HIGH COURT OF GUJARAT

JHALAWAR ELECTRIC POWER SUPPLY COMPANY LIMITED
V/S
WADHWAN CITY MUNICIPALITY

Date of Decision: 21 March 1968

Citation: 1968 LawSuit(Guj) 34

Hon'ble Judges: A D Desai

Eq. Citations: 1969 AIR(Guj) 40, 1969 GLR 225, 1968 ILR(Guj) 556

Case Type: Second Appeal

Case No: 184 of 1962

Subject: Electricity

Head Note:

By agreements the electricity company and the municipality fixed the rates of electricity - No provision to revise it. whether such agreement valid whether company can revise the rates.

Provisions of sec. 57 and first clause to Schedule 6 of the Electricity (Supply) Act 1948 read together clearly indicate that the terms of the agreements have to give way to the power of revision of rates given under the first clause of Schedule 6. Section 57 of the Electricity (Supply) Act 1948 clearly provides that If a term of an agreement was inconsistent with the provisions of Schedule 6 such a term is void and of no effect. (Para 8). HELD that in the instant case by agreements the Electricity Company and the Municipality fixed the rates to be charged for the supply of the electrical energy and it did not provide for its revision during the period of the contract. This term of the contract was in direct conflict with the first clause of the 6th Schedule which provides that the licensee shall so adjust its

rates for sale of electricity by periodical revision that his clear profit in any year shall not so as far as possible exceed the amount of reasonable return. This being the true position the clauses in the agreements, which fixed the rates for the consumption of the electricity, is void and of no effect and the appellant company has the power to revise the rates In accordance with the 6th Schedule. (Para 8). The terms of the contract fixing the rates at a particular amount were inconsistent with the provisions of revision of rates as provided in the first clause of Sch. 6 and that being so the company had the right to revise the rates. (Para 9). Babulal Chhaganlal Gujarati v. Chopda Electric Supply Co. Ltd. not followed. Amalgamated Electricity Co. Ltd. v. N. S. Bathena and others referred to

Acts Referred:
Electricity (Supply) Act, 1948 Sec 57

Final Decision: Appeal allowed

Advocates: C T Daru, S A Shah, P M Raval,K S Nanavati, I M Nanavati

Reference Cases:
Cases Cited in (+): **1**
Cases Referred in (+): **2**

Judgement Text:-

A D Desai, J

[1] The dispute in this appeal relates to the rate at which the electricity was to be supplied to the respondent In respect of the street lights and water works motors. The facts according to the plaintiffs are that formerly there was a company which was known as Wadhwan State Electric Power Distributing Company, and it held a licence under Indian Electricity Act for supplying electric energy within the limits of Wadhwan City. The respondent Municipality entered into agreements with the said Company for the supply of electric energy to its water works motors as well as street lights. The agreements with respect to supply electric energy to water works and the street lights were entered on September 28, 1943. The said Company was a partnership firm of which the former Wadhwan State and one Natvarlal Dhanjibhai Mehta were partners. On the integration of the former Wadhwan State and the formation of United State of Saurashtra, the State

of Saurashtra became a partner in the said Company. The Zalawad Electric Power Supply Company who is the appellant in this case purchased the said Wadhwan State Electric Power Distributing Company in the year 1950. According to the plaintiff, the appellant company had purchased all the rights and obligations of Wadhwan State Electric Power Distributing Company. After the date of the purchase, the Wadhwan State Electric Power Distributing Company ceased functioning and the appellant company continued to supply electric energy to consumers including the respondent municipality. Some time, in the month of May 1952, the appellant company published revised charges for the supply of energy and thereby increasing the rate at which the energy was supplied to the consumers. The respondent Municipality objected to the proposed revised charges. There was correspondence between the parties and the appellant company assured the respondent municipality that the agreements under which the electricity was supplied to the respondent municipality were not affected by fixation of revised charges and the energy would be supplied to the respondent municipality according to the terms and conditions of the said agreements. It Secms that there was some dispute between consumers and the appellant company with regard to the revised rates and the dispute was referred to arbitrators. The arbitrators did not agree and, therefore, the dispute was referred to the Sarpanch or umpire for settlement. The umpire fixed the rates of the supply of the electric energy by his award dated September 3, 1952. Thereafter the appellant company issued a public notice informing the consumers, of the rates at which the electric energy was to be supplied by them to the consumers. The rates mentioned in the public notice were the rates fixed by the umpire in his award dated September 3, 1952. The appellant company forwarded a copy of the award to the Municipality by their letter dated October 8, 1952. From August 1952 the appellant company started tendering bills to the municipality for the energy supplied for running the water work motors at the rate fixed by the arbitrator. The appellant company addressed a letter dated August 30, 1956, informing the respondent municipality that from November 1, 1956 the rates of the electricity for the street lights would be at the revised rates i.e., as. 5 per unit. The appellant company started tendering to the municipality the bills at this revised rate from November 1, 1956. The respondent municipality refused to pay the higher rates for the electrical energy and, therefore, the appellant company made frequent demands for the payment. The respondent municipality rejected those demands and continued to pay at the rates fixed under the agreements. The appellant company, therefore, gave a notice to the municipality dated April 9, 1957 under sec. 24 of the Electricity Act, 1910 to cut off the supply of electricity from April 26th, 1957 as the municipality had committed a default in

payment of the bills preferred by the company for the consumption of the energy. The appellant company had preferred bills at the revised rates. The respondent municipality, therefore, filed a Civil Suit No. 50 of 1957 in the Court of Civil Judge, Junior Division, Wadhwan City, alleging that appellant company was bound to supply electric energy to the respondent municipality at the rates fixed under the agreement and that the demands made in respect of the consumption of the energy at the revised rates were illegal and contrary to the agreements. The respondent municipality claimed the relief restraining the appellant company from discontinuing the supply of the electric energy to the municipality, restraining the defendant company from interfering with the supply of electrical energy directly or indirectly and restraining the appellant company from making demands at the revised rates.

[2] The appellant company filed its written statement and contended that they had not purchased the liabilities of Wadhwan State Electric Power Distributing Company. The contention was that they had purchased only the assets of the company and, therefore, the agreements between the municipality and the Wadhwan State Electric Power Distributing Company were not binding to them. It also contended that the company was within its rights in preferring bills at the revised rates for the consumption of the energy by the municipality. According to the defendant the umpire was appointed by the consumers including the municipality, and the company and the award given by the umpire was binding on the municipality. As the municipality did not pay up the arrears, the company had the right to take action under sec. 24 of the Indian Electricity Act and cut off the supply of the energy.

[3] The learned trial Judge held that the appellant company had purchased rights and liabilities of Wadhwan State Electric Power Distributing Company and, therefore, agreements entered into by the said company were binding on the appellant company. It also held that the appellant company was not entitled to raise the rates of the water work motors and street lights by its unilateral act. The learned Judge also came to the conclusion that the appellant company had given an assurance to the municipality that it would not charge the revised rates for the supply of energy to the municipality and on the basis of the aforesaid findings the learned trial Judge decreed the suit of the plaintiff. Being aggrieved by the said decision, the appellant company filed a Regular Civil Appeal No. 97 of 1959 in the Court of the District Judge, Surendranagar. The said appeal was heard by the Extra Assistant Judge, Surendranagar who held that the appellant company had purchased the assets and liabilities of the Wadhwan State Electric Power Distributing Company. The learned Judge also held that agreements

entered into between the said company and the municipality were binding on the appellant company. The learned Judge held that the appellant Company had no right to revise the rates unilaterally and to charge the enhanced rates from the municipality. The learned Judge also held that the municipality was entitled to the relief of injunction based on the agreement in view of the provisions of sec. 56(f) lead with sec. 21(1) of the Specific Relief Act. The Court also held that the action of the appellant company in revising the rates so as to enhance the electrical charges was contrary to the provisions of law, and therefore, illegal. The learned Judge, therefore, granted the injunction asked for by the municipality and thus confirmed the decree passed by the trial Court. It is against this judgment and decree that this second appeal has been filed by the appellant company.

[4] The Extra Assistant Judge, Surendranagar came to the conclusion that the appellant company was not entitled to revise the rates of electrical energy unilaterally and was bound by the contracts between the parties. For this proposition of law the learned Judge mainly relied on the decision In Babulal Chhaganlal Gujerathi v. Chopda Electric Supply Co. Ltd., A.I.R. 1955 Bom. 182. Mr. Daru appearing for the appellant relied on the decision of the Supreme Court in Amalgamated Electricity Co. Ltd., v. N. S. Bathena and others, A.I.R. 1964, S.C. page 1598, and contended that the decision in Babulal Chhaganlal Gujerathi (supra) has now been overruled by the Supreme Court and, therefore, the judgment and decree passed by the Extra Assistant Judge, Surendranagar were erroneous.

[5] In order to appreciate the argument of Mr. Daru, it is necessary to refer to certain provisions of the Indian Electricity Act, 1910 and the Electricity (Supply) Act, 1948. By sub-sec. (1) of sec. 3 of the Indian Electricity Act, 1910, it is provided that the State Government may grant to any person a licence to supply electrical energy in any specified area. In respect of every licence granted under sub-sec. (1) of sec. 3, certain provisions made in sub-sec. (2) are necessary to be noticed. Two out of these provisions are that a license granted under sub-sec. (1) of sec. 3 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. The other relevant provision of the Act is that the provisions contained in the Schedule to the Act shall be deemed to be incorporated In, and to form part of, every license granted under part I save in so far as they are expressly added to, varied or excepted by the license. Under sec. 21 clause (2) a licenSec may with the previous sanction of the State Government given after consulting the local authority,

make conditions not inconsistent with the Act or with his license or with any rules made under the Act, to regulate his relations with the persons who are or intend to become consumers, and may, with the like sanction given after the like consultation, add to or alter or amend any such conditions and any conditions made by a licenSec without such sanction shall be null and void. The relevant part of sec. 57 of the Electricity (Supply) Act, 1948 as it stood before its amendment was as under :-

> "Sec. 57 : LicenSecs charges to consumers: Sub sec. (1): The provisions of the Sixth schedule and the Table appended to the Seventh Schedule shall be deemed to be incorporated in the license of every liceneec, not being a local authority, from the date of the commencement of the licenSec's next succeeding year of account, and from such date the licenSec shall comply therewith accordingly and any provisions of such license or of the Indian Electricity Act, 1910 (IX of 1910), or any other law, agreement or instrument applicable to the licenSec shall, in relation to the liceneec, be void and of no effect in so far as they are inconsistent with the provisions of this section and the said Schedule and Table. "
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> The first clause of the Sixth Schedule to the Electricity Supply Act, provided that "the licenSec shall so adjust his rates for the sale of electricity by periodical revision that his clear profit in any year shall not as far as possible exceed the amount of reasonable return. "There is a proviso to this clause with which we are not concerned.

[6] We will now go to the facts of the case of Babulal Chhaganlal Gujerathi (Supra). In that case the clause 9(A) of the license Issued under the Electricity Act provided as under :-

> 'The rates to be charged by the licenSec for energy supplied by him shall not exceed the maxima set out below: (A) Where energy is supplied by meter-(1) for general supply purpose, namely (a) for lights and fans not provided for in item (b) below a rate of Annas 6 per unit;.... (c) for heating and refrigerating purposes-a rate of Annas 2 per unit."
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> The defendant company assuming that by the Electricity (Supply) Act, 1948, restrictions which were placed under the license and by the Electricity Act,

1910 upon the right of the licenSec to levy rates and charges from consumers of electrical energy were abrogated, issued a notice to the consumers informing them of revised charges for the supply of electrical energy at increased rates. Babulal Gujerathi, who was one of the consumers, challenged this right of the electric company of revising the rates and ultimately filed a civil suit for a declaration that the revised rates fixed by the Electric Supply Company were contrary to law and for injunction restraining the electric supplying company from discontinuing the supply of electricity for nonpayment of the charges. The plaintiff succeeded In his suit but lost in the appeal in the District Court. A second appeal was filed in the High Court and the High Court took the view that the Electricity Company had no power to revise the rates so as to exceed the maxima fixed by the Government while granting license under the Indian Electricity Act, 1910. The High Court held that provisions of sub-sec. (1) of the sec. 57 impose an obligation upon the licenSecs and did not create any new rights in favour of the licenSecs. By the said provisions, a further obligation was imposed on the licenSecs to so adjust the rates by making periodical revisions so that their clear profits In any year shall not so far as possible exceed the amount of reasonable return.

[7] Now we come to the facts of the case in Amalgamated Electricity Co. Ltd. v. N. S. Bathena and others (supra). In that case also the Government while issuing the license for the supply of electricity fixed the rates which the licenSec could charge for supply of the electrical energy to the consumers. Due to the conditions brought about by the Second World War, certain orders were made by the Government permitting the licenSecs to add a surcharge not exceeding 33 1/2 per cent to the existing charges. Ultimately an Act was passed by the Bombay Legislature called the Bombay Electricity (Surcharge) Act, 1946, which continued the surcharge specified therein for a period of three years. That Act expired on September 30, 1949. Even after the expiry of the said Act, the Electricity Company continued charging the consumers at the rates which included the surcharge, under the Surcharge Act, One of the consumers, therefore, filed a suit against the Electricity Company for the refund of the amount illegally collected from him in excess of the limits fixed by the Government. The Supreme Court while considering the question as to whether the Electricity Company had a right to revise the rates and charge the rates higher than fixed by the Government, had construed the provisions of the Indian Electricity Act and also the Indian Electricity (Supply) Act, 1948.

The question which was raised before the Court in that case was with regard to effect of the Electricity (Supply) Act, 1948 on the maxima of rates fixed by the Government under sec. 3(2) of the Electricity Act, 1910, which could be charged by a licenSec. While considering this question the Supreme Court observed thus :-

> "So far as the 1st point is concerned viz, whether the maxima prescribed by Government under the Electricity Act, 1910 still continue to bind the licenSec after the coming into force of the Supply Act, we feel no hesitation in agreeing with the submission of the Appellant which found favour with the High Court Sec 57 of the Supply Act, 1948-both as originally enacted and as amended in 1956 expressly provided that provisions of the VI Schedule shall be deemed to be incorporated in the license of every licenSec and 'that the provisions of the Indian Electricity Act, 1910 and the license granted thereunder and any other law, agreement or instrument applicable to the licenSec shall be void and of no effect in so far as they are inconsistent with the provisions of the section and the said Schedule. " Read in the light of sec. 70 of the Supply Act it would follow that if any restriction incorporated in the license granted under the Electricity Act, 1910 is inconsistent with the rate which a licenSec might charge under Para 1 of Sch. VI of the Supply, Act, 1948, the former would, to that extent, be superseded and the latter would prevail.
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> Para I of Sch. VI, both as it originally stood and as amended, as Secn already empowered the licenSec 'to adjust his rates, so that his clear profit in any year shall not, as far as possible, exceed the amount of reasonable return. 'We shall reserve for later consideration the meaning of the expression 'so adjust his rates. ' But one thing is clear and that is that the adjustment is unilateral and that the licenSec has a statutory right to adjust his rates provided he conforms to the requirements of that paragraph viz., the rate charged does not yield a profit exceeding the amount of reasonable return. The conclusion is therefore irresistible that the maxima prescribed by the State Government which bound the licenSec under the Electricity Act of 1910 no longer limited the amount which a licenSec could charge after the Supply Act, 1948 came into force, since the 'clear profit' and 'reasonable return' which determined the rate to be charged was to be computed on the basis of very different criteria and factors than what obtained under the

Electricity Act. In support of the submission that notwithstanding the Supply Act the maxima fixed by the State Government was still binding on the licenSec and that any adjustment within 1 st paragraph of Sch. VI should be within the limits of this maxima we were referred to a decision of the Bombay High Court reported as 56 Bom. I. R. 994: (I.L.R. 1955) Bom. 42 : (A.I.R. 1955 Bom. 182). It is sufficient to extract the headnote to understand the point of the decision :

'Sec. 57(1) of the Electricity (Supply) Act, 1948, or CI. 1 of the Sixth Schedule to the Act, does not confer a right upon a licenSec unilaterally to alter the terms and conditions on which supply may be made by a licenSec of electrical energy to consumers in the area of supply irrespective of the restrictions contained in the license and the Indian Electricity Act, 1910.

Not only does sec. 57(1) of the Electricity (Supply) Act, 1948, impose an obligation upon the licenSec to conform to the provisions of the Sixth Schedule and the table appended to the Seventh Schedule to the Act, but the first clause of the Sixth Schedule imposes a further obligation to make periodical revisions and to adjust the profits so that his profits in any year do not as far as possible exceed a reasonable return on his investment There is nothing in sec. 57 or in the first clause of the Sixth Schedule which either expressly or by implication amends the provisions of the Indian Electricity Act, 1910, contained in sec. 3(2)(d) or in sec. 21(2)ofthat Act or the rates and methods of charging the same as fixed by the license. The provision contained in sec 3(2)(d) of Indian Electricity Act, 1910, which requires the State Government to prescribe the terms and conditions under which the supply of energy is to be made is not affected by the Electricity (Supply) Act, 1948. The right to amend the license is conferred by the Indian Electricity Act, 1910, upon the State Government and that right is not affected by the Electricity (Supply) Act, 1948.

With great respect to the learned Judge we are unable to agree with this decision, for, in our opinion, the provisions of the Supply Act, 1948 to which we have adverted are too strong to permit the construction, that the maxima prescribed under the Electricity Act of 1910 survives as a fetter on the rights

of the licenSec under paragraph I of the VI Schedule. If there was any room for any argument of this kind on the terms of para I of Sch. VI as originally enacted, the matter is placed beyond possibility of dispute by the amendment affected by Act 101 of 1956 to the VI Schedule where the opening paragraph commences with the words ' notwithstanding anything contained in the Indian Electricity Act and the provisions in the licence of a licenSec'. "

[8] Mr. Nanavati faintly argued that the decision in Babulal Chhaganlal Gujerathi (Supra), was not overruled by the latter decision of the Supreme Court in Amalgamated Electricity Co. Ltd, v. N. S. Bathena (Supra). The observations cited above from the judgment of the Supreme Court clearly show that the decision given in Babulal Gujerathi was not approved by Their Lordships of the Supreme Court. The Supreme Court In that case considered sec. 57 as it was originally enacted and held that the Electricity Company had the power to adjustment of rates under the provisions of first clause of Schedule 6 of the Electricity (Supply) Act, 1948. It is, therefore, clear that when the appellant company revised the, rates of supply of the electric energy it exercised the power conferred by first clause of Schedule 6 of the Electricity (Supply) Act, 1948. Mr. Nanavati contended that in the instant case the rates for the supply of the energy were fixed by agreements and not by statute as was the case In Babulal Gujerathi and Amalgamated Electricity Company Ltd., and therefore the Company had no unilateral right of revision of rate. Mr. Nanavati is right in his contention that in this case there were agreements between the parties fixing the rates of supply of energy, but in my opinion this circumstance does not make any difference. Provisions of sec. 57 and first clause to Schedule VI of the Electricity (Supply) Act, 1948, read together clearly indicate that the terms of the agreements have to give way to the power of revision of rates given under the first clause of Schedule VI. Sec. 57 of the Electricity (Supply) Act, 1948 clearly provides that if a term of an agreement was inconsistent with the provisions of Schedule VI, such a term is void and of no effect. In the case before us, by agreements, the Electricity Company and the Municipality, fixed the rates to be charged for the supply of the electrical energy and it did not provide for its revision during the period of* the contract. In short it prohibited unilateral variations in the rates during the continuance of the contract. This term of the contract was in direct conflict with the first clause of the VI Schedule which provides that the licenSec shall so adjust its rates for sale of electricity by periodical revision that his clear profit in any year shall not so as far as possible exceed the amount of reasonable return. This being the true position, the

clauses in the agreements which fixed the rates for the consumption of the electricity are void and of no effect and the appellant company has the power to revise the rates In accordance with the VI Schedule. The appellant company in this case exercise the said authority under the said Schedule and has fixed the rates to be charged from August 1. 1952 in respect of the water work motors and from August 30, 1958 in respect of the street lights. This action of the appellant company cannot be said to be illegal as the company had the power to charge the rates unilaterally.

[9] Mr. Nanavati then contended that there is difference between the terms of the contract being inconsistent with the provisions of the Schedule and the agreement being inconsistent with the action taken by a party under the Schedule. It is difficult to appreciate this argument. What sec. 57 of the Electricity (Supply) Act, 1948 provides is that if a term of a contract is inconsistent with the provisions of the first clause of Schedule VI then the provisions of Schedule VI must prevail. In exercise of the powers conferred on the appellant company by the first clause of Schedule VI, the company charged the consumers the revised rates for the supply of energy. The terms of the contract fixing the rates at a particular amount were inconsistent with the provisions of revision of rates as provided in the first clause of Schedule VI and that being so the company had the right to revise the rates.

[10] Mr. Nanavati next argued that before the appellant company revised the rates of the energy it was bound to show that its return of profits as a result of the agreed rates was less than the reasonable return as contemplated by Schedule VI and it was only then that the company could say that the agreement was not binding to the parties. It is difficult to accept this contention. First clause to Schedule VI empowers the company to revise the rates and the company in this case acted under the said provisions and revised the rates. It bad not been challenged in this case that the revised rates fixed by the company were not in consonance with the provisions of VI Schedule. The only question that was agitated in the suit and the lower appellate Court was whether the company had a power to revise the rates under the provisions of the first clause of Schedule VI inspite of the agreement between the parties. I have already come to the conclusion that the company had such a power and that being so the company had the power to revise the rates.

[11] It was next contended by Mr. Nanavati that in this case the electricity company had given an assurance that they would not charge the municipality at the revised rates and for this purpose Mr. Nanavati relied on the correspondence which ensued between the

appellant company and the municipality. Mr. Nanavati first drew may attention to Ex. 92 dated May 12, 1952 which was a public notice issued by the appellant company for revising the rates in respect of supply of the electric energy from 1st June 1952. In response to this notice the President of the respondent Municipality addressed a latter, Ex. 70, to the appellant company informing the company that there were specific agreements between the parties with regard to the charges for the supply of the electricity and, therefore, revised rates notified by the company were not applicable to the municipality. By Ex. 71, the municipality again put forward the said contention. Ex. 73 dated June 4, 1952, was the letter of the appellant company addressed to the respondent municipality wherein they stated that a seperate agreement for supply of electricity was in respect of water works motors only and other motors installed by the municipality temporarily or permanently were to be charged as per the rates in force from time to time. The appellant company also addressed another letter, Ex. 72, dated June 5, 1952 to the Secretary of the respondent municipality in reply to the letters Ex. 70 and 71 and informed the municipality that the municipality was their consumer for connections such as Gangavav and Madhavav to which the revised rates were applicable as per notice already given. The respondent municipality addressed a letter Ex. 74 dated June 26, 1952 to the appellant company inquiring from the company as to whether the revised rates were applicable to the street lights and water work motors. The appellant company by their letter, Ex. 75 dated July 15, 1952 informed the municipality that the revised rates which were to come in force from August, 1 1952 were not applicable to the energy supplied under the special agreements. It must be noted that aforesaid correspondence except Ex. 74 related only to the revisions of rates in respect of the supply of electric energy to the water work motors. On the basis of this correspondence the argument advanced by Mr. Nanavati was that the appellant company had specifically agreed that the revised rates were not applicable to the municipality with regard to the supply of electric energy for water work motors and street lights and the action of the Company charging revised rates was contrary to the agreements and therefore illegal. Mr. Daru, appearing for the company argued that it was not the case of the municipality in the plaint that the appellant company had agreed not to charge the enhanced rates after the copy of the revised rates was sent to the municipality with Ex. 85 dated October 8, 1952 and Mr. Nanavati did not raise any dispute on this point. The argument of Mr. Daru was that no doubt an assurance was given by the company not to charge the revised rates as were set out in Ex. 69 but subsequently an award was given by the umpire and the appellant company decided to charge the revised rates in respect of the consumption of the electrical energy by the municipality. For this purpose Mr. Daru relied on the fact that the umpire by his award

fixed the revised rates which the company had to charge for the supply of the electrical energy to its consumers. The public notice, Ex. 83, in respect of these rates was given to all the consumers in this respect. The said public notice refers to the notice Ex. 69. The reference was to the operative part of the said notice Ex. 69 which informed the consumers that the company was revising the charges for the supply of the electrical energy under the provisions of sec. 57 of the Electricity (Supply) Act, 1948 read with first clause of the VI Schedule thereof. The public notice Ex. 83 also gave the revised rates which were fixed by the umpire and which the company had decided to charge under the provisions of sec. 57 of the Electricity (Supply) Act read with clause 1 of the Schedule VI of the Electricity (Supply) Act. The reviled rates were fixed also for the consumption of the electrical energy of water work motors. A copy of this was forwarded to the municipality by letter, Ex. 85, dated October 8, 1952. Thereafter some correspondence ensued between the appellant company and the municipality and by letter, Ex. 85, the appellate company informed the municipality that an agreement pertaining to the electric supply automatically terminated and they had the right to make and issue the bills as per revised rates fixed by the umpire. The argument of Mr. Daru was that this correspondence clearly indicated that the company intended to charge revised rates from the municipality in respect of the consumption for water work motors and street lights after the revised rates were fixed by the umpire. The assurance given by the company in Ex. 75, was only in respect of rates notified in. Ex. 69 and in respect of revised rates mentioned in Ex. 83. Under the circumstances the company was justified in making a demand for the consumption of the electrical energy at the rates, fixed by the umpire and adopted by the company under the provisions of sec. 57 read with clause 1 of the Schedule VI. The correspondence referred to above clearly indicates that the company at a later stage i.e. after the rates were fixed by the umpire, had decided to charge the municipality with the revised rates as fixed by the umpire. The assurance which was given by the appellant company not to charge revised rates was in respect of the rates fixed in Ex. 69. There is nothing on the record to show that the company continued the said assurance in respect of the rates fixed by the umpire on September 3, 1952. Ex. 72 clearly shows the intention of the appellant company because it was stated therein in categorically terms that the company had the right to make a demand as per rates mentioned in the notice Ex. 83. Thus the argument of Mr. Nanavati that the appellant company was not entitled to charge the revised rates from the municipality of consumption for electrical energy for water works as well as for the street lights because of the assurance given by the company cannot be accepted. The result is that the lower Courts erred in decreeing the suit of the municipality and granting

Injunctions against the appellant company.

[12] For the reasons stated above the suit of the plaintiff is dismissed and the appeal is allowed with costs throughout.

Appeal allowed.