

(1969) 02 KL CK 0012

In the High Court Of Kerala

Case No : O.P. No's. 4539/67 and 5397/67

P.T. John

APPELLANT

Vs

Deputy Chief Accountant and others

RESPONDENT

Date of Decision : 05-02-1969

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 366(12)
Electricity Act, 1910 — Section 22, 22B, 39
General Clauses Act, 1897 — Section 3(36)

Citation : (1970) KLJ 817

Hon'ble Judges : P.T. Raman Nayar, C.J.;V.R. Krishna Iyer, J

Bench : Division Bench

Advocate : P.K. Kurien, V. Desikan, K.A. Nayar and K. Sukumaran, for the Appellant; V. Narayana Menon for Respondents 1 and 2 and Government Pleader for Respondent 3, for the Respondent

Final Decision : Dismissed

Judgement

P.T. Raman Nayar, C.J.—The complaint in these two writ petitions is the same. It is that the two petitioners, both domestic consumers, have been charged at what has been called the penal rate of Re. 1 per unit for electrical energy consumed by them in excess of their monthly quota in the months, January to June, 1966 (both months inclusive) during which period there was a power cut in force. The petitioner in O.P. No. 4539 of 1966, who is supplied directly by the Electricity Board, has thus been charged at a rate 90 paise per unit higher than the usual rate, resulting in an additional levy amounting to Rs. 810/-, while the petitioner in O.P. No. 5397/1967 who is supplied through a licensee, has been charged at a rate 94 paise per unit higher than the usual rate, resulting in an additional levy of Rs. 22,097/-. On the 10th December, 1965 the State Government issued three notifications, Exs. P-2, P-3 and P-4 (the reference is to the documents as marked in O.P. No. 4539 of 1966), Ex. P-2 u/s 22B of the Indian Electricity Act, 1910 (Act 9 of 1910) and Exs. P-3 and P-4 u/s 2(a) and section 3 respectively of the Kerala Essential Articles Control (Temporary Powers) Act, 1961 (Act 3 of 1962) to meet

the situation created by the precarious storage position in the hydroelectric reservoirs of the State. Ex. P-2, so far as is material for our purposes, runs as follows:

S.R.O. No. 438/65- Whereas it has been brought to the notice of the Government of Kerala that due to worsening of the storage position and the lower inflow in the reservoirs, it will not be possible to generate electrical energy at the rate at which it is consumed at present. And whereas the Government are of opinion that for maintaining the supply and securing equitable distribution of electrical energy on the basis of the river flow and the available storage of water in the reservoirs, it is necessary to regulate the supply, distribution and consumption of electrical energy,

Now, therefore, in exercise of the powers conferred by section 22B of the Indian Electricity Act 1910 (Central Act 9 of 1910) the Government of Kerala hereby issue the following order to regulate the supply, distribution and consumption of electrical energy.

1. XXX XXX XXX

2. The monthly consumption of electrical energy by all domestic consumers shall not exceed 75% of the consumption during October 1965 or 75% of the average consumption during the months of August, September and October 1965, whichever is greater.

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2. This order, it will be noticed, contains no sanction in respect of the restriction imposed by it, and that is why Exs. P-3 and P-4 had to be issued as part and parcel thereof. By Ex.P-3 electrical energy was declared to be an essential article for the purposes of Act 3 of 1962 - while Ex. P-4, which runs as follows, provided for the levy of what has been called the penal rate of Re. 1 per unit for excessive consumption:

S.R.O. No. 440/65--In exercise of the powers conferred by clause (b) of sub-section (2) of section 3 of the Kerala Essential Articles Control (Temporary Powers) Act, 1961 (Act 3 of 1962) the Government of Kerala hereby direct that a rate of Re. 1 per unit be charged in respect of the amount of electrical energy consumed by domestic consumers in excess of the limit specified in para 2 of the Notification No. 52460-EL1/65--1/PW dated 10--12--1965.

3. It might be as well to set out section 2(a) and the relevant portion of section 3 of Act 3 of 1962:

2. Definitions:--In this Act, unless the context otherwise requires,--

(a) "essential article" means any article (not being an essential commodity as defined in the Essential Commodities Act, 1955) which may be declared by the Government by notified order to be an essential article;

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3. Powers to control production, supply distribution, etc, of essential articles.--

(1) If the Government are of opinion that it is necessary or expedient so to do for maintaining or increasing the supplies of any essential article or for securing their equitable distribution and availability at fair prices, they may, by notified order, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein.

(2) Without prejudice to the generality of the powers conferred by sub-section (1), an order made thereunder may provide--

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(b) for controlling the price at which any essential article may be bought or sold;

(c) For regulating by licences, permits, or otherwise the storage, distribution, transport, disposal, acquisition, use or consumption of any essential article;

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4. It is obvious that, Exs. P-3 and P-4 are supplemental to Ex. P-2 and that, as we have already observed, these three orders must be read together as part and parcel of the same order. That disposes of the objection taken to Ex.P-4 that it does not even recite the formation of the opinion on which the power to issue a notified order u/s 3 of Act 3 of 1962 depends. For, Ex. P-2 clearly recites that the Government was of opinion that for maintaining the supply and securing equitable distribution of electrical energy it was necessary to regulate the supply, distribution and consumption of electrical energy. Therefore, there should be no doubt that it was the formation of that opinion that led Government to issue the notification, Ex. P-4. There is thus express statement of the formation of the necessary opinion (apart from evidence aliunde thereof in the shape of the affidavit filed by the Government) and it is not necessary to consider whether the specific reference to the statute insisting on the formation of the opinion does not imply such a statement.

5. The principal argument has been that electrical energy is not an article within the meaning of Act 3 of 1962 and that therefore both Exs.P-3 and P-4 are ultra vires the Act. The word is not defined in the statute, but, an article, it is said, is, according to the common usage of the word, a particular material object or thing, especially a small thing. Therefore, it must necessarily be movable property, and reference was made to the decision in Avtar Singh Vs. State of Punjab, wherein it is observed that electricity is not considered to be movable property". Reliance was also placed on the legislative entry, entry 27 of the State List, from which Act 3 of 1962 derives, and it is contended that since the entry speaks only of the production, supply and distribution of goods, the Act could not have used the word, "article" to include anything which is not goods; and, "goods" from the definition in the Sale of Goods Act must be movable property.

6. This argument is, of course, fallacious in more ways than one. In the first place, so far as the decision of the Supreme Court is concerned what their Lordships were there considering was whether the dishonest abstraction of electrical energy amounted to theft within the meaning of the Indian Penal Code, and, when they said it would not (and was only made an offence by reason of the fiction enacted in section 39 of the Indian Electricity Act) because electrical energy was not movable property they must obviously have had in mind the definition of, "moveable property" in section 22 of the Code according to which only corporeal property can be movable property. Surely that does not mean that non-corporeal property like electrical energy cannot be movable property for the purposes of other statutes and, indeed, their Lordships have so held in C.A. Nos. 1153 to 1160 etc. of 1968 decided on 25-11-1968 where they had little difficulty in coming to the conclusion that electrical energy was goods within the meaning of a sales-tax statute. It seems to us that if the true meaning of the term, "movable property" were to determine the true meaning of the word, "article" as used in Act 3 of 1962, then the definition which would be appropriate would be the definition in section 2(23) of the (Kerala) Interpretation and General Clauses Act, 1125, which is the same as that in section 3(36) of the General Clauses Act 1897, namely, property of every description, except immovable property.

7. The legislative entry, entry 27 of the State List, which speaks of the production, supply and distribution of goods is against rather than in favour of the contention advanced on behalf of the petitioners; especially so, if we bear in mind the definition of, "goods" in article 366 (12) as including all materials, commodities and articles. If electrical energy is an article, it is certainly goods within the meaning of the legislative entry and the entry cannot have the effect of circumscribing the meaning of the word, "article" as used in Act 3 of 1962. Moreover, the definition of "goods" in article 366 (12) shows that that term is used in the Constitution in its widest possible sense to include all materials, commodities and articles. Materials, commodities and articles are more or less synonymous terms though with different shades of meaning, and these words are used, not as mutually exclusive, but each word taking colour from the other, to give the widest possible amplitude to the word, "goods". It is but reasonable to presume that the statute made under the entry uses the word, "article" in its widest possible sense and as synonymous with the word, "goods" as used in the entry.

8. It is no doubt true that the word, "article" is most commonly used to mean a particular small material object. But the word is a word of much wider import, and one of its ordinary meanings given in most dictionaries including the Shorter Oxford Dictionary is, "a commodity." Electrical energy is, not even the petitioners would deny, a commodity, and, having regard to the purpose of Act 3 of 1962, which is to control, when that becomes necessary, the supply, distribution and consumption of essential commodities, we have little doubt that that Act uses the word, "article" in a sense wide enough to include electrical energy.

9. In this connection reference may profitably be made to the speeches of Lord Reid and Lord Guest in *Longhurst v. Guildford Water Board* (1961) 3 All. E.R. 545 at 547 and 549 and to the very interesting article, what is an "article" by C.K. Allen in (1961) 77 L.Q.R. 237. We might also refer to rule 81 (1) of the Defence of India Rules of 1939 which says that any reference to "article shall be construed as including a reference to electrical energy", and to the schedule to the Madras Essential Articles Control and Requisitioning (Temporary Powers) Act (Act 29 of 1949) which lists electrical energy as an essential article within the meaning of section 2(a) of that Act. It is clear that by the time Kerala Act 3 of 1962 was enacted the word, "article" was being used, in legislative parlance in a sense wide enough to include electrical energy.

10. The contention raised in the petitions that the order, Ex. P-2, itself was ultra vires the Indian Electricity Act, 1910, under which it was made was not pressed at the hearing it is so obviously unsustainable. But, it was said that the notification, Ex. P-4, amounted to a variation of the rates fixed under the Electricity (Supply) Act., 1948 and that section 3 of Act 3 of 1962 could never have been intended to arm the Government with the power of revising in a summary manner the rates fixed under another statute after due inquiry in accordance with a very elaborate procedure. But, in fact, Ex. P-4 does not revise the rates fixed under the provisions of the Electricity (Supply) Act, but only levies an additional charge by way of penalty in order to deter consumers from exceeding the quotas fixed for them. That apart, that the power u/s 3 of Act 3 of 1962 can be legitimately used for revising rates settled under the Electricity (Supply) Act, 1948 seems to be clear from the decision of the Supreme Court in *Sri Venkata Seetaramanjaneya Rice and Oil Mills and Others Vs. State of Andhra Pradesh etc.*,

11. In the petitions it is alleged that the notification, Ex. P-4, is discriminatory and bad for offending article 14 of the Constitution. But in what way it is discriminatory is nowhere stated. Where discrimination is alleged full particulars thereof must be specifically pleaded so that the charge may be answered. That not having been done, the charge here made does not merit consideration; but, we might perhaps mention that we were told in the course of the argument that the discrimination lies in the circumstance that no penal charge is provided for in the case of industrial consumers who exceed their quota. With regard to this, we might say that, so far as industrial consumers are concerned, Ex. P-2 provides for the far more drastic sanction of discontinuance. The charge of discrimination seems to us altogether unfounded.

12. The notification, Ex. P-4, purports to have been made in exercise of the powers conferred by clause (b) of sub-section (2) of section 3 of Act 3 of 1962. It is said that what Ex. P-4 does is not to control the price at which electrical energy may be bought or sold but to regulate consumption by imposing what has been rightly called a penal charge on excessive consumption. We are inclined to agree and think that sub-section (1) or clause (c) of sub-section (2) of section 3

would have been the more appropriate provision to cite it is obvious, and, indeed, the contrary is not urged, that the order, Ex. P-4, comes well within the power conferred by these provisions. (Indeed we should have thought that Ex. P-4, could as well have been made u/s 22B of the Indian Electricity Act, 1910. And, if that be so, as we shall presently show--it would be immaterial whether or not electrical energy is an article within the meaning of Act 3 of 1962, and the entire controversy could have been avoided. But, apart from that any order purporting to have been made under sub-section (2) of section 3 is really and essentially an order under sub-section (1), the reference to the wrong provision of the law, if indeed it is wrong, can make no difference to the validity of the order--see P. Balakotaiah Vs. The Union of India (UOI) and Others, and Lekhraj Satramdas, Lalvani Vs. Deputy Custodian-cum-managing Officer and Others, . The intention to make such an order being manifest, and the power to make it being present the conditions for the exercise thereof being satisfied, surely the validity of the order made cannot in the least depend on the statement of the provision of law under which it is made.

13. We have dealt with the contentions common to both the petitions. In O.P. No. 4539 of 1966 there is, however, the further contention that Ex. P-2 has not been properly applied in fixing the monthly ceiling of the consumer. We think that this contention is well-founded. Indeed we think that, having regard to the facts we shall presently state, it is impossible to apply Ex.P-2 in this case.

14. It will be recalled that according to paragraph 2 of Ex. P-2 the ceiling for monthly consumption is to be fixed at 75% of the consumption during October, 1965 or 75% of the average consumption during the months of August, September and October 1965, whichever is higher. Now, every consumer knows that meter readings are not taken on the 1st of each month, but are generally taken, rather erratically, round about the middle of the calendar month. Therefore, in the case of no consumer will it be possible to say what exactly was his consumption during the calendar month of October, 1965 or during the calendar months of August, September and October, 1965, and literally construed, paragraph 2 of Ex. P-2 is impossible of application. Apparently the Government did not know what every consumer knows, and, if the Electricity Board knew what every consumer knew, it kept its knowledge to itself and made no attempt to advise Government on the point either before or after the issue of Ex. P-2 although it seems to have taken it upon itself to amend Ex.P-2 (which; of course, it had no power to do) under the guise of clarifying it.

15. We are told that the standing instructions issued by the Board are to the effect that meter readings should be taken between the 10th and 18th of each month, as far as possible on the same date for each consumer. Further, that the practice is to call the bill for the difference between the readings of one month and the next as the bill for the latter month though in the clarification it issued the Board seems to have thought that the practice was to call it by the name of the former month. Thus, the bill for the energy consumed between the date on

which the meter reading was taken in September, 1965 and the date on which it was taken in October, 1965 would be called the bill for October 1965 and since the consumer would usually get the bill only early in November, 1965 he would also regard it as the bill for October, 1965. Thus, according to the billing practice prevailing throughout the State, what is called the consumption during October, 1965 is really the consumption during September-October, 1965 and what is called the consumption for the months of August, September and October, 1965 is really the consumption for the quarter July-October, 1965, the beginning and end of the month or quarter being marked by the taking of the meter readings. The argument is that Ex.P-2 is not to be construed in a literal or pedantic manner, but from a practical, commonsense point of view; in other words, in the way in which a person of ordinary commonsense, who has taken the care to inform himself of the context and the surrounding circumstances, in the present case a consumer of ordinary commonsense, would understand it. It is said that he would at once see that if Ex. P-2 were to be taken to mean what it apparently says, the months mentioned therein being taken to mean as they apparently do, the calendar months, it would be quite unworkable, and that, pleased with the re-discovery, that those in positions of power and responsibility know no better, he would without difficulty come to the conclusion that what is really meant by October, 1965 is not the calendar month of October, 1965 but what might be called the meter month of October 1965, in other words, September-October, 1965. Likewise, that what is meant by the months of August, September and October, 1965 is the meter months of August, September and October, 1965, in other words, the quarter, July-October, 1965. That might be so, and, seeing that, although the additional charge levied is that has been called a penal charge, the order Ex. P-2, is not really a penal statute creating a criminal offence, we might have been disposed to read Ex. P-2 in the way suggested in order to make it workable. But, in the particular case before us, even that would not make Ex. P-2 workable. Nor we would observe, in any other case, unless the number of days of the meter month on the basis of which a ceiling is fixed is not less than 30 days and the number of days of the meter month in respect of which the penal charge is levied, does not exceed 31 days. For, it would not be right to fix a monthly quota on the basis of the consumption for less than a month; nor to impose a penal charge for consumption for a period that exceeds that. Or else, in addition to a definition to the effect that the months referred to in paragraph 2 of Ex. P-2 are not the calendar months but the meter months, there would also have to be a provision by which the ceiling for any particular meter month is based on the average daily consumption during the specified meter month of October, 1965 or the specified meter quarter of August to October 1965 whichever is higher.

16. Turning to the particular case on hand, the bill Ex. P-7 (a) issued to the consumer shows that it is the bill for electrical energy consumed during the month of September, 1966. But we are told that it includes the penal charge for excessive energy consumed during the months, January to June, 1966. Ex.P-9(a) is the meter card of this consumer and it provides a very good illustration of the

difficulties of applying Ex.P-2 even accepting the construction sought to be placed upon it that the reference in paragraph 2 thereof is not really to the calendar months named therein but to the meter months in accordance with the prevailing practice. We find that in July, 1966 the meter reading was taken as late as the 26th of the month while in October, 1966 it was taken as early as the 10th. It follows that a meter month can be from the 26th of one month to the 10th of the following month, perhaps even from some later date than the 26th of one month to an earlier date than the 10th of the following month. A meter month can thus well be hardly a fortnight, whereas, on the other hand, if a reading is taken on or about the 10th of one month and only on the 26th of the following month it can be as long as six weeks. It must be obvious that, to fix a ceiling on the basis of a meter month which is hardly a fortnight, and to impose a penal charge on the basis of consumption during a meter month which extends to six weeks, would be preposterous, and, if countenanced by Ex.P-2, would render that order liable to be struck down on the ground of arbitrariness.

17. The meter card, Ex.P-9 (a), shows that in December, 1965 a monthly ceiling was fixed at 364 units, and there is an entry to that effect immediately below the reading for December, 1965. But the counter-affidavit filed by the 1st respondent, an Officer of the Electricity Board, shows that the penal charge was levied on the basis of a ceiling of 290 units. This, by itself, should be sufficient to invalidate the additional levy. But, there is the further circumstance that, reading Ex.P-2 as widely and as generously as the 1st respondent would have us read it, it is still impossible to work out the ceiling so far as this particular consumer is concerned. In terms of Ex.P-2, he is entitled to have his ceiling fixed at 75% of the consumption for the meter month of October, 1965, in other words, September-October, 1965, or 75% of the average monthly consumption for the meter quarter August to October, 1965, in other words, for the quarter July-October, 1965, whichever is higher. Taking first the consumption for September-October, 1965 we find that there was a reading on the 17th September, 1965. If there was a reading in October, 1965 not less than 30 days from the 17th September, 1965, it might have been possible to determine the consumption for the meter month of October, 1965, and fix the ceiling accordingly. It would appear that there was a reading in October, 1965 but no date is given, and, for aught we know, the reading might have been made on the 1st October, 1965 so that the consumption might have been for as short a period as 14 days. Obviously the monthly ceiling cannot be fixed on the basis of the consumption for a fortnight.

18. If we turn next to the consumption during the months, the meter months, of August, September and October, 1965, or the months July to October, 1965, we find that there was no reading at all taken in July 1965. There was a reading taken on the 14th June, 1965 and the next reading was only on the 14th August, 1965. As we have seen a reading was taken in October, 1965, but we do not know on what date it was taken. Thus it is impossible to fix a ceiling on the basis of consumption for the meter months of August, September and October, 1965.

19. In the result, we allow O.P. No. 4539 of 1966 to this extent, namely, that we direct that no steps be taken to collect the additional charge of Rs. 810/- demanded of the petitioner by the bill, Ex. P-7, as what has been called penalty for excess. The petitioner will get his costs from the respondents. We dismiss O. P. No. 5397 of 1967 with costs.

Krishna Iyer, J.

20. My learned brother has just delivered judgment on behalf of both of us but a few features of public concern, of deeper import and wider impact than affects this individual case, prompt me to add a few words of my own. Government is quite often a delegate of the legislature and issues notifications, like Exs. P-2 to P-4, so as to implement the objects of important statutes like the Essential Articles Control (Temporary Powers) Act, 1962. Such law-making postulates intimate understanding of the ways of the law enforcing machinery. In this case, the Electricity Board is the authority chosen to enforce the regulation and the Board members are not only nominees of Government but a majority are ordinarily Secretaries to Government. The State Government was faced with a grave power shortage and rightly invoked its powers under Act 3 of 1962. But its duty obviously did not end with making some paper scheme of control. Its responsibility certainly extended to acquainting itself, in consultation with the Board, with the shape the restriction should take, the steps necessary to make it effective and the practical methods of enforcing sanctions against violations. If the scheme failed, it was doubly injurious. For one thing, electricity is so vital to the life of the community that, in a crisis, the law must serve to save the situation. For another, any law that fails in practice boomerangs on the rule of law. Bad law is worse than no law, for it makes people cynical about the legal order generally. In the present case, it behaved Government and the Board to collaborate and promulgate a system of control which would work. But on the facts placed before us it looks as if, between them, they set about the job, biblical style, without the left hand knowing what the right hand does. For, while the Board had issued instructions for meter-reading being recorded only between the 10th and the 18th of every month and knew that there was no reading for August 1965 because of "the staggering system"--whatever that may mean--the Government issued the order, Ex.P-2, which would be still-born if no measurement of current consumption was available for any one of the months of August, September and October 1965. And when Exs.P-2 and P-4 reached the Board, instead of getting Government to amend the notification immediately, it unwittingly arrogated to itself amendatory or declaratory powers which it did not possess under Act 3 of 1962 and issued instructions to its subordinates to substitute, while executing Ex. P-2, an ersatz month of its own--August means middle of August to middle of September--and now stands self-condemned in Court, because on its own showing August 1965 reading is not available at all and for September and October the "amended" month has been substituted without legal sanction. Of course, the entries in the metercard show that no method has been adopted by the meter-reader and in some crucial months not

even the date up to which the reading has been taken has been entered. The basic quota mentioned in the card is 364 units (see Ex.P-9 in O.P. No. 4539 of 1966) while the Board's affidavit puts it in that O.P. at 290 units. This confusion is astonishing when we remember we are dealing with the records of a public body relating to a penal levy as it were; the endorsement on the card of a basic quota higher than is conceded now would have even misled the consumer into using more energy. The teeth of the law, in this case, are provided by Ex. P-4 penal rates but the demand Ex.P-7, purporting to be on that basis, cannot be lawfully issued, thanks to the spinal weakness pointed out by me and elaborated by my learned brother. All these troubles were perhaps of their own making, for, it was easy to draft the notification so as to click when transgression occurred or at least to rectify it when it was found defective. And now the unedifying result; when the wheels of Industry were struggling to keep moving for some hours in the day, some domestic consumers, ignoring the warning against lavish using-up of energy, behaved indifferently to the power scarcity and yet were now escaping the penalty of the law! Poor social engineering indeed.

21. Precisely because law is social engineering I was receptive and not resistant to the strained construction counsel for the Board commended for our acceptance in a valiant endeavour to salvage Ex. P-2 P-4 scheme. His able advocacy deserves our appreciation. Any interpretation, out of many, which will "advance the remedy and suppress the mischief" may be adopted by the Court departing from the dictionary meaning and even the popular meaning of the words used, although judicial interpretation cannot be the last refuge of the incompetent draftsman so as to rope in categories, in the name of supposed injustice, which the words of the legislation have left out. In short, Judges may re-read the law helpfully but not re-write the law compassionately. I am also at one with counsel for the board in his submission based on the ruling in 1963 S.C. 1062 that Ex.P-2 must be understood in a workable fashion. The law is for life and not against it, although it works through the words used. Therefore, a meaning which makes it effective rather than otherwise must find favour with us. And words themselves must receive that connotation which the ordinary, prudent man affected by the law and aware of the practices prevailing in that type of activity would give. The argument of Shri Narayana Menon, learned counsel for the Board, is that the settled practice, in the matter of meter-reading and making out of bills for electrical consumption, is to treat a month as partaking of a part of the previous month. If I ask my neighbour "what is your electricity bill for January 1969? his mind instantly and instinctively moves back to the month made up of the middle of December 1968 upto the middle of January 1969 (I mean, with reference to the particular dates of reading) and not to the calendar month of 1st to 31st of January. If this be the average consumer's notion, the petitioner cannot complain if we consult what I may call the dictionary of the affected community and relax the semantic rigidity of the words used so as to accord with reality. Even so, Ex. P-9 contains no date to apply what my learned brother expressively called the "meter-months" of August, September and

October. The entries in the card Ex. P-9 are in disregard of the calendar months, the "practice months" or the "Board's months"-- which last means for, say, August, the 15th of August to the 15th of September, I would still have hesitated to interfere with Ex. P-7, had there been in Ex. P-9 or elsewhere at least approximate data answering the requirements of Ex.P-2, as I take the view that minor lacunae in meter-readings should not be exploited by a clear transgressor. Article 226 of the Constitution reaches out to correct injustice and, for that very reason, retreats from its exercise when the impugned order is reproachable but not unjust. In this case, however the condition for holding that the petitioner has exceeded the basic quota has not been made out and the penal price cannot therefore be levied.

22. But this does not mean that in other cases where better material is available the Board cannot justify the higher price levied and collected. Even in the present petitioner's case, I do not think that any personal immunity from further proceeding to collect summer surcharge can be conferred by the Court. Only, Ex. P7 demand deserves to be demolished. May be, if the Board fixes the basic quota from out of the materials now available, supplemented by any other reasonably relevant facts, and after giving an opportunity to the consumer to present his answer to the proposed estimate, the quantification and levy may be valid. But in no case can the fixation of quota be less favourable to the consumer than Ex. P-2 as provided. For example, if the computation is made on the basis of the difference between the reading next after October and next before August and divided by three and similarly, by treating the difference between the reading next after October and next before, October as the consumption for October. The petitioner cannot claim to be aggrieved by treating three plus as three months and one plus as one month. But it is not necessary to go into such hypothetical possibilities as the. Board is in no need of judicial speculation. I only want to emphasise that the dismissal of this writ petition need not be the last word on the question of the consumer's liability. Let me express a last thought which occurs to me every time a law fails to click and public interest suffers on account of some one's neglect or worse. The order in a writ petition should not then be the end of the story but the beginning of some new follow-up action so that the judicial verdict will serve a larger purpose.