(1967) 07 PAT CK 0016

In the Patna High Court

Case No : A.F.A.D. No. 258 of 1962

State of Bihar and Others — APPELLANT

Vs

Inderchand Jain and Others — RESPONDENT

Date of Decision : 25-07-1967

Acts Referred:

Contract Act, 1872 — Section 2
Electricity (Supply) Act, 1948 — Section 60, 78(1)
Specific Relief Act, 1877 — Section 21

Citation : AIR 1968 Patna 171

Hon'ble Judges : Shambhu Prasad Singh, J;Ramratna Singh, J

Bench : Division Bench

Advocate : Lalnarain Sinha, General and Ramanand Sinha, for the Appellant; Prem Lall and Parmeshwar Prasad Sinha, for the Respondent

Final Decision : Allowed

Judgement

1. This appeal is directed against the judgment and decree of a Subordinate Judge of Hazaribagh, setting aside those of a Munsif of the same station and decreeing the suit instituted by the respondents, who own industrial concerns, against the appellants.

2. The facts giving rise to this appeal are these -- The State of Bihar started the supply of electricity to the consumers of Hazaribagh town six or seven years before the institution of the suit, and defendant-appellant No. 2, who was the Assistant Electrical Engineer, was in charge of this work on behalf of the State. Since then, the plaintiffs respondents took electric connections and have been receiving electrical energy for industrial purposes. On the 30th April, 1956, there was a notification by the State Government, in which they increased the rates for supply of electrical energy. This Notification was published in the Bihar Gazette dated 8-8-1956. By this notification the rate for minimum consumption at 1000 units per K W. per annum to be charged for electrical energy supplied for industrial purposes was introduced. On the basis of this notification, the Assistant

Electrical Engineer demanded in April, 1957 from the plaintiffs, for the year 1956-57 the difference between the charges for the electrical energy actually consumed by them and the charges they were liable to pay for the minimum fixed by the notification. The plaintiffs protested against this demand. Again, in May, 1958 the Assistant Electrical Engineer issued an annual supplementary bill for the electrical energy consumed by the plaintiff? respondents, demanding the amount corresponding to the difference in the rates on account of the units actually consumed and the units required by the rate for minimum consumption.

The protest of the plaintiffs was considered by the State Government, and by notification dated 14-10-1958 which was published in the Bihar Gazette dated 12-11-1958, the minimum rate was reduced from 1000 units per K.W. to 500 units per K W per annum. On 23-12-58, again a revised supplementary bill for 1956-57 and 1957-58 was issued to each of the respondents at the rate of minimum consumption contained in the notification dated 14-10-1958 The fixation of rate for minimum consumption meant that even if lesser quantity of electrical energy was consumed by the consumers, they would be liable to pay charges for units fixed by the notification per K.W Per year, i. E. 1000 units per K W per year in pursuance of the notification dated 30-4-1956 and 500 units per K.W. per annum in pursuance of the notification dated 14-10-1958. It may also be mentioned that the notification of 1958 was given retrospective effect, by the State Government; that is, this revised rate was to take effect from 1-4-56. This was apparently a concession to the consumers for industrial purposes. Defendant No. 3 viz., the Bihar State Electricity Board, which was constituted with effect from 1-4-1958, was added in the suit by an amendment of the plaint on an objection by the State of Bihar in its written statement that the Board was a necessary party to the suit. In the original plaint which was filed on 27-1-1957 only the State of Bihar and the Assistant Electrical Engineer were made defendants.

3. The case of the plaintiffs respondents was that the State Government could not in law fix a minimum quantity of consumption of electrical energy in supersession of the contract previously entered into between the plaintiffs and the defendants and that the charges in the bills for the supposed quantity of electrical energy consumed in excess of the actual quantity consumed were illegal. The defendants appellants, who filed written statements to the same effect, however, justified the charges, in pursuance of the notifications issued in 1956 and 1958. As stated earlier, the learned Additional Munsif, Hazaribagh accepted the contentions of the appellants, but the learned Subordinate Judge rejected the same and decreed the suit.

4. The learned Advocate General attacked the judgment and decree of the court of appeal below on two gounds The first ground urged by him was that the two notifications issued on 30-4-1956 and 14-10-1958 were statutory notifications, as they were issued in pursuance of Clause 14 of the conditions for the supply of electrical energy by the Government Electricity Department, Bihar, contained in a

notification dated the 16th November. 1954 He submitted that these conditions were prescribed by the State Government in pursuance of Section 78(1) of the Electricity (Supply) Act 1948 (hereinafter referred to as 1948 Act). But this Act doe? not contemplate supply of electrical energy by the State Government and therefore the conditions contained in the notification dated 16-11-1954 could not be prescribed u/s 78 of this Act He drew our attention to Section 60 of the Act which provides that all debts and obligations incurred, all contracts entered into and all matters and things engaged to be done by with or for State Government for any of the ''purposes of this Act'' before the first constitution of the Board shall be deemed to have been incurred entered into or engaged to be done by with or for the Board He laid stress on the words underlined (here in '' '') but these words do not by themselves indicate that the supply of electrical energy by the State Government comes within the purview of 1948 Act.

5. Mr Sinha could not point out any provision in the Indian Electricity Ast, 1910, Under which the aforesaid condition contained in the notification dated 16-11-1954 had been issued. A decision of the Supreme Court in The Mysore State Electricity Board Vs. Bangalore Woollen, Cotton and Silk Mills Ltd. and Others, also supports the view taken above. In that case, the Government of Mysore, which was generating and supplying electric energy to consurmers prior to the constitution of the Mysore State Electricity Board, revised the rates it charged to the respondents as consumers of electric energy, in 1953--1956, before Sections 5, 49 and 76 of the Electricity (Supp)v) Act, 1948, came into force in Mysore. The Board after its constitution in 1957 as successor-in-interest of the State Government, made a demand of the arrears due in respect of the revised rates from the respondents. It was argued on behalf of the respondents that, as at the time when the revision was made there was a dispute about the rates between the respondents and the State Government and as that dispute had continued with the Board by reason of the Board demanding the arrears at the revised rates, it must be held that the dispute arose under the 1948 Act and might be determined by arbitration u/s 76(1) thereof. It was held that the position in 1953-1956 was that the Government of Mysore was free to contract with the consumers of electric energy to supply at such rates as it thought fit. As the matter rested in the region of contract, express or implied, or on the unilateral action of the State Government, it was outside the purview of the 1948 Act and was not referable to any of its provisions. Their Lordships came to the conclusion after examining briefly the schemes of the 1910 and 1948 Acts and the relevant provisions thereof.

6. After the above decision was shown to Mr. Sinha, he conceded that the notification dated 16-11-1954, containing the aforesaid conditions could not be statutory notification under either of the two Acts. He argued, therefore, in the alternative, that the notifications dated 30-4-1956 and 14-10-1958 fixing the rate for minimum consumption created an implied contract between the State Government and the appellants, inasmuch as the appellants never raised anv objection thereto, even though the two notifications were published earlier, and

after the notification of 1956, the consumers merely made a protest to the State Government which, after further consideration, reduced the rate of minimum consumption of electrical energy by the notification dated 14-11-1958 from 1000 units to 500 units. In support of this contention regarding the implied contract under the general law. Mr Sinha relied on some English decisions.

In Clarke v. Earl of Dunraven (1897) A.C. 59, two yachts were entered by their respective owners for a club race, each owner undertaking with the club to be bound by the dub sailing rules. By the rules the owner of any yacht disobeying any of the rules was to be liable for all damages arising therefrom. One of the yachts in breach of a sailing rule, through improper navigation without the actual fault or privity of the owner, ran into and sank the other yacht. It was held that there was a contract between the owners upon which the owner of the damaged yacht could sue the owner of the other. It will be noticed that this is an extreme example of implied contract; because the owner of one yacht which caused damage to the other yact in breach of the sailing rule was held to be bound by the rules of the club. In Denton v. Great Northern Rly. Co. (1856) 105 R. R. 335, in the printed and published time-tables of the defendants for the month of March, 1855, which were kept in circulation throughout the month, a passenger train was advertised to leave the defendants'' station in London at 5 p.m. and to arrive at Peterborough at about 7.20 the same evening, and about the same time to proceed on to Hull, arriving at Hull about midnight. The time-tables contained a notice to the effect that the defendants would not hold themselves responsible for delay or the consequences arising therefrom.

The defendants'' line of railway extended as far as A. beyond Peterborough, but they had running powers over the I. and Y. Railway to M. where the N. E. Railway Company''s line joined; and, under the Railway Clearing Act, 1850, the defendants had far some time been issuing tickets with which passengers were conveyed, as advertised, from Peterborough to Hull. But, on the 1st of March, the N. E. Railway Company discontinued to run their train, having given previous notice to the defendants, but not until after their time-tables had been printed and published, and, in consequence, the defendants were no longer able to issue tickets by the train as advertised. Relying on the time-tables, the plaintiff left London on the 25th of March for Peterborough, on business, intending to go on to Hull the same evening. He accordingly applied to the clerk at the Peterborough station in proper time for a ticket by the train advertised to leave for Hull about 7.20 p.m. and offered to pay the fare; the clerk, however refused to grant the ticket, stating as a reason, the N E. Railway Company having discontinued running their train as before. The plaintiff then took a ticket, and proceeded as far as the M junction, where he was obliged to remain that night and it was admitted, had, in consequence, sustained a pecuniary loss. It was held by the majority of Judges who constituted the bench, on the analogy of a contract brought about by an advertisement to pay a reward in a certain contingency that the facts of the case constituted an implied contract between the appellant and the railway company. This was a case also of implied contract.

In Upton-on-Severn Rural Dist. Council v. Powell, (1942) 1 All E.R. 220, the appellant''s farm was in the Upton police district, but in the Pershore, and not the Upton, fire district, A fire broke out on the farm, and the appellant telephoned to the police Inspector at Upton and asked for the fire brigade to be sent. The Upton fire brigade was informed, and it went to the farm at once. The appellant was entitled to the services of the Pershore fire brigade, without charge, but the Upton brigade, if it went to a fire outside its own area, was entitled to contract for payment for its services. At the time when the brigade was summoned, all the parties concerned were under the impression that the farm was in the Upton fire district. For the Upton fire brigade it was contended that a contract had been created by implication, under which it was entitled to be remunerated for its services. It was held that the appellant must be treated as having asked for the Upton fire brigade to be sent to his farm, and the fact that at the time the parties thought that the fire was in its area did not prevent there being a contractual relationship. The appellant was, therefore, liable under an implied contract to pay for the brigade''s services. A common case of implied contract in this country arises when the guardian of a boy who runs away from his house makes an advertisement or issues a pamphlet offering a reward in these terms. "Any body who finds trace of the boy and brings him home, will get Rs. 500." and then the man who finds the missing boy is entitled to get the reward advertised. Learned counsel for the respondents did not challenge the principle of implied contract, which is well settled.

7. The question is whether in the instant case the law of implied contract between the State Government and the respondents on account of the notifications issued in 1956 and 1958 in respect of the rate of minimum consumption of electrical energy applies. It is admitted that the respondents were taking electrical energy from the State Government for several years before 1956 without any contract though at the time the respondents were charged for the actual quantity of electrical energy consumed by them. By the notification dated 30-4-1956 the Government notified to all concerned through the Bihar Gazette that, in cases of industrial concerns the minimum charge would be for 1000 units per K. W. a year irrespective of the fact that in the particular year the quantity of electrical energy consumed was less than 1000 units. Even after the publication of this notification in the Bihar Gazette, the respondents continued to take electrical energy from the State Government and they had been doing so at least up to the date of the institution of the suit. This conduct of the respondents amounted apparently to the acceptance of the new term mentioned in the notification. Of course they protested against the new term to the Government, and on a re-consideration the State Government modified the term by the notification dated 14-10-1958 and reduced the rate for minimum consumption from 1000 to 500 units, but at no stage did the respondents stop or refuse taking electrical energy from the State Government.

It does frequently happen that even a private concern advertises its terms of supply by general notice or notification, and it is well settled in law that any one who takes the supply after such an advertisement accepts by implication the terms contained therein. In the instant case, therefore, the respondents did, by their conduct, accept the terms notified in the notification of 1956 and thereafter in the notification of 1958 and thereby made themselves liable to pay charges for the Units fixed, for minimum consumption of electrical energy for K. W. every year from the date of the publication of the notification in the Bihar Gazette. It will be recalled that the notification dated 30-4-1956 was published in the Bihar Gazette on 8-8-1956 and, therefore, the respondents made themselves liable to pay at this rate with effect from that date. The date of publication in the Bihar Gazette of the notification dated 14-10-1958 is not of much importance, as it merely reduced the rate fixed for minimum consumption with effect from 1-4-1956. The court of appeal below has, in granting a decree in favour of the respondents, relied on a decision of R. C. Mitter, J. in Saila Bala Roy and on her death Malti Rose Vs. Chairman, Darjeeling Municipality, ; but that was a case of the supply of electrical energy by a licensee to whom licences had been granted under the Act of 1910 and, therefore, the decision will not apply to the instant case.

8. The last contention of Mr. Sinha was that the reliefs claimed in the suit cannot be allowed. In the first relief the plaintiffs respondents sought for a declaration that the introduction of minimum consumption scale was ultra vires and opposed to equity. If the relevant notifications were validly issued under the Act of 1948, they cannot be declared ultra vires and illegal; but in view of the finding that they were not issued under the Act, no question of declaring them ultra vires arises. The second relief was for a decree for permanent injunction restraining the defendants from disconnecting the electric line and stopping the supply of electrical energy to the plaintiffs-respondents. But the supplier of electrical energy, in the absence of a contract that it must supply the same to a certain consumer for a certain fixed period or till a certain date, is perfectly entitled to stop the supply, after giving due notice to the consumer. In substance, the second relief amounts to a claim for enforcement of a contract which is of such a nature that compensation in money will be an adequate relief for the non-performance. Section 21(a) of the Specific Relief Act (Act I of 1877) which was in force at the time the suit was instituted and Section 14(1)(a) of the new Act (Act XLVII of 1963) which is nothing but reproduction of the aforesaid sub-section of the old Act, bar such a suit. Thus, no suit at all is maintainable for this relief. This contention of Mr. Sinba, therefore, also prevails.

9. It may be mentioned incidentally what charges the respondents are actually liable to pay after the introduction of the minimum guarantee scale does not arise for consideration in the present case.

10. In the result, the appeal is allowed and the suit is dimissed with costs throughout but there will be only one set of pleader''s fee for all the defendants in all the courts.

