Privy Council Appeal No. 100 *of* 1947

The Hubli Electricity Co. Ltd. - - - - - - - *Appellant*

v.

The Province of Bombay - - - - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 20TH DECEMBER, 1948

Present at the Hearing:

LORD UTHWATT
LORD MORTON OF HENRYTON
LORD REID
SIR MADHAVAN NAIR
SIR JOHN BEAUMONT

[*Delivered by* LORD UTHWATT]

In the proceedings out of which this appeal arises the appellants sought a declaration that the purported revocation by the respondent Government on the 28th January, 1944, of a licence to supply electricity to the town of Hubli was invalid and asked for consequential relief on the footing of that declaration. Their suit was dismissed by the High Court of Judicature at Bombay acting in its original jurisdiction and that decision was affirmed by that Court in its appellate jurisdiction (Stone C.J. dissenting). Many matters at issue in the suit are not now in controversy. The substantial questions before their Lordships are confined to questions of construction arising under the Indian Electricity Act (No. IX of 1910).

Under that Act the Government was empowered to grant to persons to be selected by the Government licences to supply electrical energy in areas to be specified in the licences and to lay down electric supply lines for the transmission of such energy.

Sections 3 (2) and 4 (1) and (2) of the Act so far as relevant provided as follows:—

"3 (2). In respect of every such licence and the grant thereof the following provisions shall have effect, namely:—

(*a*) . . .

(*b*) . . .

(*c*) . . .

(*d*) a licence under this Part—

(i) may prescribe such terms as to the limits within which, and the conditions under which, the supply of energy is to be compulsory or permissive, and as to the limits of price to be charged in respect of the supply of energy, and generally as to such matters as the Provincial Government may think fit.

* * * * *

(*e*) the grant of a licence under this Part for any purpose shall not in any way hinder or restrict the grant of a licence to another person within the same area of supply for a like purpose;

(*f*) the provisions contained in the Schedule shall be deemed to be incorporated with, and to form part of, every licence granted under this Part, save in so far as they are expressly added to, varied or excepted by the licence, and shall, subject to any such additions, variations or exceptions which the Provincial Government is hereby empowered to make, apply to the undertaking authorized by the licence:

Provided that, where a licence is granted in accordance with the provisions of clause IX of the Schedule for the supply of energy to other licensees for distribution by them, then, in so far as such licence relates to such supply, the provisions of clauses IV, V, VI, VII, VIII and XII of the Schedule shall not be deemed to be incorporated with the licence.

4.—(1) The Provincial Government may, if in its opinion the public interest so requires, revoke a licence in any of the following cases, namely:—

(*a*) where the licensee in the opinion of the Provincial Government makes wilful and unreasonably prolonged default in doing anything required of him by or under this Act;

(*b*) where the licensee breaks any of the terms or conditions of his licence the breach of which is expressly declared by such licence to render it liable to revocation;

(*c*) where the licensee fails, within the period fixed in this behalf by his licence or any longer period which the Provincial Government may substitute therefor by order under sub-section (3), clause (*b*), and before exercising any of the powers conferred on him thereby in relation to the execution of works—

(i) to show, to the satisfaction of the Provincial Government that he is in a position fully and efficiently to discharge the duties and obligations imposed on him by his licence, or

(ii) to make the deposit or furnish the security required by his licence;

(*d*) where the licensee is, in the opinion of the Provincial Government, unable, by reason of his insolvency, fully and efficiently to discharge the duties and obligations imposed on him by his licence.

(2) Where the Provincial Government might, under sub-section (1), revoke a licence, it may, instead of revoking the licence, permit it to remain in force subject to such further terms and conditions as it thinks fit to impose, and any further terms or conditions so imposed shall be binding upon, and be observed by, the licensee, and shall be of like force and effect as if they were contained in the licence."

Section 5 of the Act provided that where the Government revokes a licence under Section 4 (1) the Government should serve a notice of revocation upon the licensee.

The only other Section to which it is necessary to refer is Section 47 which provides that where a licensee makes default in any of the conditions of a licence the licensee should be liable to the fines therein set out.

The Schedule referred to in Section 3 (2) (*f*) contained many provisions relating to the conduct of the undertaking under the licence. It is necessary only to refer to sub-clause (1) of VI which runs as follows:—

"VI.—(1) Where after distributing mains have been laid down under the provisions of clause IV or clause V and the supply of energy through those mains or any of them has commenced, a requisition is made by the owner or occupier of any premises situate within the area of supply requiring the licensee to supply energy for such premises, the licensee shall, within one month from the making of the requisition, or within such longer period as the Electric Inspector may allow supply, and, save in so far as he is prevented from doing so by cyclones, floods, storms or other occurrences beyond his control, continue to supply, energy in accordance with the requisition."

On the 26th June, 1924, the Government granted a licence—The Hubli Electric Licence 1924—to Amti and Co., Hubli, and such licence was on the 28th January, 1925, duly transferred to the appellants with the consent of the Government. The result of this transfer was that for all the purposes of the Act and the licence the appellants stood in the shoes of the original licensee.

It is unnecessary to refer in detail to the provisions of the licence. The area of supply and compulsory area of supply were set out. No condition of the licence (save one which was shortly after the grant of the licence complied with) was expressed to be a condition the breach of which was declared to render the licence liable to revocation. No material variation was made in any of the conditions set forth in the Schedule to the Act.

The distributing mains referred to in Clause VI (1) of the Schedule were duly laid down shortly after the grant of the licence and thereupon the appellants began to supply electricity under the licence.

It appears that the appellants were during the war faced with difficulties in the conduct of their undertaking. It is not necessary to consider their difficulties at length. Suffice it to say that at the end of 1941 the Government demanded and received explanations as to an interruption in the supply, but there is nothing to show whether or not the Government was satisfied with the explanations which were given. In December, 1942, the appellants informed their customers and the Government that they proposed to shut down their works altogether on the 18th December for the purpose of a thorough overhaul and stated that they anticipated resuming supply by the 1st January, 1943.

On the 10th February, 1943, the Government's Electrical Inspector paid a visit of inspection to the appellants' works and made a report to the Government. Following on that report the following letter was on the 3rd April, 1943, sent by the Government to the appellants:—

3rd April, 1943.

" From

The Deputy Secretary to the Government of Bombay,
Public Works Department.

To

Messrs. The Hubli Electricity Company Limited.

Subject:—Hubli Electric Licence, 1924.

" Dear Sirs,

The Electric Inspector, Bombay Province, who recently visited your Company reports as under:—

> ' There is no qualified Engineer or other person in charge of the Supply Company's station and works, either electrical or mechanical. There are six generating sets in the power house.

Description of the Sets.	*Condition of the Sets.*
1. 750 B.H.P. engine with 600 KVA. generator.	Unserviceable owing to broken crankshaft.
2. 480 B.H.P. engine with 296 KW generator.	Unserviceable owing to broken crankshaft.
3. 350 B.H.P. engine with 275 KVA generator.	Unserviceable, cylinder heads and piston heads cracked.
4. 150 B.H.P. engine with 130 KVA generator.	Has been dismantled and new parts are being fitted from the Railway workshop.
5. 150 B.H.P. engine with 130 KVA. generator.	The engine is in such bad condition that not more than 60 KW load can be put on the generator.
6. 115 B.H.P. engine with 82 KVA. generator.	The set is in a very bad condition and repairs are badly needed.

> ' It will be seen from the above that only one set No. (5), can be used for obtaining power, the maximum being 60 KW against the Company's average peak load of 180 KW.'

2. Government is satisfied that there are sufficient grounds for revoking your licence under Section 4 (1) of the Indian Electricity Act but it is pleased to permit the licence to remain in force under Section 4 (2) of the Act subject to the following conditions:—

(*a*) that within a period of six months from the date of this letter you recondition your plant and put the same in proper working order for the purpose of ensuring a continuous and efficient supply to all consumers connected to the system and in order to fulfil the obligation imposed on you by virtue of the contract with the consumers as laid down in Clause VI of the Schedule to the I.E. Act, 1910, subject to the limitations imposed by the orders issued under the Defence of India Rules, and

(*b*) that you make proper arrangements for the maintenance of the plant immediately.

3. Should you fail to take necessary steps to fulfil the above conditions your licence will be revoked.

Yours faithfully,

Sd. C. G. KALE

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Deputy Secretary to the Government of Bombay,
Public Works Department."

The new conditions contained in that letter were not, it was held in the suit, complied with and on the 28th January, 1944, the Government wrote to the appellants informing them that their licence was revoked as at the 1st May, 1944.

The matter at issue before their Lordships centres on the validity of the imposition of the new conditions. If when the letter of the 3rd April, 1943, was written, the Government was not entitled to revoke the appellants' licence, the condition precedent to the right of the Government to introduce new conditions under Section 4 (2) of the Act was not fulfilled, and a revocation based on a breach of the new conditions would be a nullity. On the other hand, if the Government was at the date of the letter entitled to revoke the appellants' licence then the Government was entitled to introduce the new conditions and, on the facts found in the suit, the revocation of the licence on the 28th January, 1944, was effective.

In the proceedings the Government pleaded that on the 3rd April, 1943, it was of opinion that the appellants had made a wilful and unreasonably prolonged default in doing what was required of them under the Act and that the public interest required the revocation of the licence. The Government contended that on the true construction of the Act the Court was not entitled to go behind that opinion.

The appellants disputed this contention, their point being that the opinion of the Government referred to in Section 4 (1) was not the subjective opinion of the Government but an opinion subject to objective tests. They further contended that in exercising its functions under Section 4 (1) (*a*) the Government was bound to act in a judicial manner and not contravene the rules of natural justice and that in fact the Government failed so to act.

The first raises only a question of construction; the second raises also a question of fact.

The second contention, on which Stone C.J. rested his dissenting judgment, may be shortly disposed of. Their Lordships share the opinion of Chagla J. and Coyajee J. that this point was not open to the appellants upon the pleadings. There was no averment directed to the matter of fact upon which the contention rests, the only matter alleged being that in April, 1943, the Government had no sufficient grounds for revoking the licence. It is unnecessary therefore for their Lordships to decide

whether in forming an opinion the Government had to act judicially or whether the formation of an opinion was a pure ministerial or administrative act.

Before dealing with the question of construction raised by the first contention reference should be made to two matters.

First. It will be observed that the letter of the 3rd April, 1943, does not in terms refer to head (a) of Section 4 (1) of the Act nor does it state that the Government had formed the opinion referred to in that head. But the terms of the letter, which begins by specifying the deficiencies in the appellants' machinery and the disparity between the average peak load and the maximum capacity of the machinery and ends by imposing conditions as to the reconditioning of the plant so as to ensure a continuous and efficient supply to all consumers, make it clear that the Government had and was in no uncertain terms expressing, an opinion as to past failure of the appellants to give a supply. The requirements of Clause VI of the Schedule were obviously in the mind of the Government and the recipients of the letter could not have any doubt but that the Government was founding itself on Section 4 (1) (*a*) of the Act and entertained the opinion as to the public interest and the default of the appellants referred to in that sub-section.

Second. As has been stated the Government in the pleadings alleged that it had formed the opinion referred to in Section 4 (1) (*a*). At the trial the Judge ruled that in view of the production by the appellants of the letter of the 3rd April, 1943, it was not necessary for the Government to call evidence to prove—as the Government stated it was prepared to do —that the Government had formed the opinion required by Section 4 (1) (*a*) and the trial Judge thereupon found as a fact that the Government entertained the relevant opinion. This ruling was acquiesced in by the appellants at the trial, and in the Memorandum of Appeal to the High Court in its Appellate jurisdiction the appellants did not take specific objection to this ruling. It is clear that the substantial dispute at the trial was not that the Government did not entertain the opinion referred to in Section 4 (1) (*a*) but that it had no grounds for entertaining that opinion. In the circumstances their Lordships do not think it is open to the appellants to question before their Lordships the trial Judge's finding that the Government entertained the opinion mentioned in Section 4 (1) (*a*).

Their Lordships now turn to the question of construction of Section 4 (1) (*a*). Their Lordships are unable to see that there is anything in the language of the sub-section or in the subject matter to which it relates upon which to found the suggestion that the opinion of the Government is to be subject to objective tests. In terms the relevant matter is the opinion of the Government—not the grounds on which the opinion is based. The language leaves no room for the relevance of a judicial examination as to the sufficiency of the grounds on which the Government acted in forming an opinion.

Further the question on which the opinion of the Government is relevant is not whether a default has been wilful and unreasonably prolonged but whether there has been a wilful and unreasonably prolonged default. Upon that point the opinion is the determining matter and—if it is not for good cause displaced as a relevant opinion—it is conclusive. But there the area of opinion ceases. The phrase "anything required under the Act" means "anything which is required under the Act." The question what obligations are imposed on licensees by or under the Act is a question of law. Their Lordships do not read the Section as making the Government the arbiter upon the construction of the Act or as to the obligations it imposes. Doubtless the Government must in expressing an opinion for the purpose of the Section also entertain a view as to the question of law. But its view on law is not decisive. If in arriving at a conclusion it appeared that the Government had given effect to a wrong apprehension of the obligations imposed on the licensee by or under the Act the result would be that the Government had not expressed such an opinion as is referred to in the Section.

The question that then emerges is whether the performance of Condition VI of the Schedule incorporated in the licence by Section 3 (2) (*f*) is required by the licensee by or under the Act. In their Lordships' view it is. The scheduled conditions, unless excluded or modified, necessarily form part of the licence to be granted under the Act: the licence is required to be operated in accordance with these conditions and not otherwise and the authority to operate the licence is derived from the Act. To this it may be added that the latter part of Section 3 (2) (*f*) expressly provides that the scheduled conditions are to apply to the undertaking and that Section 47 provides for penalties judicially exigible on breach of the conditions. Performance of the scheduled conditions may not on a strict reading be required of the licensee " by " the Act: it is clearly required " under " the Act.

The appellants' contention therefore fails. The Government held and sufficiently expressed the opinion required by Section 4 (1) (*a*) and was therefore entitled to impose the conditions specified in the letter of 3rd April, 1943. The licence was effectually revoked by the letter of the 28th January, 1944.

Their Lordships will humbly advise His Majesty that this appeal be dismissed. The appellants will pay the costs of the appeal.

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In the Privy Council

THE HUBLI ELECTRICITY CO. LTD.

v.

THE PROVINCE OF BOMBAY

DELIVERED BY LORD UTHWATT

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