment of 1959. Therefore, the legislature has used a different phraseology to disclose its intention that it is not dealing with the same subject-matter. Even the context of Section 22-A(3) makes it abundantly clear that the subject-matter of that sub-section is totally different from the subject-matter of Section 22-A(1). Section 22-A(3) envisages an agreement even before the commencement of the Amendment Act, 1959. As we have already prior to this amendment, there was an absolute ban of any preferential supply and, therefore, there could be no agreement by a licensee for supply of energy with any establishment which gave any preferential supply. Without a direction u/s 22-A(1) there can be no question of any preferential supply whether before or after the amendment Act, 1959. Therefore, the problem posed and dealt with by Section 22-A(3) is a totally different problem, not of any preferential supply but of discontinuance of existing supply, and the contractual obligation had to be turned into a statutory obligation only for the simple reason that on the expiry of the agreement the contractual obligation came to an end. The legislature wanted to confer a benefit to such an establishment which had that character imprinted on them of being used or intended to be used for maintaining supplies and services to the community. Their maintenance of essential supplies and services should be continued notwithstanding the fact that their contract had come to an end. It is only to help them out of this predicament to which they came to by reason of the contract that the legislature intervened to create this statutory obligation. Of

course, it is in the public interest that that is done and that is why the benefit is not given to all and sundry but only to those establishments which satisfy the definitive test which is referred to in Section 22-A(1), but their being used or intended to be used for maintaining supplies or services essential to the community. Therefore, this argument of Mr. Nanavati is wholly misconceived that Section 22-A(3) has introduced a totally extraneous concept. The whole contention was based on the basis of the marginal note which could never be a guide, and such an assumption of Mr. Nanavati that the entire Section 22-A is only by way of giving preferential direction is found to be baseless in view of the plain terms of this provision of Section 22-A(3) which deals with no question of preference. This contention of Mr. Nanavati must therefore, fail.

9. Mr. Nanavati next argued that the expression, "any establishment referred to in sub-section (1)" in Section 22-A(3) must be interpreted to mean an establishment which is wholly covered by Section 22-A(1) and in respect of which direction for preferential supply is issued. This construction, as we have already shown, would amount to rewriting Section 22-A(3). It is well settled that the Court cannot change the texture of a statutory enactment even though it may iron out the creases. The whole context of Section 22-A(3) is only of continuance of existing supply, where there is no question of any preference over other consumers and, therefore, the construction advanced by Mr. Nanavati would not only be rewriting the section but would be repugnant in the whole context of Section 22-A(3). As we have already pointed out, there can be no agreement prior to 1959 Amendment Act for supply of energy by giving any preference over other consumers and even after the Amendment Act without a direction in sub-section 22-A(1), no such preferential supply could be given. Therefore, there can be no such agreement as envisaged by Section 22-A(3) in cases of preferential supply. Besides, the only reference in sub-section 22-A(3) is to an establishment referred to in sub-section (1) which is clearly a reference to the descriptive portion in Section 22-A(1). Such a reference to the descriptive portion could never relate to the operative portion of Section 22-A(1).

10. Besides the contention of Mr. Nanavati would make the entire Section 22-A(3) redundant. Section 22-A(4) in terms provides that a licensee shall be bound to comply with any direction given to him under sub-section (1), notwithstanding anything contained in this act or in the Electricity (Supply) Act, 1948, or in his licence or in any agreement entered into by him for the supply of energy. Therefore, notwithstanding the fact that the agreement has expired, when a direction is issued the licensee would be bound to comply with the direction u/s 22-A(1). In that view of the matter, the whole provision enacted in Section 22-A(3) would be nugatory or redundant as it would be a mere surplusage. Mr. Nanavati in this connection vehemently argued that even in spite of Section 22-A(4) there was a necessity to enact Section 22-A(3), because the direction u/s 22(1) could not contain the terms for supply. In order to make that aspect clear that legislature enacted Section 22-A(3) by laying down the statutory obligation that notwithstanding the expiry of the contract, the licensee

shall continue to supply energy on the same terms and conditions as they were specified in the agreement. This argument of Mr. Nanavati proceeds on an assumption that Section 22-A contains any limitation on the power of the State Government to direct preferential supply. As we have already shown, the power of the State Government to direct such preferential supply is not sought to be limited by any better whatever and any preference could be given whether as to quantity, quality or price of the energy to be supplied. That is why we had pointed out that the legislature sought to give immunity u/s 22-A(4) by providing that the licensee who acts in pursuance of such direction u/s 22-A(1), shall not be deemed to contravene Section 22-A(3) which deals with undue preference to any one consumer by different charges in the same circumstances. Mr. Nanavati, however, argued that the power to issue direction u/s 22-A(1) was by way of an exception to Section 22 and not to Section 23. This argument ignores the fact that Section 22-A uses the expression, "preference" in its widest context without any limitation and in its turn provides for the immunity in Section 22-A(4) for the contravention of Section 23. Mr. Nanavati suggested another reason that when the prices were fixed in arbitration on a dispute arising between the licensee and the consumer in question u/s 22-A(2), immunity would have to be provided in Section 22-A(4). This argument cannot be accepted because the immunity irrespective of the fact, whether in pursuance to the direction in any arbitration proceeding had taken place or not. Mr. Nanavati further argued that u/s 22-A(2) a situation might arise when the licensee may offer prices less than those charged from the other consumers to this particular consumer and there might be an agreement and in such a case immunity could be obtained only u/s 22-A(4). We cannot agree with Mr. Nanavati that Section 22-A(4) was enacted to cover such a far fetched case which is a practical world we can hardly envisage.

11. Mr. Nanavati next argued that to any event this construction would lead to an invidious discrimination and the legislature would never have intended such a hardship to be imposed on the licensee, and to avoid such anomalous consequences, the construction canvassed by him should be preferred. Mr. Nanavati pointed out in this context that Section 22-A(3) provides a statutory obligations to continue supply of energy on the same terms and conditions as per previous agreement until the licensee receives a notice in writing requiring him to discontinue the supply. Therefore, in perpetuity the licensee would be tied down with those obligations with no way for him to set out of this predicament, the other essential and service consumers to whom direction was issued u/s 22-A(1) can at least avail of the statutory remedy u/s 22-A(2) to raise a dispute to be resolved by arbitration if they feel themselves aggrieved by the prices or other terms and conditions. While these establishments which if held to be different establishments than those in whose case the direction is issued u/s 22-A(1) would not have the benefit of this statutory arbitration. There would be no reason. Mr. Nanavati argued out for this invidious distinction between these two classes, when especially they came out of the same genus viz., establishments used or intended to be used for supplies and services essential to the community.

Mr. Nanavati in this context vehemently relied upon the fact that in the Supply Act Para I of Schedule VI was amended only to except Section 22-A(2). In fact that very exception offers a solution to the problem posed by Mr. Nanavati. The direction under S. 22-A(1) is special direction of a preferential supply in which case the legislature gives this special protection of the special statutory arbitration u/s 22-A(2) and that is why the exception is made only for this provision in Part (1) of the Sixth Schedule. When the case is not one of any preferential direction u/s 22-A(1) but is only of continuance of supply for on is only of continuance of supply for on the same terms and conditions as previously agreed and which is dealt with u/s 22-A(3), the legislature had no necessity to enact any such special protection and that is why it left the parties to their general remedy and by resorting to Sections 57 and 57-A and Para I of the Sixth Schedule. Mr. Nanavati rightly pointed out that after the decision of the Supreme Court in *Jindal Oil Mills and Others and Somalal Nathji and Others Vs. Godhra Electricity Co. Ltd.*, , it is well settled that the licensee has unilateral right to enhance the charges in accordance with the conditions prescribed in the Sixth Schedule by following that procedure. This was the procedure applicable even when the previous agreement was in force and it could make no difference merely because instead of the contractual obligation, statutory obligation was substituted because the contract came to an end. There would be no question of any invidious discrimination when the two situations are totally different. In one case there is the question of a preferential direction and, therefore, a special protection u/s 22-A(2) exists while in the other case there is only continuance of supply on the terms as originally agreed and therefore, the parties would be left to the same original remedy. That is why the legislature was particular to exclude only Section 22-A(2) by amending Part I of the Sixth Schedule of the Supply Act. Besides, our learned brother rightly pointed out that merely because hardship results it would be no ground to depart from the accepted principles of statutory construction as that would be a matter for the legislature to consider. In fact, the construction suggested by Mr. Nanavati not only compels us to rewrite the language but results in the vices which would be redundancy and repugnancy and it would plainly defeat the object of the legislature in enacting this statutory measure for the benefit of such hardship establishments which are used and intended to be used for maintaining supplies and services essential to the community. Even if two interpretations were possible, we would be bound to give that interpretation which would advance this object rather than would defeat it and which would not lead to any such anomalies.

12. Mr. Nanavati argued his case in the alternative for another construction by interpreting the expression "establishment referred to in sub-section (1)" as an establishment which falls within the descriptive part of Section 22-A(1) by satisfying all the three relevant conditions, or in any event, at least the first relevant condition that it is an establishment which in the opinion of the State Government is used or intended to be used for maintaining supplies and services essential to the community. Mr. Nanavati argues that this construction would

avoid conflict of decisions as to the "establishment referred to in sub-section (1)." On the interpretation propounded by Mr. Shah, argued Mr. Nanavati, there would be two conflicting decisions in one case as per the opinion of the State Government on the application of the subjective test, and in the other case, as per the decision of the Court on the application of the objective test. There is no substance even in this last contention of Mr. Nanavati different consequences ensue not because of our different interpretation of the same words but because in the two sub-sections the legislature has made different provisions. In Section 22-A(1) the legislature has in terms provided that the criterion which is to be applied for finding out whether the establishment fulfils the necessary test of its being used or intended to be used for maintaining supplies and services essential to the community, is one by way of a subjective process viz., by the opinion of the State Government which is made conclusive. In Section 22-A(3) on the other hand, the legislature has not used the same expression that such an establishment must satisfy only the subjective test. The legislature contented itself by using the words "establishment referred to in sub-section (1)". The reference could only be a descriptive reference and such description must be, no doubt, by way of a definition by laying down the criterion and that criterion could only be found from the words "establishment used or intended to be used for maintaining supplies and services essential to the community." Section 22-A(1) in terms speaks of that as the being of that establishment or its essence. For the purpose of Section 22-A(1) when the State Government acts. For exercising power in that behalf it is provided that this criterion may be applied subjectively but that does not change the nature of the criterion. The criterion would always be a norm or an objective criterion unless the legislature in terms states that the criterion must be applied subjectively, so that the being need not actually exist or must be objectively shown to exist and it would be sufficient to say that it exists subjectively or only as mental fact. Unless the Legislature uses such words, the reference must always be by objective description. Mr. Nanavati next argued that the expression used in Section 22-A(3) is "any establishment," and, therefore, it must have reference to any particular establishment which wholly falls u/s 22-A(1) at least satisfies the three criteria referred to in the later part of S. 22-A(1): (1) of a subjective opinion of the State, (2) and descriptive nature of the establishment, and (3) the notification by the State. Now the use of the word "any" is often in the sense of "all" as in the familiar expression "any one can do it", we mean that all can do it. Therefore, "any establishment" would mean in S. 22-A(3) "all" such establishments which satisfy the objective norms or criteria to which we find reference in Section 22-A(1) and that is why the legislature used only the compedious expression "establishment referred to in Section 22-A(2)", instead of repeating the words "establishment used or intended to be used for maintaining supplies and services to the community. Besides, it must be kept in mind that Section 22-A(3) contemplates an agreement between a licensee and the establishment referred to in sub-section (1). Therefore, such an establishment cannot exist as a mental fact but must be one which must satisfy the objective norms. Mr. Nanavati made it clear that the establishment even in

his argument is not one which exists only as a mental fact. Establishment is actual but its character is determined by a subjective process by its existence in the mind of the State. We are not concerned for determining the eligibility for the benefit of S. 22-A(3), with the establishment in general but only with the establishment referred to in sub-section (1). Once we accept Mr. Nanavati's argument that the reference brings in a subjective existence in the mind of the State, it would mean that what is contemplated in Section 22-A(3) is establishment which had only a mental existence. When the argument is contemplated between the licensee and such referred establishment, it would be obvious that both licensee and the referred establishment must exist objectively. Therefore, looking to the entire context, setting and all these considerations which we have made, neither of the alternative constructions urged by Mr. Nanavati can be accepted in plain departure from the statutory language of this statutory enactment embodied in Section 22-A(3) and in violation of all the settled principles of construction of statute. We, therefore, completely agree with the decision of our learned brother that Section 22-A(3) operates in a totally different field as it does not deal with any question of preference but it provides for continuance of the obligation to supply energy to an establishment used or intended to be used for maintaining supplies and services to the community irrespective of the fact that an agreement whether entered into prior or after 1959 Amendment has expired until the licensee received a notice in writing from the establishment requiring him to discontinue the supply. In that view of the matter this appeal must fail.

13. In the result, this appeal is dismissed with costs.

14. At the end Mr. Nanavati made a request for the issue of a certificate under Article 133(1)(c) of the Constitution. We consider this question of interpretation of Section 22-A(3) as one of wide public importance which should be resolved by the Supreme Court. We, therefore, order that a certificate may be issued in this case under Article 133(1)(c) in view of the wide importance of this question.

15. We also direct that the entire order made by this Court on June 19, 1963 shall continue for a period of 30 days from the date the certified copy of this order with the certificate is supplied to the licensee company provided an application for the same is made within a week. We further direct that the plaintiff shall not withdraw the security deposited by them under the order of this Court, dated November 23, 1962, for the aforesaid period of 30 days when the certified copy of the judgment is supplied to the licensee company.

16. Appeal dismissed.