

(1962) 03 GUJ CK 0003
In the Gujarat High Court
Case No : A.F.A.D. No. 8 of 1962

The Nadiad Borough Municipality

APPELLANT

Vs

The Nadiad Electric Co. Ltd.

RESPONDENT

Date of Decision : 28-03-1962

Acts Referred:

Electricity (Supply) Act, 1948 — Section 57, 57A

Electricity Act, 1910 — Section 22, 22A, 22A(1), 22A(3), 23(1)

Citation : AIR 1964 Guj 30 : (1964) 5 GLR 82

Hon'ble Judges : P.N. Bhagwati, J

Bench : Single Bench

Advocate : S.V. Gupte and M.C. Shah, for the Appellant; M.P. Amin and I.M. Nanavati, for the Respondent

Final Decision : Allowed

Judgement

P.N. Bhagwati, J.—This appeal raises a short but interesting question relating to the construction of Section 22A of the Indian Electricity Act, 1910. The question, is one of considerable importance and consequence and is certainly not free from difficulty. The task of determination has, however, been rendered considerably easier by the very able assistance received by me from the learned advocate appearing on behalf of the parties and having regard to the full and detailed arguments which have been advanced before me on both sides. I think it right and proper that I should give in some detail my reasons for the conclusion which I have reached on this rather difficult question of construction. The facts giving rise to this appeal are few and for the most part undisputed and may be briefly stated as follows.

2. The plaintiff is a Municipality for the Municipal Borough of Nadiad established under the Bombay Municipal Boroughs Act, 1925. The defendant has been granted a licence to supply electrical energy u/s 3(2)(d) of the Indian Electricity Act, 1910, and the defendant is, pursuant to such licence, carrying on the business of supplying electrical energy within the municipal limits of the City of

Nadiad. The plaintiff requires electrical energy for the purpose of its office buildings as also for the purpose of carrying out street-lighting programme and working water-pumps for effectuating water supply to residents within the municipal limits of the City of Nadiad. An agreement was, therefore, reached between the plaintiff and the defendant on 3rd April 1937 regulating the terms and conditions on which the defendant would supply electrical energy to the plaintiff for the aforesaid purposes. The period of the agreement was 25 years and there was an express clause conferring on the plaintiff an option to renew the agreement for a further period of 15 years or until the expiry of the period of the licence held by the defendant, on the same terms and conditions as provided by the agreement. It appears that some ratepayers of the plaintiff at Nadiad filed a suit being Civil Suit No. 258 of 1938, challenging the legality of the agreement and by a decree passed in that suit the agreement was declared null and void on some technical grounds with which I am not concerned for the purpose of the present appeal. This happened on 17th November 1939. The plaintiff and the defendant thereafter carried on negotiations for entering into a new agreement and ultimately on 14th August 1940 an agreement was concluded between the plaintiff and the defendant for supply of electrical energy by the defendant to the plaintiff. The period of the agreement was 20 years but according to the plaintiff there was an option of renewal in favour of the plaintiff contained in the agreement. The defendant, however, denied the existence of any such option of renewal. The contention that there was an option of renewal contained in the agreement was founded on clauses 14 and 15 of the agreement, which were in the following terms :

"14. This agreement shall be in force for a period of twenty years from the date on which it is entered into. On expiry of a period of fifteen years from the date on which this contract is entered into if the defendant Company declares a dividend at six per cent on its ordinary shares, after taking into account the depreciation, then for the remaining period of five years of this contract, there shall be a rebate of one and one-half pie per unit."

"15. When the period reserved under this contract expires and if it is not renewed the licensee shall be entitled to remove the street lighting installation".

The defendant thereafter supplied electrical energy to the plaintiff in accordance with the terms and conditions of the agreement. Since the period of the agreement was due to expire on 13th August 1960, the defendant addressed a letter to the plaintiff on 10th May 1960, pointing out to the plaintiff that the agreement was due to expire by efflux of time on 13th August 1960 and that the defendant would not thereafter be under any obligation to supply electrical energy to the plaintiff in accordance with the terms and conditions of the agreement; but that the defendant would supply energy to the plaintiff at the rate of 30 nP. per unit exclusive of maintenance charges for street lighting and 19 nP. for the first 50 units and graded charge thereafter for the consumption for other purposes. It appears that thereafter some negotiations took place between

the parties but the negotiations proved inconclusive. Moreover, in the meantime, the plaintiff was advised that the plaintiff was entitled to a renewal of the agreement and that in any event, the defendant was bound to supply electrical energy to the plaintiff on the same terms and conditions as were contained in the agreement and the plaintiff, therefore, filed the present suit against the defendant for a declaration that the plaintiff was entitled to renew the agreement and that in any event the defendant was bound to continue the supply of electrical energy to the plaintiff in accordance with the terms and conditions contained in the agreement, as also for a permanent injunction restraining the defendant from withholding supply of electrical energy to the plaintiff. The plaintiff, founding on clauses 14 and 15 of the agreement, contended that there was an option of renewal of the agreement in favour of the plaintiffs and that in any view of the matter the defendant was bound to continue to supply electrical energy to the plaintiff on the same terms and conditions as were contained in the agreement by virtue of the provision enacted in Section 22A(3) of the Indian Electricity Act, 1910. The defendant resisted the suit on various ground's, two of which only now survive and fall to be considered in the present appeal. The defendant contended, in the first instance, that there was no option of renewal contained in the agreement and that the plaintiff was not entitled to a renewal of the agreement on the expiration of the period of the agreement. The defendant also contended that Section 22A(3) of the Indian Electricity Act, 1910, did not apply to the facts of the present case and that the agreement having expired by efflux of time, the defendant was not bound to supply electrical energy to the plaintiff in accordance with the terms and conditions of the agreement and that if the plaintiff wanted electrical energy from the defendant, the defendant was ready and willing to supply the same to the plaintiff on the same terms and conditions on which the defendant supplied electrical energy to other consumers. On these contentions the suit was tried by the Joint Civil Judge. Junior Division, Nadiad. The learned trial Judge held that there was no option reserved in favour of the plaintiff to renew the agreement and that the plaintiff was not entitled to a renewal of the agreement. The learned trial Judge also held that the agreement could not be deemed to be in force u/s 22A(3) of the Indian Electricity Act, 1910 and that the agreement having expired by efflux of time, the defendant was not bound to supply electrical energy to the plaintiff in accordance with the terms and conditions of the agreement. The learned trial Judge accordingly dismissed the plaintiff's suit with costs. The plaintiff being aggrieved by the dismissal of the suit filed an appeal in the Court of the District Judge at Nadiad. The appeal was transferred to the Court of the District Judge, Ahmedabad, and was ultimately heard by the Second Extra Assistant Judge, Ahmedabad. The learned Assistant Judge agreed with the conclusion reached by the learned trial Judge and took the view that there was no option of renewal contained in the agreement and that the plaintiff was not entitled to a renewal of the agreement. So far as the contention based on the provisions of Section 22A(3) of the Indian Electricity Act 1910 was concerned, the learned Assistant Judge found, in agreement with the learned trial Judge, that this Section did not apply to the

facts of the case and the defendant was, therefore, not bound to supply electrical energy to the plaintiff on the same terms and conditions as were contained in the agreement. The learned Assistant Judge accordingly dismissed the appeal with costs. The plaintiff thereupon brought the matter in second appeal before this Court.

3. Mr. S.V. Gupte, learned advocate appearing on behalf of the plaintiff, urged before me in support of the appeal the same two contentions which were pressed before the learned trial Judge and the learned Assistant Judge and were rejected by them. To briefly restate, the first contention was that there was an option of renewal to be found in Clauses 14 and 15 of the agreement and that even if the words used did not expressly state in whose favour the option of renewal was, it must be assumed to be in favour of the plaintiff who was the grantee under the agreement and that the plaintiff was, therefore, entitled to a renewal of the agreement. The second contention and this was the contention most vehemently pressed by Mr. S.V. Gupte that the plaintiff was an establishment used or intended to be used for maintaining supplies and services essential to the community and that since the agreement expired after the coming into force of the Indian Electricity (Amendment) Act, 1959, the defendant was bound by reason of the provisions of Section 22A(3) of the Indian Electricity Act, 1910, to continue to supply electrical energy to the plaintiff on the same terms and conditions as were contained in the agreement until the plaintiff gave notice in writing to the defendant requiring the defendant to discontinue such supply. Mr. M. P. Amin on the other hand supported the judgment of the learned Assistant Judge and urged that there was no substance in either of the two contentions pressed by Mr. S.V. Gupte and submitted that the appeal should be dismissed.

4. I may point out that the contention based on the existence of an option of renewal in the agreement was urged by Mr. S.V. Gupte last in point of time but it would be convenient to take up that point for consideration first since, in my opinion, it is capable of an easy answer and does not really admit of much argument. Mr. S.V. Gupte with his usual candour conceded that there was no express clause of renewal contained in the agreement, but argued that there was in the agreement language from which an option of renewal could be implied in favour of the plaintiff. Mr. S.V. Gupte tried to spell out an implied covenant for renewal from the language used in Clauses 14 and 15 of the agreement. I have already reproduced Clauses 14 and 15 of the agreement a little earlier and in the course of the hearing I heard these clauses read and also read them for myself, dozens of times. Despite this iteration I must confess I am unable to perceive any covenant for renewal hidden even in the darkest corners of these clauses. It is clear on a plain and grammatical construction that under Clause 14 the life of the agreement was only 20 years calculated from the date on which the same was entered into between the parties. The opening part of Clause 14 provided in terms clear and explicit that the agreement shall be in force for a period of 20 years from the date on which it was entered into between the parties. Clause 14 then proceeded to declare that if on the expiration of a period of 15 out of 20

years, which constituted the life of the agreement, the defendant declared dividend at the rate of six per cent on its ordinary shares after taking into account depreciation, then for the remaining period of five years, the plaintiff shall be entitled to a rebate of one and a half paise per unit on the electrical energy supplied by the defendant to the plaintiff. This last provision also made it abundantly clear that the duration of the agreement was to be only 20 years and that is why rebate of one and a half paise per unit was provided only for the remaining period of five years on the expiration of the period of 15 years from the date on which the agreement was made between the plaintiff and the defendant. Clause 14 therefore clearly limited the life of the agreement to a period of 20 years from the date of the agreement. Clause 15 then provided that when the period reserved under the agreement expires and if it is not renewed, the defendant shall be entitled to remove the street-lighting installation. Now, Mr. S.V. Gupte strongly relied on the words "if it is not renewed" and contended that these words clearly show that the parties contemplated a renewal of the agreement and this they could not have done, unless they intended that there should be a covenant for renewal. Mr. S.V. Gupte, stressed his argument in the form of interrogation : If the parties did not intend that there should be a covenant for renewal, how could they contemplate a renewal of the agreement? How could there be a renewal of the agreement without a covenant for renewal? The words "if it is not renewed" clearly contemplated the possibility that the agreement might be renewed and it could not be so renewed unless there was a covenant for renewal and the covenant for renewal must, therefore, be implied in the agreement so ran the argument of Mr. S.V. Gupte. This contention of Mr. S.V. Gupte is, however, in my opinion, entirely devoid of merit and that was perhaps the reason why Mr. S. V. Gupte did not place it in the forefront of his argument in support of the appeal. It is no doubt true that the words "if it is not renewed" contemplated the possibility that the agreement might be renewed but the renewal of the agreement did not necessarily need to be brought about as a result of the exercise of any option of renewal in favour of the plaintiff contained in the agreement. The agreement could be renewed also by mutual agreement of the parties either before or after the expiration of the agreement. At any time before or after the expiration of the agreement the parties could mutually agree that the agreement shall stand renewed for a further period agreed upon between the parties. In such a case the period of the agreement would stand extended by such further period as might be agreed upon between the parties and the agreement would be renewed for such further period. It is, therefore, clear that the use of the words "if it is not renewed" would not necessarily lead to the implication of a covenant for renewal. These words would have a meaning and content even without implying any covenant for renewal. It is well settled that a term can be implied in a contract only if it is necessary in order to give business efficacy to the contract. If, for example, it could be shown that the words "if it is not renewed" would have no meaning or content and would be totally inapplicable without a covenant for renewal, then certainly in order to give meaning and efficacy to these words, the Court would be justified in implying a

covenant for renewal; but where these words can be given full meaning and effect without any necessity to imply a covenant for renewal, it would not be right on the part of the Court to make any such implication. These words are not rendered meaningless by the absence of a covenant for renewal since they would apply where the agreement is renewed by mutual agreement between the parties and there is, therefore, neither necessity nor scope for implying any covenant for renewal as contended for by Mr. S.V. Gupte. All that Clause 15 provided was that when the period of 20 years which was expressed to be the duration of the agreement in clear and unmistakable terms expires and the agreement is not renewed by mutual agreement that being the only mode by which it could be renewed in the absence of a covenant for renewal the defendant shall be entitled to remove the street-lighting installation. If the agreement was renewed by mutual agreement of parties, then there would be no point in removing the street-lighting installation and Clause 15, therefore, provided that the defendant shall be entitled to remove the street-lighting installation if the agreement was not renewed. Mr. S.V. Gupte, in my opinion, tried to read much more in Clauses 14 and 15 than what they contained. I am afraid these clauses are not susceptible of any such implication as desired by the plaintiff. The contention of Mr. S.V. Gupte based on the existence of an option of renewal in the agreement must, therefore, fail.

5. Before, however, I proceed to examine the second contention of Mr. S.V. Gupte, I must refer to certain cases which were cited by Mr. S.V. Gupte in support of his first contention which I have just rejected. The first case on which Mr. S.V. Gupte relied was that reported in *Secretary of State v. Forbes*, 17 Ind Cas 180 : 16 Cal LJ 217. In that case the lease recited the prior settlements upon the termination of the last of which the lease was renewed at enhanced rent. It then provided that if the lessee stood in need of constructing any house, he could do so on obtaining sanction from the lessor and the lessee, his heirs and representatives would have the right to dwell on the land. After the expiry of the term, the Government was empowered to resettle the land with the lessee on a fair rent. The question arose whether this last clause in the lease was intended to be a covenant for renewal and this question was answered in the affirmative by a Division Bench of the Calcutta High Court consisting of Sir Ashutosh Mookerjee, J. and Beachcroft, J. The learned Judges observed as follows :-

"It must again be remembered that the tenancy had apparently continued for many years, had been renewed from time to time, and was intended for dwelling purposes, which would necessarily imply the erection of structures of a more or less substantial character. From this point of view, the insertion of a renewal clause would be appropriate and in perfect harmony with the avowed object of the grant. The construction, therefore, suggested by the respondent is reasonable, and I do not hesitate to accept it because it is well settled that an express covenant to renew in appropriate technical language is not essential, and the habendum may be so framed as to amount in substance to a covenant for even perpetual renewal."

It would thus be seen that in implying a covenant for renewal from the clause in the lease which provided that after the expiry of the term the Government shall have power to resettle the land with the lessee on a fair rent, the learned Judges relied on various factors and circumstances which are conspicuously absent in the present case. I do not see how this decision can be an authority for implying a covenant for renewal on the facts and circumstances of the present case. Whether or not an implication of a covenant for renewal can be made in a particular case must depend on the facts and circumstances of the case and no decision on the peculiar facts and circumstances of one case can be an authority for the decision on the facts and circumstances of another case. The question in every case must be: "Does it appear by necessary implication that the parties intended that there should be a covenant for renewal?" and if this question is asked in the present case, the answer must obviously be, for the reasons which I have already stated that there is no covenant for renewal.

6. Mr. S.V. Gupte next relied on another decision of a Division Bench of the Calcutta High Court reported in *Lani Mia v. Muhammad Easin Mea*, 33 Ind Cas 448 : 20 Cal WN 948 : (AIR 1917 Cal 509). This case was, to my mind, a clear case in which no other view could be taken of the clause in question than to construe it as a covenant for renewal. The clause which came up for consideration provided that upon the expiry of the term of the lease, the tenant would take a fresh settlement and the landlord would grant him such settlement. The Division Bench of the Calcutta High Court consisting of Sir Ashutosh Mookerjee and Chatterjea, JJ., came to the conclusion that this clause operated as a covenant for renewal. The learned Judges observed that the choice lay between two alternatives, either to construe the covenant as futile or to interpret it as providing for a fresh lease on the same terms as the original lease: and relying on the principle of interpretation that if it is possible so to interpret an agreement between the parties as to make it operative, effect should be given to it and the contract should not be pronounced unenforceable, the learned Judges construed the clause as a covenant for renewal on the same terms as the original lease. I do not see how this decision can possibly help Mr. S.V. Gupte. The language of the clause in this case was clear beyond doubt and there was hardly any need for implication. The only difficulty arose because it was not stated as to what would be the terms of a fresh settlement and this difficulty was resolved by the learned Judges by taking the view that where there is a covenant for renewal, if the option does not state the terms of the renewal, the new lease would be for the same period and on the same terms as the original lease and all the conditions of the original lease would be incorporated in the new lease barring the covenant for renewal itself.

7. Mr. S.V. Gupte also relied on two other decisions one a decision of the Calcutta High Court reported in *Secretary of State v. Digambar Nanda*, AIR 1919 Cal 620 and the other a decision of the Assam High Court reported in *Ramesh Chandra Das v. Atul Chandra Sarkar* AIR 1959 Assam 22. I need not consider these cases in any detail for they turned on the language of the relevant clauses which came

up for consideration before the Courts in these cases and, as I have stated before, no decision on the particular language of one clause can be an authority for the decision on the language of another clause. These decisions do not, therefore, in my opinion, advance the case of the plaintiff and the contention of Mr. S.V. Gupte that the plaintiff is entitled to a renewal of the agreement must, therefore, be rejected.

8. That takes me to the second contention urged by Mr. S.V. Gupte based on the provisions of Section 22A of the Indian Electricity Act, 1910. This contention evoked the greatest controversy between the parties and raised a question of construction, which can by no means be said to be easy of solution. The contest between the parties on this point turned on the true interpretation to be put on the language of Section 22A. It is, therefore, necessary in order to appreciate the arguments which were advanced on both sides, to set out that section in extenso. That section runs as follows :-

"22A. Powers of State Government to give direction to a licensee in regard to the supply of energy to certain class of consumers :-

(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 (i) 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 (i) 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 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 (i) and any action taken by him in pursuance of any such direction shall not be deemed to be a contravention of Section 23."

It may be mentioned at this stage that Section 22-A was introduced in the Indian Electricity Act 1910 by way of an amendment by Section 15 of the Indian Electricity (Amendment) Act, 1959. This amending Act came into force from sth

September, 1959, with the result that Section 22-A became part of the Indian Electricity Act, 1910 with effect from that date. Mr. S.V. Gupte contended that the present case was governed by Sub-section (3) of Section 22-A and the defendant was, therefore, bound to continue to supply electrical energy to the plaintiff on the same terms and conditions as were contained in the agreement dated 14th August 1940. The contention was built up by taking the following steps. Mr. S.V. Gupte urged that on a plain and grammatical construction Sub-section (3) of Section 22-A applied where any agreement by a licensee, whether made before or after the commencement of the Indian Electricity (Amendment) Act, 1959, for the supply of electrical energy with any establishment referred to in Sub-section (i) of Section 22-A expired after the date of coming into force of the Indian Electricity (Amendment) Act, 1959. The establishment referred to in Sub-section (i) of Section 22-A, argued Mr. S.V. Gupte, was an establishment used or intended to be used for maintaining supplies and services essential to the community, and if therefore there, was any agreement made by a licensee, whether before or after the commencement of the Indian Electricity (Amendment) Act, 1959, for the supply of electrical energy with any such establishment and such agreement expired after the coming into force of the Indian Electricity (Amendment) Act, 1959, the provisions of Sub-section (3) of Section 22-A became applicable and the licensee was bound to continue to supply electrical energy to such establishment on the same terms and conditions as were specified in such agreement. The contention of Mr. S.V. Gupte was that the plaintiff was an establishment used or intended to be used for maintaining supplies and services essential to the community and the defendant was a licensee, and since the agreement dated 14th August 1940, was an agreement made by the defendant before the commencement of the Indian Electricity (Amendment) Act, 1959, for the supply of electrical energy with the plaintiff and the said agreement expired on 13th August, 1960, i.e., after the coming into force of the Indian Electricity (Amendment) Act, 1959, the conditions specified in Sub-section (3) of Section 22-A were fulfilled and the defendant was, therefore, bound to continue to supply electrical energy to the plaintiff on the same terms and conditions as were specified in the agreement dated 14th August 1940. Mr. M.P. Amin, learned advocate appearing on behalf of the defendant, on the other hand, contended that Sub-section (3) of Section 22-A did not apply to the facts of the present case since the plaintiff could not be said to be an establishment referred to in Sub-section (i) of Section 22-A. The establishment referred to in Sub-section (i) of Section 22-A, argued Mr. M. P. Amin, was an 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 was notified by the State Government in the Official Gazette. Mr. M. P. Amin pointed out that the plaintiff did not satisfy this description of the establishment referred to in Sub-section (i) of Section 22-A inasmuch as the name of the plaintiff was not notified by the State Government in the Official Gazette under Sub-section (i) of Section 22-A, and the provisions of Sub-section (3) of Section 22-A did not, therefore, apply even though the agreement dated

14th August, 1940, was an agreement by a licensee made before the commencement of the Indian Electricity (Amendment) Act, 1959, for the supply of electrical energy with the plaintiff and it expired after the coming into force of the Indian Electricity (Amendment) Act, 1959. If this contention of Mr. M.P. Arnin were correct, it is obvious that the defendant would be under no obligation to continue to supply electrical energy to the plaintiff on the terms and conditions specified in the agreement dated 14th August, 1940, and in that event the plaintiff would fail. The entire controversy between the parties thus centred round the question as to the true interpretation of the words "any establishment referred to in Sub-section (i)". According to Mr. S.V. Gupte, these words in the context and setting in which they occurred embraced every establishment used or intended to be used for maintaining supplies and services -essential to the community; while these words, according to Mr. M. P. Amin, did not extend to every establishment used or intended to be used for maintaining supplies and services essential to the community but referred only to such 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, was notified by that Government in the Official Gazette under Sub-section (r) of Section 22-A. These were the rival contentions urged before me as regards the true connotation of the words "any establishment referred to in Sub-section (i)" and I shall now proceed to examine the validity of these contentions.

9. Before, however, I do so, I must refer to certain well-established principles of construction which must be borne in mind in approaching the task of interpretation set before me. Of course where the language of an enactment is plain and clear upon its face and is susceptible of only one meaning, then ordinarily that meaning would have to be given by the Court. In such a case, the task of interpretation can hardly be said to arise. But the language at best is an imperfect medium of expression and a variety of significations may often lie in a word or an expression. It has, therefore, been said that the words of a statute must be understood in the sense in which they best harmonise with the subject of the enactment and the object which the legislature has in view and their meaning must be found not so much in a strictly grammatical or etymological propriety of language, nor in its popular use as in the subject or in the occasion on which they are used and the object to be attained. It is not because the words of a statute read in one sense will cover the case, that that is the right sense. Grammatically they may cover it; but whenever a statute is to be construed it must be construed not according to the mere ordinary general meaning of the words, but according to the ordinary meaning of the words as applied to the subject-matter with regard to which they are used. Language is rarely so free from ambiguity as to be incapable of being used in more sense than one and to adhere strictly to its literal and primary meaning in all cases would be to miss its real meaning in many. The words must, therefore, be construed having regard to the subject and the occasion and the object of the enactment. It must also be remembered that the exact colour and shape of the meaning of any words in an

enactment is not to be ascertained by reading them in isolation. They must be read structurally and in their context, for "their signification may vary with their contextual setting. It is also an established rule of construction that the provisions of a statute must be construed fairly so as reasonably to effect the object which the legislature may be presumed to have had in view. If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, the Court should avoid the construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that the legislature would legislate only for the purpose of bringing about an effective result. If these principles of interpretation are borne in mind, much of the difficulty with which this question of construction may appear at first sight to be beset, would disappear. It is in the light of these principles of interpretation that I will now proceed to construe the language of Section 22-A(3) for the ultimate decision of the case must turn upon the true interpretation to be put upon that section.

10. The contextual setting in which Section 22-A occurs is provided by Sections 22 and 23(i). Section 22 provides as follows:-

"22. Obligation on licensee to supply energy:-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 licence, 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."

This section requires that there shall be no discrimination between consumer and consumer and that all consumers shall be entitled to be treated alike in so far as the supply of electrical energy by a licensee is concerned. What this section aims to strike at is preference of one consumer as against another by providing that all consumers shall be treated alike in the matter of supply of electrical energy. This concept of equal treatment of all consumers is re-emphasized in Section 23(1) which provides in the same strain that:-

"23 (i). A licensee shall not, in making any agreement for the supply of energy, show undue preference to any person".

A licensee being a public utility concern and enjoying ordinarily a monopoly in the matter of supply of electrical energy within a particular area of supply, should not be allowed to discriminate between consumer and consumer, so that no consumer can in the matter of such an important requirement as electrical energy, be dependant on the whim or fancy of the licensee. Sections 22 and 23(r), therefore, provide a safeguard to the consumer and prescribe that there shall be no discrimination between consumer and consumer and no preference shall be given to one consumer as against another.

11. Sub-section (1) of Section 22A is, however, in the nature of an exception to this principle which enjoins equal treatment of all consumers. Sub-section (1) of Section 22A empowers the State Government to direct a licensee to supply, in

preference to any other consumer, electrical energy required by a particular kind of establishment, if in the opinion of the State Government it is necessary in the public interest so to do. A licensee can under Sub-section (1) of Section 22A supply electrical energy required by a particular kind of establishment in preference to any other consumer, notwithstanding the provisions of Sections 22 and 23(1), if the licensee is directed to do so by the State Government and the State Government can so direct only if in its opinion it is necessary in the public interest to do so. Sub-section (1) of Section 22A read as a whole clearly implies a close and intimate co-relation between the two parts, namely, the power conferred on the State Government to give a direction and the formation, of opinion of the State Government that it is necessary in the public interest to exercise the said power and this co-relation is brought about by the use of the word "so" in conjunction with the words "to do". The words "so to do" cover and include within their meaning all that the State Government is authorised to do and what the State Government is authorised to do is to direct any licensee to supply, in preference to any other consumer, electrical energy required by a particular kind of establishment. It is, therefore, apparent on a plain and grammatical construction that it is only if the State Government is of opinion that it is necessary in the public interest to exercise the power of giving direction to a licensee to supply electrical energy to a particular kind of establishment in preference to any other consumer, that the State Government can proceed to exercise the power. The same proposition may be put in another form by stating that it is a condition precedent to the exercise of the power to give direction under Sub-section (1) of Section 22A that the State Government should be of opinion that it is necessary in the public interest to give direction to a licensee to supply electrical energy to a particular kind of establishment in preference to any other consumer. But then the question arises what is the particular kind of establishment for whose benefit direction can be given by the State Government under Sub-section (1) of Section 22A when it is of opinion that it is necessary in the public interest to do so? To what class must the establishment belong in order to qualify for preferential treatment under Sub-section (1) of Section 22A? In other words what is the class of consumers which is intended to be benefited by the provision for preferential treatment enacted in Sub-section (1) of Section 22A? Now, to my mind, it is clear that the class of consumers to whom preferential treatment can be accorded under Sub-section (1) of Section 22A is the class comprising establishments used or intended to be used for maintaining supplies and services essential to the community. The establishment must belong to this class before any direction can be given to a licensee to supply electrical energy required by such establishment in preference to any other consumer. But it is for the State Government to decide whether the establishment is an establishment used or intended to be used for maintaining supplies and services essential to the community and is, therefore, comprised within this class. The Legislature has committed to the State Government the discretion to decide whether the establishment in respect of which direction is sought to be given falls within the class of consumers referred to in Sub-section

(1) of Section 22A. Before any direction can be given by the State Government under Sub-section (1) of Section 22A, it would have to be determined whether the establishment falls within, the class of consumers referred to in that sub-section and the determination of that question is left to the subjective satisfaction of the State Government. It is, therefore, clear that the provision for preferential treatment enacted in Sub-section (1) of Section 22A is intended for the benefit of the class of consumers consisting of establishments used or intended to be used for maintaining supplies and services essential to the community. But the question whether a particular establishment is an establishment used or intended to be used for maintaining supplies and services essential to the community so as to be comprised within this class of consumers is left to the subjective opinion of the State Government and it cannot be tested objectively in a Court of law. The State Government is thus empowered to determine not only whether in its opinion it is necessary in the public interest to give any direction under Sub-section (1) of Section 22A for preferential supply to any particular establishment but also whether the particular establishment falls within the class of establishments used or intended to be used for maintaining supplies and services essential to the community, which is the class of consumers referred to in Sub-section (1) of Section 22A, for it is only in respect of an establishment which in the opinion of the State Government belongs to this class of consumers that the State Government can issue direction under Sub-section (1) of Section 22A, if in its opinion it is necessary in the public interest so to do. The State Government would, therefore, have to form an opinion whether a particular establishment falls within the class of consumers referred to in Sub-section (1) of Section 22A; and if it does so fall within that class, the State Government would then have to consider whether it is necessary in the public interest to direct a licensee to supply electrical energy required by such establishment in preference to any other consumer and if the State Government reaches opinion that it is necessary in the public interest so to do, the State Government would notify such establishment in the Official Gazette for the purpose of according preferential treatment to such establishment and giving direction to the licensee to supply electrical energy required by such establishment in preference to any other consumer.

12. Mr. M. P. Amin contended that sub-section (1) of Section 22A contemplates two distinct and separate steps to be taken by the State Government. The first step is the notification of establishments which in the opinion of the State Government are establishments used or intended to be used for maintaining supplies and services essential to the community and which are selected by the State Government for the purpose of the benefits contained in Section 22A. There may be many establishments, argued Mr. M. P. Amin, which in the opinion of the State Government may be establishments used or intended to be used for maintaining supplies and services essential to the community but the State Government would select and notify only some out of them because the benefit is to be given only to those establishments which the State Government selects

and notifies. The State Government would select and notify these establishments out of many which in the opinion of the State Government are used or intended to be used for maintaining supplies and services essential to the community, having regard to various considerations which may appeal to the State Government, such as need, stability, finance etc. The class of consumers referred to in Sub-section (i) of Section 22A would, therefore, be formed, according to Mr. M. P. Amin, of these establishments selected and notified by the State Government. This would be the first step which the State Government would have to take, namely, the creation of a charmed class of establishments by notification in the Official Gazette. After the State Government has constituted the class by selection and notification of some establishments out of many, the State Government may consider whether in its opinion it is necessary in the public interest to give direction for preferential supply to any particular establishment belonging to such class. This the State Government may consider either suo motu or on the application of the particular establishment, if the State Government reaches the opinion that it is necessary in the public interest that the particular establishment should have preferential supply, the State Government would issue the necessary direction under Sub-section (1) of Section 22A. This would constitute the second step to be taken by the State Government. Mr. M. P. Amin urged that it may be that in a particular case these two steps may be taken at the same time, as for example, when an establishment which is not in the notified class applies to the State Government for direction for preferential supply under Sub-section (1) of Section 22A, in such a case the State Government would have to consider whether the establishment should be selected and notified under Sub-section (1) of Section 22A and if so, whether in its opinion it is necessary in the public interest to give direction to a licensee to supply electrical energy to the establishment in preference to any other consumer and both these processes would take place at the same time. But even here, argued Mr. M. P. Amin, though those two processes may take place at the same time, they are distinct and independent processes and not two component parts of one integrated process which must take place as a whole or not at all. These two processes may in a given Case such as the one mentioned above take place at the same time but they need not necessarily be, according to Mr. M. P. Amin, simultaneous in point of time. The occasion to give direction under Sub-section (1) of Section 22A may arise subsequent to the formation of the class by selection and notification and the act of giving direction and the act of selecting and notifying would not in such a case be simultaneous acts but the former would follow upon the latter. Mr. M. P. Amin contended that the creation of a class of notified establishments is thus a distinct independent step which may be taken alone and which need not be accompanied by the giving of direction under Sub-section (1) of Section 22A in favour of the establishment included in the class. The class of notified establishments may expand or shrink according as the State Government may include any more establishment or establishments in this class by selection and notification or remove any establishment or establishments from this class by denotification, but an establishment in order to qualify for

preferential treatment under Sub-section (1) of Section 22A must belong to this class and equally for the purpose of Sub-section (3) of Section 22A also the establishment must be one which belongs to this class. This argument of Mr. M. P. Amin postulates power in the State Government to select and notify establishment quite independent of the power to give direction under Sub-section (1) of Section 22A So as to create a class of notified establishments from which alone can be drawn as establishment for the purpose of according preferential treatment under Sub-section (1) of Section 22A and to which must belong all establishments entitled to the benefit of Sub-section (3) of Section 22A. Now only a little reflection will show that it was necessary for Mr. M. P. Amin to put forward this contention since it is clear that if the act of notifying is one integral part of the process culminating in the giving of direction under Sub-section (1) of Section 22A, the reason for limiting the application of Sub-section (3) of Section 22A to the establishments notified under Sub-section (1) of Section 22A would, as I shall presently show, disappear altogether and on such a construction Sub-section (3) of Section 22A would be rendered futile. This line of reasoning pressed for my acceptance, however, suffers in my opinion, from three major objections.

13. In the first place, if the construction suggested by Mr. M. P. Amin were accepted, the act of issuing a notification might turn out to be a futile mental activity on the part of the State Government. The State Government might select some establishments out of many establishments which, in the opinion of the State Government, are used or intended to be used for maintaining supplies and services essential to the Community and notify such establishments under Sub-section (1) of Section 22A but this entire process might turn out to be academic for the State Government might not ultimately consider it necessary in the public interest to give direction for preferential treatment to any of such establishments. I do not see why the State Government should have been called upon by the Legislature to indulge in this activity of selecting and notifying establishments when such an activity might or might not ultimately bear fruition. Is it not more reasonable to assume and in my opinion the language of Sub-section (1) of Section 22A clearly does not admit of any other conclusion that the State Government should be required to notify an establishment under Sub-section (1) of Section 22A when the State Government is called upon to exercise the power under that sub-section?

14. The second objection from which this contention of Mr. M. P. Amin suffers is that, on the construction contended for by Mr. M. P. Amin, the State Government would be called upon to consider for the purpose of selection and notification all establishments within the State which are used or intended to be used for maintaining supplies and services essential to the community and there may be a large number of establishments within the State which are used or intended to be used for maintaining supplies and services essential to the community. The State Government would have to consider all these establishments for the purpose of selection and notification under Sub-section (1) of Section 22A. The

State Government would also have to revise the notified list of establishments from time to time according as the circumstances may change from time to time. The State Government may notify 100 establishments at the beginning of the year but at the end of the year the State Government may find that some out of these establishments can no longer be said to be establishments used or intended to be used for maintaining supplies and services essential to the community, while some others which were not notified are used or intended to be used for maintaining supplies and services essential to the community. The State Government may also find that the considerations which weighed with it in notifying some establishments at the beginning of the year no longer exist at the end of the year and that these establishments should not, therefore, continue as notified establishments. These are only some of the instances which I have given in order to illustrate the remarkable situation which would arise if the State Government was required under Sub-section (1) of Section 22A to create a class of notified establishments regardless of the question whether it was necessary or not to give direction under that sub-section. I do not think that the intention of the Legislature was to do any such thing. In my opinion, all that the Legislature intended to provide was that if a direction is sought to be given under Sub-section (1) of Section 22A for preferential supply to any establishment, the State Government must first satisfy itself that establishment falls within the class of consumers intended to be benefited by that sub-section, viz., that it is an establishment used or intended to be used for maintaining supplies and services essential to the community the subjective satisfaction of the State Government on this point being final and conclusive and that in its opinion it is necessary in the public interest to give direction to the licensee to supply electrical energy required by such establishment in preference to other consumers. If the State Government is satisfied on these two matters, the State Government would notify the establishment in the official gazette under Sub-section (1) of Section 22A and give direction to the licensee to supply electrical energy required by such establishment in preference to any other consumer.

15. The third objection to the contention of Mr. M.P. Amin is, however, in my opinion, the most formidable and is quite determinative of the matter. If, as Mr. M. P. Amin contended, the State Government is to select for the purpose of notification some establishments out of many establishments, which, in the opinion of the State Government, are establishments used or intended to be used for maintaining supplies and services essential to the community, as a preliminary and independent step to the exercise of the power of giving direction under Sub-section (1) of Section 22A, what is the basis on which the State Government is to make such selection for the purpose of notification? According to Mr. M. P. Amin, the stage of selecting and notifying establishments is a distinct and independent stage from the stage of giving direction to a licensee for preferential supply to an establishment and the occasion for giving direction under Sub-section (1) of Section 22A may or may not arise at the stage of selection and notification of establishments. But if this argument were correct, it

is indeed difficult to see on what principle the State Government would be guided in making selection and notification. There may be a large number of establishments which in the opinion of the State Government are establishments used or intended to be used for maintaining supplies and services essential to the community. From all these establishments how is the State Government to make its selection for the purpose of notification under Sub-section (1) of Section 22A. The answer given by Mr. M.P. Amin was that the State Government may select out of these establishments, some establishments having regard--and I am here using the language of Mr. M. P. Amin -- to any considerations which may, appeal to the State Government such as need, stability, finance etc. I on my part cannot think of any considerations more vague and nebulous than these. The legislature surely could not have intended to leave the matter of notification of an establishment to the whim and fancy of the State Government and in fact the language of sub-section (1) of Section 22A clearly shows that the legislature has wisely not done any such thing. The crucial words in Sub-section (1) of Section 22A are "in this behalf". These words in the context in which they occur can only mean in the matter of subjection (1) of Section 22A or for the purpose of Sub-section (1) of Section 22A. The establishment to be notified under Sub-section (1) of Section 22A must of course be an establishment which, in the opinion of the State Government, is an establishment used or intended to be used for maintaining supplies and services essential to the community, but it is to be notified in the matter of or for the purpose of Sub-section (1) of Section 22A. Now the matter for which Sub-section (1) of Section 22A provides is giving of a direction to a licensee for preferential supply to an establishment and that is also the purpose of Sub-section (1) of Section 22A. The notification of the establishment is, therefore, for the purpose of giving direction to a licensee to supply electrical energy required by such establishment in preference to any other consumer; that is the purpose for which the establishment is to be notified. Now, it is obvious that an establishment cannot be notified for the purpose of being given preferential treatment unless the State Government decides that preferential treatment should be given to such establishment and this, in its turn, the State Government cannot do, unless "he State Government ia of opinion that it is necessary in the public interest so to do. This latter condition is a condition precedent before any direction can be given by the State Government for preferential treatment. An establishment cannot, therefore, be notified under Sub-section (1) of Section 22A unless the State Government comes to the opinion that it is necessary in the public interest to give direction to a licensee to supply, in preference to any other consumer, electrical energy required by such establishment. It would thus be seen that the principle which must guide the State Government in its determination whether or not to notify a particular establishment under Sub-section (1) of Section 22A is whether in its opinion it is necessary in the public interest to direct a licensee to give preferential treatment to such establishment. The two stages, viz., the stage of issuing notification and the stage of giving direction are consequently not two distinct and independent stages. These two stages are closely and intimately connected with each other

and they really form part of one single process which may ultimately culminate in the giving of a direction by the State Government under Sub-section (1) of Section 22A. Even if the State Government is satisfied that the establishment is an establishment used or intended to be used for maintaining supplies and services essential to the community, the State Government cannot notify such an establishment without anything more, because the notification being in express terms in the matter of or for the purpose of Sub-section (1) of Section 22A, the State Government would have to consider whether any preferential treatment should be given to such establishment, giving of preferential treatment being both the purpose and the subject-matter of Sub-section (1) of Section 22A and the State Government can decide that preferential treatment should be given to such establishment only if the State Government is of opinion that it is necessary in the public interest so to do. I may point out at this stage that, even on the argument of Mr. M.P. Amin, it was conceded that the purpose of making a selection of some out of many establishments for notification was to determine the class of consumers intended to be benefited by the provisions of Section 22A including Sub-section (1) of that Section. In order to determine the class of consumers to whom the benefit of Sub-section (1) of Section 22A should go, it is obvious that the consideration which must weigh with the State Government in deciding whether preferential treatment should be given to any establishment, must also apply namely that in the opinion of the State Government it is necessary in the public interest to give preferential treatment to such establishment, for otherwise the reason for the determination of the class of consumers by notification would disappear and there would be no principles to guide the State Government in the determination of such class. I am, therefore, of the opinion that it is only when the State Government is satisfied that a particular establishment is an establishment used or intended to be used for maintaining supplies and services essential to the community and the State Government is further of the opinion that it is necessary in the public interest to give direction to any licensee to supply, in preference to any other consumer, electrical energy required by such establishment that the State Government can notify such establishment in the official gazette under Sub-section (1) of Section 22A and give direction to the licensee to give preferential treatment to such establishment. The establishment would be notified by the State Government under Sub-section (1) of Section 22A only for the purpose of giving a direction to the licensee to supply electrical energy required by such establishment in preference to any other consumer and there can be no notification of an establishment under Sub-section (1) of Section 22A except for the purpose of giving such direction. This, according to me, is the right construction of the provisions of Sub-section (1) of Section 22A.

16. If this is the right construction to be put on Sub-section (1) of Section 22A, the construction of Sub-section (3) of Section 22A which is the material section which requires to be construed for the decision of the present case does not present any difficulty. Sub-section (3) of Section 22A enacts that where any

agreement by a licensee, whether made before or after the commencement of the Indian Electricity (Amendment) Act, 1959, for the supply of electrical energy with any establishment referred to in Sub-section (1) expires, the licensee shall continue to supply electrical energy to such establishment on the same terms and_ conditions as are specified in the agreement until he receives a notice in writing from such establishment requiring him to discontinue the supply. The main controversy between the parties has centred round the words "any establishment referred to in Sub-section (1)". I have set out the rival contentions of the Parties in regard to the meaning and content of these words and I need not repeat the same here beyond stating that according to Mr. S.V. Gupte these comprise every establishment used or intended to be used for maintaining supplies and services essential to the community, whereas according to Mr. M. P. Amin these words refer to an 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 the State Government in the official gazette under Sub-section (1) of Section 22A. Now these words are obviously descriptive of the establish merit in relation to which provision is made in Sub-section (3) of Section 22A. The question is "what do these words signify?". In answering this question I must not forget that though the words used, even in their literal sense, are the primary, and ordinarily the most reliable, source of interpreting the meaning of any writing, be it a statute, a contract, or anything else but it is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary; but to remember that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning. Adopting this approach to the task of interpretation it is clear to my mind that these words do not have the narrow and restricted meaning which Mr. M. P. Amin seeks to place upon them. They plainly refer to an establishment used or intended to be used for maintaining supplies and services essential to the community and do not require that an establishment in order to tali within the scope and ambit of Sub-section (3) of Section 22A must be an 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 the State Government in the the official gazette under Sub-section (1) of Section 22A. My reasons for taking this view are: as follows.

17. The first consideration to which I must refer is the language of Sub-section (3) of Section 22A. The words used in this sub-section to describe the establishment falling within the ambit and coverage of this sub-section are "any establismment referred to in Sub-section (1)" and not any establishment notified under Sub-section (1). If the legislature intended that the application of Sub-section (3) of Section 22A should be confined to an establishment notified under Sub-section (1) of Section 22A, the legislature could have expressed itself to that effect in language clear and explicit and no words could have expressed that intention better than the words "any establishment notified under Sub-section

(1)." The Legislature, however, chose to use the words "any establishment" referred to in Sub-section (1) obviously because the legislature intended to convey a different meaning than what would be conveyed by the words "any establishment notified under Sub-section (1)". Moreover it is a well-recognized canon of construction that if it appears that there are two expressions which might have been used to convey a certain intention, but one of those expressions will convey that intention more clearly than the other, it is proper to conclude that if the legislature uses that one of the two expressions which would convey the intention less clearly, it does not intend to convey that intention at all and in that event it becomes necessary to try to discover what intention it did intend to convey. *Craies on Statute Law (Fifth Edition)* pages 87-88. Even if, therefore, words "any establishment referred to in Sub-section (1)" and "any establishment notified under Sub-section (1)" could have been used to convey the intention that the establishment entitled to the privilege conferred by Sub-section (3) of Section 22-A must be an establishment notified under Sub-section (1) of Section 22A, the words "every establishment notified under Sub-section (1)" would convey that intention more clearly than the words "any establishment referred to in Sub-section (1)" and it would therefore be legitimate to hold that since the legislature used the words "an establishment referred to in Sub-section (1)" which would convey that intention less clearly, the legislature did not intend to convey that intention at all but the intention of the legislature was different, namely to refer to an establishment used or intended to be used for maintaining supplies and services essential to the community. Besides it is clear on a plain and grammatical construction that the words "any establishment referred to in Sub-section (1)" must mean an establishment used or intended to be used for maintaining supplies and services essential to the community, for that is the establishment referred to in Sub-section (1) of Section 22A. In order to understand what these words signify, I may ask myself the question: "which is the establishment referred to in Sub-section (1) of Section 22A"? and if that question is asked, it is obvious that the establishment referred to in Sub-section (1) of Section 22A is an establishment used or intended to be used for maintaining supplies and services essential to the community. Of course, the determination of the question whether a particular establishment is an establishment used or intended to be used for maintaining supplies and services essential to the community, is, as I have pointed out above left to the subjective satisfaction of the State Government: but the establishment referred to in Sub-section (1) of Section 22A is indubitably an establishment used or intended to be used for maintaining supplies and services essential to the community and it is only when a particular establishment is, in the opinion of the State Government, such an establishment, that it can be notified by the State Government under Sub-section (1) of Section 22A. The establishment in favour of which a direction can be given under Sub-section (1) of Section 22A must be an establishment used or intended to be used for maintaining supplies and services essential to the community but someone must have the power to determine whether a particular establishment is such an establishment. That

power is entrusted by the legislature to the State Government and the determination of the State Government in its subjective satisfaction is made final and conclusive; but it is clear that what the State Government has to find in its subjective satisfaction is the fact as to the establishment being used or intended to be used for maintaining supplies and services essential to the community and it is because a particular establishment is such an establishment as determined by the State Government, that the State Government can notify it for the purpose of giving it preferential treatment in the matter of supply of electrical energy. It is, therefore, obvious that the establishment referred to in Sub-section (1) of Section 22A is an establishment used or intended to be used for maintaining supplies and services essential to the community and it is not the same thing as an establishment notified under Sub-section (1) of Section 22A.

18. This view which I am inclined to take as regards the construction of the words "any establishment referred to in Sub-section (1)" in Sub-section (3) of Section 22A derives considerable support from another consideration to which I shall immediately refer. The provisions of Sub-section (3) of Section 22A become applicable when an agreement by a licensee, whether made before or after the commencement of the Indian Electricity (Amendment) Act, 1959, for the supply of electrical energy¹ with any establishment referred to in Sub-section (1) of Section 22A expires after the coming into force of the Indian Electricity (Amendment) Act, 1959. The agreement, on the expiration of which the provisions of Sub-section (3) of Section 22A are attracted, must therefore be an agreement made by a licensee with an establishment referred to in Sub-section (1) of Section 22A for the supply of electrical energy, whether before or after the commencement of the Indian Electricity (Amendment) Act, 1959. The establishment with whom the agreement has been made by the licensee! must, therefore, evidently be an establishment referred to in Sub-section (1) of Section 22A at the date when the agreement was made between the Parties. It is at the date of the agreement that the establishment must satisfy the description given in the words "any establishment referred to in Sub-section (1)" for it is only then that it can be said that the agreement was made by the licensee with an establishment referred to in Sub-section (1) of Section 22A. Now Sub-section (3) of Section 22A clearly contemplates that the agreement may have been made either before or after the commencement of the Indian Electricity (Amendment) Act 1959. The establishment must, therefore, come within the description given in the words "any establishment referred to in Sub-section (1)" at the date of the agreement, even when the agreement has been made before the commencement of the India Electricity (Amendment) Act, 1959. But if this requirement connotes as Mr. M. P. Amin contends, that the establishment must be one notified Under Sub-section (1) of Section 22A, it cannot possibly be fulfilled in a case where the agreement has been entered into prior to the commencement of the Indian Electricity (Amendment) Act, 1959, for Section 22A itself having been introduced in the Indian Electricity Act, 1910 by the Indian Electricity (Amendment) Act, 1959 no establishment could be notified under sub-

section (1) of Section 22A prior to the commencement of the Indian Electricity (Amendment) Act, 1959. The consequence of accepting the construction contended for by Mr. M. P. Amin would thus be that Sub-section (3) of Section 22A, though in terms it professes to encompass within the scope of its provisions an agreement entered into prior to the commencement of the Indian Electricity (Amendment) Act, 1959, would be reduced to futility in so far as such provision is concerned. I cannot accept a construction which would have the effect of reducing a part of Sub-section (3) of Section 22A to silence and making it altogether inapplicable. The logic of this argument is to my mind unanswerable and I do not see any escape from the conclusion to which it must inevitably lead, namely, that when the the legislature used the words "any establishment referred to in subsection (1)", the legislature did not intend these words to mean an establishment notified under subsection (1) of Section 22A but clearly intended to refer to an establishment used or intended to be used for "maintaining supplies and services essential to the community. If there was an agreement arrived at between a licensee and such establishment, whether before or after the commencement of the Indian Electricity (Amendment); Act, 1959, and such agreement expired after the coming into force of the Indian Electricity (Amendment) Act, 1959, the provisions of Sub-section (3) of Section 22A would apply and the licensee would be bound to continue to supply electrical energy to such establishment on the same terms and conditions as were specified in the agreement.

19. There is one further consideration which also weighs with me in taking the view that the words "any establishment referred to in Sub-section (1)" do not connote an establishment notified under Sub-section (1) of Section 22A but merely refer to an establishment used or intended to be "used for maintaining supplies and services essential (o the community. The object and purpose of subsection (1) of Section 22A is clearly different from the object and purpose of Sub-section (3) of Section 22A. Sub-section (1) of Section 22A and sub-section (3) of Section 22A also deal with different subject-matters. Sub-section (1) of Section 22A provides that in certain circumstances a licensee can be directed to supply electrical energy to a particular establishment in preference to any other consumer. The object of Sub-section (1) of Section 22A is to give preference to a particular establishment in the matter of supply of electrical, energy as against any other consumer notwithstanding the provisions of Sections 22 and 23. Sub-section (3) of Section 22A, on the other hand, has nothing to do with the preference of one consumer as against another. Sub-section (3) of Section 22A postulates the existence of an agreement between a licensee and an establishment, whether such agreement may have been made before or after the commencement of the Indian Electricity (Amendment) Act, 1959, and provides for the continuance of such agreement. It is clear that in a case coming within the scope and ambit of Sub-section (3) of Section 22A, there can be no question of any preference to one consumer as against another consumer. No preference could possibly toe given under the agreement to the establishment with which

the agreement is made, since Sections 22 and 23 clearly prohibit showing of such preference. Nor is there preference of one consumer as against another involved in what is prescribed in Sub-section (3) of Section 22A. Sub-section (3) of Section 22A thus provides for a totally different situation from Sub-section (1) of Section 22A. In the context of this background it is difficult to see why the concept of a notification issued by the State Government under Sub-section (1) of Section 22A for the purpose of giving preference to a particular establishment as, against any other consumer should be carried into the provisions of Sub-section (3) of Section 22A. When an establishment is notified by the State Government under Sub-section (1) of Section 22A, that is for the purpose of giving a direction to the licensee to make a preferential supply to such establishment and the considerations which would weigh with the Government in notifying such establishment would, therefore, be considerations bearing upon the question whether preferential treatment should be accorded to such establishment. These considerations, it is obvious, cannot have any relevance or applicability when the question is not whether preferential supply of electrical energy should be made to such establishment but whether the agreement made by the licensee with such establishment should continue notwithstanding the expiration of such agreement. The considerations relevant to the question of determination of preferential treatment would be necessarily different from the considerations relevant to the determination of the question whether an agreement between a licensee and an establishment should continue indefinitely even after the expiration of such agreement. I cannot see any reason why in these circumstances the Legislature should have provided that the notification of an establishment for the purpose of giving a direction under subsection (1) of Section 22A for preferential supply of electrical energy should also hold good for the purpose of application of the provisions of Sub-section (3) of Section 22A, which deals with a totally different subject-matter and is enacted for a totally different object as compared with Sub-section (1) of Section 22A. It may also be mentioned that the notification of an establishment under Sub-section (1) of Section 22A is, as the words "in this behalf" clearly indicate, for the purpose of Sub-section (1) of Section 22A and unless the language of Sub-section (3) of Section 22A clearly compels such a construction, the requirement of the notification of such establishment cannot be projected into the provisions of Sub-section (3) of Section 22A. Moreover it must also be remembered that there is no provision for notification of an establishment for the purpose of Sub-section (3) of Section 22A distinct and independent from notification for the purpose of Sub-section (1) of Section 22A and an establishment cannot be notified for the purpose of Sub-section (3) of Section 22A simpliciter since such notification would not be notification "in this behalf" within the meaning of Sub-section (1) of Section 22A. An establishment can, therefore, be notified only when the purpose of Sub-section (1) of Section 22A is intended to be served and if that be so, it is difficult to find any logic or reason for importing the requirement of such notification in determining the applicability of the provisions of Sub-section (3) of Section 22A.

20. But the matter does not rest there. There is one consideration which is by far the most important and which, to my mind, clinches the decision of this question in favour of the plaintiff and it is this. If, as I have held above, the notification of an establishment under Sub-section (1) of Section 22A is for the purpose of giving direction to a licensee to supply electrical energy required by such establishment in preference to any other consumer and there can be no notification of an establishment under Sub-section (1) of Section 22A except as a step in the process culminating in the giving of such direction, it is difficult to see what reason the Legislature could have had in view in introducing the requirement of such notification in the provisions of Sub-section (3) of Section 22A. If any establishment is notified by the State Government under Sub-section (1) of Section 22A, that can only be for the purpose of giving a direction to a licensee to supply, in preference to any other consumer, electrical energy required by such establishment, but if the conditions of Sub-section (3) of Section 22A are satisfied and as a result thereof, the licensee is bound to continue to supply electrical energy to such establishment on the same terms and conditions as are specified in the agreement between the parties, it would be entirely unnecessary for the State Government to give any direction to the licensee to make preferential supply of electrical energy to such establishment, for such establishment would have supply of electrical energy under Sub-section (3) of Section 22A without any preference having to be given to it in the matter of such supply. And if it were not necessary for the State Government to give any direction to the licensee to supply electrical energy to such establishment in preference to any other consumer under Sub-section (1) of Section 22A, the State Government obviously could not notify such establishment, for the notification of such establishment could be only for the purpose of giving such direction, and if such direction were not necessary, such notification would be unjustified. The result would, therefore, be that the very premise on which, on the contention of Mr. M. P. Amin, the applicability of Sub-section (3) of Section 22A depends, would be non-existent and the argument would end in *reductio ad absurdum*. In this view of the matter, the construction contended for by Mr. M. P. Arnin cannot be accepted.

21. Mr. M. P. Amin lastly contended that if I accepted the construction that the establishment referred to in Sub-section (1) of Section 22A meant an establishment used or intended to be used for maintaining supplies and services essential to the community, the result would be that an agreement made between a licensee and such establishment would continue indefinitely at the rates which might have been agreed upon several years ago at a time when the cost of electricity was comparatively much lower and the licensee would have to continue to supply electrical energy to such establishment at such lower rates for an indefinite period of time. This would lead, argued Mr. M. P. Amin, to an anomalous situation and involve great hardship on the licensee and such a construction should not, therefore, be accepted by me. Now all arguments on the hardship of a case either on one side or the other must be rejected when I am

pronouncing what the law is; for such arguments are only quicksands in the law, and, if indulged, would soon swallow up every principle of it. If there is any hardship, the appeal must be to the Legislature and not to the Court. Besides, an argument ab inconvenient is at best only an unhandy weapon. For it often means that the Court is to attempt to construe the difficult language of that part of an enactment which is properly before it for construction by the aid of another part of an enactment which is not really before it at all. It is therefore a method which would be shunned unless it is perfectly plain that the suggested construction will, in fact lead to the supposed anomaly or hardship. In the present case not only is it not plain that any anomaly or hardship would result but on the contrary it is clear that no anomaly or hardship would be caused if the construction contended for on behalf of the plaintiff were accepted. On this construction if there is an agreement between a licensee and an establishment used or intended to be used for maintaining supplies and services essential to the community, whether made before or after the commencement of the Indian Electricity (Amendment) Act, 1959, the licensee would be bound to continue to supply electrical energy to such establishment on the same terms and conditions, as are specified in such agreement, notwithstanding the expiration of the period of such agreement. The terms and conditions of such agreement would include, as I shall presently show, the rates chargeable by the licensee to such establishment for the supply of electrical energy and it is therefore apparent that if there were no other provision, the result would undoubtedly be that the licensee would be bound to continue to supply electrical energy to such establishment at the rates mentioned in such agreement for an indefinite period of time, irrespective of the cost of manufacture of electrical energy. This would indeed create an anomalous situation and cause hardship to the licensee but I find that there is a provision made in the Electricity (Supply) Act, 1948, under which it is possible for the licensee to get the rates revised if the licensee finds them inadequate. This provision is to be found in Sections 57 and 57A and the Sixth and Seventh Schedules of that Act. Section 57 provides that as from the date when the provisions of the Sixth and Seventh Schedules are deemed to be incorporated in the licence of the licensee (which in the present case, having regard to the terms of the Section must be treated as having happened long prior to the enactment of Section 22A) any provisions of the Indian Electricity Act, 1910, and the licence granted to the licensee 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 57A and the said Schedules. If, therefore, there is any provision of the Indian Electricity Act, 1910, which is inconsistent with the provisions of Section 57A and the Sixth and Seventh Schedules, such provision would be void and of no effect in relation to the licensee. Now Section 57A provides for the constitution of a Rating Committee and under that Section the State Electricity Board, or where no State Electricity Board is constituted, the State Government, is bound, when so requested by the licensee in writing, to 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 Rating Committee so constituted is required, after giving the licensee a reasonable opportunity of being heard and after taking into consideration the efficiency of operation and management and the potentialities of the undertaking, to report to the State Government within three months from the date of its constitution, making recommendations with reasons therefor, regarding the charges for electricity which the licensee may make to any class or classes of consumers which would obviously include the class of consumers entitled to the benefit of Sub-section S(3) of Section 22A. Within one month after the receipt of the report, the State Government has to cause the report to be published in the Official Gazette and the State Government may at the same time make an order in accordance with the report fixing the licensee's charges for the supply of electricity with effect from such date, not earlier than two months or later than three months, after the date of publication of the report as may be specified in the order and if such order is made the licensee is bound to forthwith give effect to such order. The charges for the supply of electricity so fixed are to remain in operation for such period not exceeding three years as the State Government may specify in the order. This is the provision enacted in Section 57A and, as pointed out above, this provision must, to the extent of any inconsistency, prevail over any provision of the Indian Electricity Act, 1910, including subsection (3) of Section 22A. If, therefore, the licensee in any particular case is dissatisfied with the rates at which the licensee is bound to continue to supply electrical energy to any establishment under Sub-section (3) of Section 22A, the licensee can, in my opinion, resort to the provisions of Section 57A and request the State Electricity Board or where there is no State Electricity Board, the State Government, to constitute a rating Committee for the purpose of making recommendations regarding the charges for the supply of electricity which the licensee may make to the class of consumers consisting of establishments used or intended to be used for maintaining supplies and services essential to the community, and if the Rating Committee recommends any higher rates and the State Government makes an order in accordance with the recommendations of the Rating Committee fixing the licensee's charges at such higher rates, the licensee would, notwithstanding the provisions of Sub-section (3) of Section 22A, be entitled to charge such higher rates to such establishments. It would, therefore, be seen that there is no real anomaly or hardship on the licensee; though, as I have pointed out above, even if there were any such anomaly or hardship, that would be no ground for refusing to place on the language of Sub-section (3) of section 22A the construction which such language must necessarily bear. I am, therefore, of the opinion that on a true construction of the provisions of Sub-section (3) of section 22A, the words "any establishment referred to in Sub-section (1)" refer to an establishment used or intended to be used for maintaining supplies and services essential to the community and are not limited to an 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 the State Government in the Official

Gazette under Sub-section (1) of section 22A. If, therefore, there is an agreement made by a licensee, whether before or after the commencement of the Indian Electricity (Amendment) Act, 1959, for the supply of electrical energy with any establishment used or intended to be used for maintaining supplies and services essential to the community and such agreement expires after the coming into force of the Indian Electricity (Amendment) Act, 1959, Sub-section (3) of Section 22-A would be attracted and the licensee would, under the provisions of that sub-section, be bound to continue to supply electrical energy to such establishment on the same terms and conditions as are specified in the agreement, until the licensee receives notice from such establishment requiring the licensee to discontinue the supply.

22. Mr. M. P. Amin then urged that even if Sub-section (3) of section 22A were construed in the manner in which I had done, the obligation on the licensee would be to continue to supply electrical energy to the establishment in question on the same terms and conditions as are specified in the agreement but so far as the rates are concerned, the licensee would not be bound by the rates contained in the agreement but would be entitled to charge such rates as the licensee lawfully can under the provisions of law. This contention of Mr. M. P. Amin was based on the premise that the words "terms and conditions" in Sub-section (3) of section 22A do not include rates for the supply of electrical energy. This contention is, however, in my opinion, a contention of despair and cannot be accepted by me for obvious reasons. I do not see why on a plain and grammatical construction the words "terms and conditions" cannot be said to include rates for the supply of electrical energy. The rates for the supply of electrical energy would be as much part of terms and conditions as any other provision contained in the agreement. But the matter no longer remains in doubt when one turns to Sub-section (2) of section 22A. Sub-section (2) of Section 22A provides that where any direction is issued under Sub-section (1) requiring a licensee to supply electrical energy to any establishment and any difference or dispute arises as to the price or other terms and conditions relating to the supply of electrical energy, the licensee shall not by reason only of such difference or dispute be entitled to refuse to supply electrical energy but such difference or dispute shall be determined by arbitration. The important words in this sub-section are "the price or other terms and conditions". These words clearly indicate that the legislature regarded price as one of the terms and conditions relating to the supply of electrical energy. If the legislature regarded price as one of the terms and conditions relating to the supply of electrical energy under Sub-section (1) of Section 22A, it must follow that the words "terms and conditions" were also used by the Legislature in Sub-section (3) of Section 22 A as covering and including the price or rates for the supply of electrical energy. I am, therefore, of the opinion that the words "terms and conditions" in Sub-section (3) of section 22A comprehend within their scope and ambit rates for the supply of electrical energy and that the licensee would, therefore, be bound, in cases to which Sub-section (3) of Section 22A applies, to continue to supply electrical

energy to the establishment at the same rates as are specified in the agreement between the licensee and the establishment, subject, of course, to the provisions of sections 57 and 57A and the Sixth and Seventh Schedules of the Electricity (Supply) Act, 1948.

23. In this view of the matter, the decree passed by the learned Assistant Judge dismissing the suit must be set aside and a declaration should be granted that the defendant is bound under Sub-section (3) of section 22A of the Indian Electricity Act, 1910, to continue to supply electrical energy to the plaintiff at the same rates and on the same terms and conditions as are specified in the agreement dated 14th August 1940, so long as the plaintiff continues to be an establishment used or intended to be used for maintaining supplies and services essential to the community, until the defendant receives notice in writing from the plaintiff requiring the defendant to discontinue the supply, such obligation, however, being subject to the other provisions of the Indian Electricity Act, 1930, and the provisions of the Electricity (Supply) Act, 1948, including Sections 57 and 57A and the Sixth and Seventh Schedules of that Act. Since the only grounds on which the defendant refused to supply electrical energy to the plaintiff at the same rates and on the same terms and conditions as are specified in the agreement dated 14th August 1940 were that there was no covenant for renewal contained in the agreement dated 14th August 1940 and that Sub-section (3) of Section 22A did not apply, I do not think that it is necessary to grant any injunction against the defendant, for the defendant has never refused to supply electrical energy to the plaintiff at the same rates and on the same terms and conditions as are specified in the agreement dated 14th August 1940 if it is held either that there is a covenant for renewal contained in the agreement dated 14th August 1940 or that Sub-section (3) of section 22A applies to the facts of the present case. Since the plaintiff has succeeded, the defendant will pay the costs of the plaintiff all throughout. Mr. I. M. Nanavati, on behalf of the defendant, applies that the interim order made by me on 23rd January 1962 should be continued for a period of 30 days from the date when a certified copy of the judgment is received by the defendant, so that the defendant can, if so advised, move any higher appellate Court for continuing the security given by the plaintiff under that order. Mr. M. C. Shah, learned advocate on behalf of the plaintiff, however, states before me that the plaintiff will not withdraw the security deposited by the plaintiff under the Order dated 23rd January 1962 for a period of 30 days from the date when a certified copy of the Judgment is received by the defendant. In view of this statement of Mr. M. C. Shah there will be no order on the application of Mr. J. M. Nanavati.