

(1938) 08 CAL CK 0010
In the Calcutta High Court

Sarat Chandra Guha

APPELLANT

Vs

Kali Pada Roy and Others

RESPONDENT

Date of Decision : 05-08-1938

Acts Referred:

Bengal Municipal Act, 1932 — Section 295, 309(d)

Citation : AIR 1939 Cal 254

Hon'ble Judges : B.K. Mukherjea, J

Bench : Division Bench

Judgement

B.K. Mukherjea, J.—This is an appeal on behalf of the Chairman, Barisal Municipality, who was the defendant in a suit commenced by the plaintiffs for restoration of the connexion of filtered water supply in their house, which was alleged to have been illegally cut off by the Municipality. There was also a claim for damages to the extent of Rs. 250. It appears that the plaintiff's father who was a pleader at Barisal, owned a house in the town which has been now inherited by the plaintiffs. The plaintiffs' father got house connexion for supply of filtered water with the main service pipe of the Municipality some time in the year 1914 and it is not disputed that at that time a meter was set up by the Plumber under the supervision of the municipal authorities, the cost of which was paid by the plaintiffs' father. It is found by the Courts below on evidence, that the meter thus setup gradually deteriorated and in 1927 it became practically useless. Notices were served upon the plaintiffs from time to time asking them to replace the meter. As the plaintiffs paid no heed to these notices, the water connexion was cut off on 17th May 1935. This suit was instituted on 6th September following, and the plaintiffs pray for restoration of the house connexion and damages, as said already, on the allegation that the Municipality has no right to turn off water supply, on the ground of the meter being defective. Both the Courts below have decreed the plaintiffs' suit in part. The prayer for restoration of the connexion of water supply has been granted, but the claim for damages has been allowed to the extent of rupees fifty only.

2. The Municipality has preferred this appeal, and the point taken on its behalf is that the Courts below erred in law in holding that under the provisions of the Bengal Municipal Act, the Municipality has no power to cut off house connexion when the house owner refuses to replace a meter, which has become rusty and useless in compliance with the requisitions of the Municipality. There is no appearance on behalf of the respondents in the appeal before me; but Mr. Guha who has argued the case for the appellant has placed every, thing that could be said in their favour. Now, the powers of the Municipality to cut off supply of water to premises enjoying connexion with the water works of the former, are contained in Section 309, Bengal Municipal Act, 1932. Clouse (d) of this Section empowers the Commissioners to cut off the connexion

if any pipes, taps, or fittings connected with the supply of water to the premises be found on examination by an officer of the Commissioners authorized by them in their behalf, to be out of repair to such an extent as to cause so serious a waste or contamination of water that in the opinion of the Chairman immediate prevention is necessary.

3. A question was raised as to whether the present case is governed by the new Act or the old Act of 1884. As the cause of action arose in 1935 when water connexion to the plaintiff's premises was cut off, prima facie it is the new Act that is applicable. The defendant however relied upon Section 2 of the present Municipal Act, and contended that as notices to replace the meter were served upon the plaintiffs when the old Act was in force the notices were saved by Section 2 of the new Act, and the right of the parties would be governed by the old Act. Section 2 simply says that the notices given by the Commissioners under the old Act would be deemed to have been given under the new Act. If the Commissioners had really acquired any right under the old law, this may not be taken away by the new Act, unless it does so either expressly or by necessary implication. But in the present case, I think, that there is no material difference between the present Municipal Act and its predecessor, and whatever alterations have been made in the new Act on this point they are more favourable to the Commissioners than to the house owner. Section 293 of the old Municipal Act, contained the following provision:

In the event of any pipes, works, or fittings connected with the supply of water to any house or land being at any time found on examination by any officer of the Commissioners authorized in that behalf to be out of repair to such an extent as to cause waste of water, the Commissioners may cause the water to be turned off from such house or land, after giving notice in writing of not less than 24 hours and may recover from the occupier of such house or land the expense incurred for turning off the water.

4. The difference that one notices in the present Act is, that "taps" are mentioned in the latter in addition to pipes, and the Commissioners are empowered to cut off connexion not only in case of waste but also where there is contamination of water. The period of notice has also been extended in the new

Act from 24 to 48 hours. It will be noticed that the word "meter" does-not occur either in Section 309 of the present Municipal Act, or Section 293 of the old Act and it is nowhere said that any defect in or non-repair of the meter will justify the Commissioners in turning off water supply. The argument of the appellant is that though "meter" has not been expressly mentioned, yet the word "fittings" occurring in both the Sections does include meter which is a part of the fittings, and reliance is placed for this interpretation upon Rule 5 of the bye-laws framed by the Chittagong Municipality. That rule in enumerating the different parts or fittings of a house connexion mentions meter as one of the items. I do not think that the bye-law referred to above is of any assistance to the appellant. In my opinion there are two substantial grounds which repel the argument that the appellant has put forward. In the first place it appears that the essential pre-requisite for exercise of the powers of the Commissioner, is that, non-repair of any part of the fitting must cause such waste, or contamination of water as could not be otherwise prevented. It seems to me that a meter is not such a part; for even if it is allowed to stand without repairs, it cannot by itself cause any leakage or contamination of water. The meter simply records the actual consumption made by the house owner. It enables the Municipality to know, whether or not there is excess consumption by the rate payer, but no waste or contamination of water can be ascribed to a faulty meter. In the second place, I think that the Legislature could not have contemplated non-repair of meter, as a circumstance justifying the Commissioners in cutting off house connexion as the duty of maintaining the meter in good order rests upon the Municipality and not the owner or occupier of the house. Section 295, Bengal Municipal Act (1932), lays down that though the expense of providing or attaching meter has to be borne by the person requiring the supply, yet

the Commissioners shall bear the cost of maintaining meter in good order and replacing a meter which is out of order, or under repair owing to an inherent defect and not owing to its being tampered with.

5. If the Commissioners want to rely upon the old law, that is still more against them, and u/s 295 of the old Act, the Commissioners had to provide a meter at their own expense. It is true that under rules framed by Government which were adopted as bye-laws by the Municipality, the entire costs of house connexion including the expenses of a meter had to be borne by the owner or occupier of the house, but there is no rule or bye-law that the costs of maintaining the meter in good order have to be met by the house owner and not by the Municipality. No allegation has been made in this case, that the meter was tampered with and we do not know also whether it had any inherent vice. The question whether when the meter has been replaced by the Municipality the costs could be recovered from the plaintiffs also does not arise for consideration. The whole point is as to whether the Commissioners have the right to cut off connexion of water supply, because the meter was not repaired by the plaintiffs, and in my opinion for the reasons given above the question must be answered in the negative. The result is that the appeal fails. As the respondents have not appeared I make no order

as to costs.