

PETITIONER:
JINDAS OIL MILL & ORS.

Vs.

RESPONDENT:
GODHRA ELECTRICITY CO. LTD.

DATE OF JUDGMENT:
26/02/1969

BENCH:
HEGDE, K.S.
BENCH:
HEGDE, K.S.
SIKRI, S.M.
BACHAWAT, R.S.

CITATION:
1969 AIR 1225 1969 SCR (3) 836
1969 SCC (1) 781

ACT:

Electricity Supply Act, 1948, s. 57(2)(c)-Rates of supply licenses fixed by Government on recommendation of rating committee-Act amended in 1956 s. 57(A) (1) (e) of amended, Act read with amended Schedule VI--Licensee's power under amended Act to enhance rates of supply--Rates fixed under original Act whether can be enhanced by licensee unilaterally-Vested right whether affected-Applicability of General Clauses Act, 1897, s. 6.

HEADNOTE:

The respondent held a licence for the supply of Electricity under the 'Indian Electricity Act, 1910 in the Godhra area of undivided Bombay. On the creation of the State of Gujarat the area went to that State. The Electricity (Supply) Act came into force in 1948 and under it the conditions in Schedule VI thereof were deemed to be incorporated in the licence of every licensee. Under s. 57 (2) (c) of the ' Act the Government could fix the rates for supply of electricity and under cl. 1 of the Schedule VI a licensee could reduce the rates for keeping the profit at a reasonable level. A licensee had no power to enhance the rates except by requesting the Government to fix new rates on the recommendation of a fresh rating committee. In 1952 the Government fixed certain rates on the recommendations of a rating committee. In 1956 the Supply Act of 1948 was amended. By s. 57A(1) (e) of the amended Act the rates fixed by the Government under s. 57(A)(1)(d) on the recommendation of a rating committee were to enure for a maximum of three years. Under of the amended Schedule VI the licensee shall so adjust his charges Cl. the sale of electricity whether by enhancing or reducing them that his clear profit in any year of account shall not as far as possible exceed the amount of reasonable return. In 1963 the respondent enhanced the rates of supply without having them fixed by the Government on the recommendations of a rating committee. The appellants who were consumers of electricity in the Godhra area filed suits seeking, to restrain the respondent from enforcing the enhanced charges. The suits were decreed by the trial court and the decrees

were 'confirmed by the first appellate court and in second appeal by a single Judge. In Letters Patent appeal however the High Court held that under the Supply Act as amended in 1956 the respondent had a unilateral right to enhance the charges subject to the conditions prescribed in, Schedule VI of the Act. The appellants Came to this Court contending that they had a vested right in. the rates fixed by Government in 1952, that under the amended Act the respondent did not have a unilateral right to enhance those rates, and that the amended provisions not being retrospective nor inconsistent with the old provisions the charges fixed by the Government in 1952 must in view of s. 6 of the General Clauses Act, 1897 continue to be in operation.

HELD : The law declared by the Amending Act does not affect any right or privilege, accrued under the repealed provision. It merely Prescribes as to what can or should be done in the future. Therefore there is no basis for saying that it affects vested rights. [847 F]

For finding out the power of the licensee to alter the charges one has to look at the terms of the license in the light of the law as it stands, the

837

past history of that law being wholly irrelevant. If the terms of the licence, including the deemed terms permit him to unilaterally alter the charges then he has that right. In the present case looking at those terms, the respondent was certainly within its rights in enhancing the charges as admittedly it had followed the procedure prescribed by law. [847 F-G]

The contention that there was no inconsistency between the present scheme relating to the enhancement of charges vis-a-vis the scheme provided under the Supply Act prior to its amendment in 1956 could not be accepted. The two schemes are substantially different. Under the former scheme once the Government fixed the charges the licensee could not enhance them but at present at the end of the period fixed in the Government order the licensee has a unilateral right to enhance the charges in accordance with the conditions prescribed in Schedule VI. Therefore in, view of s. 57 the provisions contained in that Schedule have an overriding effect. [847 H-848 A]

The intention of the legislature being clear and unambiguous there was no need to call into aid any rule of statutory construction or any legal presumption. Further, there was no reason why those who obtained licences prior to the amendment of the Supply Act in 1956 'should be in a more disadvantageous position than those who got their licences thereafter. Correspondingly there was no reason why those who are served by licencees who obtained their licences prior to the amendment of the Supply Act in 1956 should be placed in a better position than those served by licencees who obtained their licences thereafter. [847 C]

Section 57(A)(1)(e) was intended to meet the changing economic circumstances. The purpose behind the new provisions appears to be to, permit the licencees to adjust their charges to get reasonable profits. But at the same time a machinery has been provided to see whether any excess charges have been levied and if levied 'get the same refunded to the consumers.[847 E]

In view of the above considerations and findings the appeals must fail.

State of Punjab V. Mohar Singh, [1955] S.C.R. 893 and
Deep Chand,
v. State of U.P. & Ors. [1959] 2 Supp. S.C.R. 8,

distinguished. Amalgamated Electricity Co. Ltd. v. N. S. Bhathena & Anr. [1964] 7 S.C.R. 503, applied.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 15 and 16 of 1969.

Appeals from the judgment and order dated December 3, 1968 of the Gujarat High Court in Letters Patent Appeals Nos. 43 and 42 of 1966 respectively.

M. C. Chagla, P. C. Bhartari, P. N. Tiwari and J. B. Dada-chanji, for the appellants (in both the appeals).

I. N. Shroff, for the respondent (in both the appeals).

The Judgment of the Court was delivered by

Hegde, J. Common questions of law arise for decision in these appeals, by certificate. The suits from which these appeals arise have been considered together and decided by common judgments,

838

both in the High Court as well as in the courts below. It is convenient to do so in this Court as well.

The suits in questions are representative suits. The plaintiffs appellants who are consumers of electricity in the Godhra area sued the respondent-company on behalf of all the consumers in that area seeking to restrain the respondent from enforcing the enhanced charges sought to be collected from the consumers of power used for lights and fans as well as of motive power.

The facts leading to these appeals may no,% be stated. On November 19, 1922, the then Government of Bombay granted a licence under the Indian Electricity Act, 1910 to a concern called Lady Sulochna Chinubhai & Co. authorising it to generate and supply electricity to the consumers in Godhra area. Clause 10 of the licence prescribed the maximum charges that the licensee could levy for the power supplied. The respondent is the successor of the said licensee. After the Electricity (Supply) Act, 1948 (to be hereinafter referred to as the Supply Act) came into force, a rating committee was constituted under s. 57(2) of the Supply Act at the request of the respondent on January 19, 1950. On the recommendation of that committee, the Government fixed with effect from February 1, 1952, the following charges for the power supplied:

- (i) 0-7-9 pies per unit for the electricity supplied for lights and fans with a minimum of Rs. 3/- per month per installation and
- (ii) for motive power at 4 annas per unit with a minimum of Rs. 4-8-0 per month per installation.

The Supply Act was amended in 1956. The respondent increases the charges for motive power from January 1, 1963 to 35 NP. per unit with a minimum of Rs. 7/- per month for every installation. On June 22., 1963, the rates for light and fans were increased with effect from July 1, 1963 to 70 NP. per unit with a minimum of Rs. 51- per month for every installation. The contention of the appellants is that the respondent was not competent to enhance the charges, in question without the matter having been considered by a rating committee. Their suits to restrain the respondent from levying the proposed increased charges were decreed by the trial court. Those decrees were affirmed by the first appellate court as well as by a single judge of the Gujarat High Court in second appeals but the appellate bench of the Gujarat High Court reversed those decrees and

dismissed the suits holding that under the Supply Act as amended in 1956 the respondent has a unilateral right to enhance the charges subject to the conditions prescribed in the VI Schedule to that Act. It is

839

as against those decisions these appeals have been brought. Civil Appeal No. 15 of 1969 relates to the enhancement of charges for electricity power for lights and fans and Civil Appeal No. 16 of 1969 relates to the enhancement of charges for the motive power.

The only question that arises-for decision in these appeals is whether under the provisions of the Supply Act as amended in 1956, the respondent was competent to unilaterally enhance the charges.

In these appeals we are not concerned with the provisions of the Electricity Act, 1916. There is no dispute as regards the charges fixed by the Government with effect from February 1, 1952, under s. 57(2)(c) of the Supply Act on the basis of the recommendation made by the rating committee. The appellants admit their liability to pay enhanced charges that may be fixed by the Government on the basis of any recommendation by a freshly appointed rating committee. They merely challenge the respondent's right to unilaterally enhance the charges. According to the appellants they have a vested right to be governed by the charges fixed in 1952 until the same is revised by the Government on the basis of the recommendation of a rating committee. It was urged on their behalf that the amendments made in 1956 do not affect the charges fixed in 1952 and they continue to rule till altered by the Government in accordance with law. The respondent repudiates those contentions. It denies that the appellants have any vested right in the charges fixed. It was urged on its behalf that the amendments made to the Supply Act in 1956 have substantially altered the scheme as regards levying charges; it is now open to a licensee to alter the charges fixed by the Government unilaterally subject to the conditions prescribed in s. 57(A) and in Sch. VI of the Supply Act. We may mention at this stage that even according to the appellants the charges that may be fixed by the Government now on the basis of the recommendation of a rating committee can be unilaterally altered by the licensee after the period fixed in the Government order in accordance with cl. (e) of S. 57(A)(1), expires. In order to decide the point in controversy, we have to take into consideration the relevant provisions of the Supply Act as it stands now and as it stood prior to its amendment in 1956. For the sake of convenience we shall set out side by side the relevant provisions.

The Supply Act as it stood 1956	before The Supply Act as amended In 1956
s. 57. Licensee's charges to consu- mers	S. 57. The Provisions of the Sixth Schedule and the Seventh Schedule

840

(1st column of page-no 840)

(1) The Provisions of the Sixth Schedule and the Table appended to the Seventh Schedule shall be deemed to be incorporated in the licence of every licences not being a local authority, from the date of the commencement of the licensees next succeeding year of account. and from such date the licensee shall comply therewith accordingly and any provisions of such licence or of the Indian Electricity Act,

1910 (I.X of 1910), or 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 this section and the said Schedule and Table.

(2) Where the provisions of the Sixth Schedule and the Table appended to the Seventh Schedule are under sub-section (1) deemed to be incorporated in the licence of any licensee, the following provisions shall have effect in relation to the said licensee, namely :-

(a) The Board or where 'no Board is constituted under this Act, the Provincial Government, may, if it is satisfied that the licensee has failed to comply with any provisions of the Sixth Schedule and shall when requested so to do by the licensee, constitute a rating committee to examine the licensee's charges for the supply of electricity and to recommend thereon to the Provincial Government;

Provided that no rating committee shall be constituted in respect of a licensee within three (2nd column of the page-no 840)

shall be deemed to be incorporated in the licence of every licensee. not being a local authority

(a) in the case of a licence granted before the commencement of this Act, from the date of the commencement of the licences next succeeding year of account; and

(b) in the case of a licensee granted after the commencement of this Act, from the date of the commencement of supply, and as from the said date. the licensee shall comply with the provisions of the said Schedules accordingly , and any provisions of, the Indian Electricity Act, 1910, and the the licence granted, to him 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.

S. 57(A) (1) : where the provisions of the Sixth Schedule and the Seventh Schedule are under section 57 deemed, to be incorporated in the licence of any licensee, the following provisions shall have effect in relation to the said licensee namely :-

(a) the Board or where no Board is constituted under this Act, the State Government-

(i) may, if satisfied that the licensee has failed to comply with any of the provisions of the Sixth Schedule, and

(ii) shall, when so requested by the licensee in writing constitute a rating committee to examine the licensee's charges for the supply of electricity and

841

(1st column of the page-no 841)

years from the date on which such a committee has reported in respect of that licensee, unless the Provincial Government declares that in its opinion circumstances have arisen rendering the orders passed on the recommendation of the previous rating committee unfair to the licensee or any of his consumers.

(b) The rating committee shall 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 his undertaking report to the Provincial Government making recommendations (and giving reasons therefore) regarding the charges for electricity which the licensee may make to any class or classes of consumers so however that the recommendations are not likely to prevent the licensee from earning clear profits sufficient when taken with the sums available in the

Tariffs and Dividends Control Reserve to afford him a reasonable return during his next succeeding three years of account if the potentialities of the undertaking of the licensee, with efficient operation and management so permit.

(c) Within one, month after the receipt of the report under Clause (b) the Provincial Government shall cause the report to be published in the, official Gazette. and may at the same time make an order in accordance therewith fixing the Been-see's charges for the supply

(2nd column of the page-no 841)

to make recommendations in that behalf to the State Government

Provided that where it is proto constitute a rating committee under this section on account failure of the licensee to comply with any provisions of the Sixth Schedule. such committee shall not be constituted unless the licensee has been given a notice in writing of thirty clear days (which period, if the circumstances so warrant may be extended from time to time) to show cause against the action proposed to be taken

Provided further that no such rating committee shall be constituted if the alleged failure of the licensee to comply with any provisions of the Sixth Schedule raises any dispute or difference as to the interpretation of the said provisions or any matter arising therefrom and such difference or dispute has been referred by the licensee to the arbitration of the Authority under paragraph XVI of that Schedule before the notice referred to in the preceding proviso was given or is so referred within the period of the said notice

Provided further that no rating committee shall be constituted in respect of a 'licensee within three years from the date on which such a committee has reported in respect of that licensee, unless the State Government declares that in its opinion circumstances have arisen rendering the orders passed on the recommendations of the previous rating. committee unfair to the licensee or any of the consumers :

(b) a rating committee under clause (a) shall:--

(i) where such committee is to be, constituted under subclause (i) of that clause. be constituted not later than three months after the

842

(1st column of the page-no 842)

of electricity with effect from such date, not earlier than two months after the date of publication of the report, as may be specified in the order; and the &Msee shall forth with give effect to such order

Provided that nothing in this clause shall be deemed to prevent a licensee from reducing at any time any charges, so fixed.

THE SIXTH SCHEDULE

1.The Licensee 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

Provided that the licensee shall not be considered to have failed so to adjust his rates if the clear profit in any year of account has not exceeded the. amount of &be reasonable return by more than thirty per centum of the amount of the reasonable return.

II. (1) If the clear profit of a licensee in any year of account is in excess of the amount of reasonable return one-third of such excess. not exceeding 7-1/2 per cent of the amount of reasonable return shall be at the disposal of the

undertaking. Of the balance of the excess, one half shall be appropriated to a reserve which shall be called the Tariffs and Dividends Control Reserve and the remaining half, shall either be distributed in the form of a proportionable rebate on the amounts collected from the sale of electricity and meter rentals 'or carried forward in the accounts of the licensee for distribution, to the consumers in future, in

(2nd column of the page-no 842)

expiry of the notice referred to in 'the first proviso to that clause

(ii) where such committee is to be constituted at the request of the licensee, be constituted within three months of the date of such request;

(c) a rating committee shall, 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 his undertaking, report to the State Government within three months from the date of its constitution, making recommendations with reasons there for, regarding the charges for electricity which the licensee may make to any class or classes of consumers so, however, that the recommendations are not likely to prevent the licensee from earning clear profit, sufficient when taken with the sums available in the Tariffs and Dividends Control Reserve to afford him a reasonable return as defined in the Sixth Schedule during his next succeeding three years of account:

Provided that the State Government may, if it go deems necessary, extend the said period of three months by a further period not exceeding three month within which the report of the rating committee may be submitted to it;

(d) within one month after the receipt of the report under clause (c), the State Government shall cause the report to be published in the Official Gazette, and may at the same time make an order in accordance therewith fixing the licensee's charges for

843

such manner as the Provincial Government may direct.

(2) The Tariffs and Dividends Control Reserve shall be available for disposal by the licensee only to the extent by which the clear profit is less than the reasonable return in any year of account.

(3) On the purchase of the undertaking under the terms of its licence any balance remaining in the Tariffs and Dividends Control Reserve shall be handed over to the purchaser and maintained as such Tariffs and Dividends Control Reserve.

(2nd column of the page-no 843)

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 the licensee shall forthwith give effect to such order;

(e) the charges for the supply of electricity fixed under clause (d) shall be in operation for such period not exceeding three years as the State Government may specify in the order

Provided that nothing in this clause shall be deemed to prevent a licensee from reducing at any time any charges so fixed.

THE SIXTH SCHEDULE

1. Notwithstanding anything contained in the Indian Electricity Act, 1910 except sub-section (2) of section 9 of 1910, 22A, and the provisions in the licence of a licensee.

the licensee shall so adjust his (charges) for the sale of electricity whether by enhancing or reducing them that his clear profit in any year of account shall not, as far as possible, exceed the amount of reasonable return

Provided that such (charges) shall not be enhanced more than once in any year of account :

Provided further that the licensee shall not be deemed to have failed so to adjust his (charges) if the clear profit in any year of account has not exceeded the amount of reasonable return by (twenty) per centum of the amount of reasonable return:

Provided further that the licensee shall not enhance the (charges) for the supply of electricity until after the expiry of a notice in writing of, not less than sixty

844

(2nd column of the page-no 844)

clear days of his intention to so enhance the (charges) given by him to the State Government and and to the Board

Provided further that if the (charges) of supply fixed in pursuance of the recommendations of a rating committee constituted under sec. 57A are lower than those notified by the licensee under and in accordance with the preceding Proviso', the licensee shall refund to the consumers the excess amount recovered by him from them :

Provided also that nothing in this Schedule shall be deemed to prevent a licensee from levying. with the previous approval of State Govt. minimum charges for supply of electricity for any purpose.

IA. The notice referred to in the third proviso to paragraph I shall be accompanied by such financial and technical data in support of the proposed enhancement of charges as the State Government may, by general or special order, specify.

II. (1) If the clear profit of a licensee in any year of account is in excess of the amount of reasonable return, one-third of such excess, not exceeding (five per cent) of the amount of reasonable return, shall be at the disposal of the undertaking. Of the balance of the excess, one-half shall be appropriated to a reserve which shall be called the Tariffs and Dividends Control Reserve and the remaining half shall either be distributed in the form of a Proportional rebate on the amounts collected from the sale of electricity and meter rentals or carried, - forward in the accounts of the licensee for distribution to the consumers in future, in such manner as the State Government may direct.

(2) The Tariffs and Dividends Control Reserve shall be available for disposal by the licensee only to the extent by which the clear

845

(2nd column of the page-no 845)

profit is less than the reasonable return in any year of account.

(3) On the purchase of the undertaking under the terms of its licence any balance remaining in the Tariffs and Dividends Control Reserve shall be handed over to the purchaser and maintained as such Tariffs and Dividends Control Reserve:

Provided that where the Undertaking is purchased by the Board or the State Government the amount of the Reserve may be deducted from the price payable to the licensee.

From an examination of these provisions it would be seen that under the Supply Act prior to its amendment in 1956, the charges fixed by the Govt. under s' 57(2)(c) remained in force unless reduced by the licensee in the meantime till the same were altered by a subsequent order made by the Govt. after getting a fresh recommendation from the rating

committee but under the law as it now stands the rate fixed by the Government under s. 57 (A)(1)(d) would be in operation only for such period not exceeding three years as the State Govt. may specify in the order. Thereafter it can be enhanced by the licensee in accordance with the provisions contained in Sch. VI. It was urged on behalf of the appellants that the present s. 57 (A) (1) (e) can only govern the charges fixed under s. 57(A)(1)(d) and it has not impact on an order made under the old s. 57(2)(c). According to the appellants the charges so fixed can only be modified by the Government after getting a report from the rating committee. Mr. Chagla, learned Counsel for the appellants contended that the consumers who 'get power from the respondent have a vested right in the charges fixed in 1952 and that vested right cannot be considered to have been taken away by the provisions of the Amending Act. He argued that the provisions of the Amending Act are not retrospective in character nor is there any inconsistency between those provisions and the present provisions as the two operate on different fields; hence in view of s. 6 of the General Clauses Act, 1897, we must hold that the charges fixed by the Government in 1952 continue to be in operation. In this connection he relied on certain observations made by this Court in State of Punjab v. Mohar Singh(") and Deep Chand v. State of U.P. & Ors. (2). On the other hand it was contended by the learned Counsel for the respondent that the rights and liabilities of the respondents at present are exclusively regulated by the provisions of the Supply

(1) [1955] S.C.R. 893.

(2) [1959] 2 Supp. S. C.R. 8.

846

Act as it stands now; the terms of licences as they originally stood or as they stood on the coming into force of the Supply Act in 1948 are of no consequence now; they cannot be looked into for finding out the rights or duties of the licensee as at present; for that purpose we must look into those terms as modified by the provisions of the Supply Act as it is now. It was also urged on its behalf that there is no question of vested rights in these cases; herein we are only concerned with the procedure to be adopted in modifying the charges fixed in 1952.

In Mohar Singh's case(1) this Court laid down that the provisions of S. 6(c), (d) and (e) of the General Clauses Act, 1897 relating to the consequences of the repeal of a law are applicable not only when an Act or Regulation is repealed simpliciter but also to a case of repeal and simultaneous enactment re-enacting all the provisions of the repealed law. In the course of its judgment this Court observed that when the repeal is followed by a fresh legislation on the same subject, the Court has undoubtedly to look into the provisions of the new Act but that only for the purpose of determining whether they indicate a different intention. The line of inquiry would be, not whether the new Act-keeps alive the old rights and liabilities but whether it manifests any intention to destroy them. In Deep Chand's case(2) this Court was considering the effect of repugnancy between a State Act and a Central Act. The observations made in that context, we think, have no bearing on the point in issue in this case. It is true that when an existing Statute or Regulation is repealed and the same is replaced by fresh Statute or Regulation unless the new Statute or Regulation specifically or by necessary implication affects rights created under the old law those rights must be held to continue in force even after the new Statute or Regulation comes into force. But in the cases

before us there is no question of affecting any vested right. There is no dispute that the charges fixed can be altered. The controversy relates to the procedure to be adopted in altering them. That controversy does not touch any vested right. The procedure in question must necessarily be regulated by the law in force at the time of the alteration of the charges.

Section 57 of the Supply Act as it stands now lays down that the provisions of Sch. VI shall be deemed to be incorporated in the licence of every licensee not being a local authority, in 'the case of a licence granted before the commencement of the Act from the date of the commencement of the licensee's next succeeding year of account. Admittedly the licence with which we are concerned in these cases was granted even before the Supply Act was enacted. Therefore quite clearly the licence in question is governed by the present S. 57. Hence we have to read into that licence the provisions contained in Sch. VI. If any of the earlier

(1) [1955] S.C.R. 893.

(2) [1959] 2 Supp. S.C.R. 8.

8 47

provisions in the licence either as they stood when the licence was originally granted or as they stood modified as per the provisions of the Supply Act prior to its amendment in 1956 are inconsistent with the provisions of Sch. VI or s. 57(A) as they are now they must be held to be void and of no effect. In other words we must read into the licence the provisions of Sch. VI and strike out therefrom such terms as are inconsistent with those provisions and thereafter give effect to the same. For determining the rights and duties of the licensee as at present we have only to look into the terms of the licence as modified by Sch. VI. We cannot go behind them. That much is clear from the language of the Supply Act. The intention of the legislature is clear and unambiguous. Therefore there is no need to call into aid any rule of statutory construction or any legal presumption. Further no reason was advanced before us, nor can we conceive of any why those who obtained licenses prior to the amendment of Supply Act in 1956 should be in a more disadvantageous-position than those who got their licenses thereafter. Correspondingly we fail to see why those who are served by licensees who obtained their licences prior to the amendment of the Supply Act in 1956 should be placed in a better position than- those served by licensees who obtained their licenses thereafter. After all, every law has some reason behind it. Section 57(A)(2)(e) was intended to meet the changing economic circumstances. The purpose behind the new provisions appears to be to permit the licensees to so adjust their charges as to get reasonable profits., But at the same time a machinery has been provided to see whether any excess charges have been levied and if levied, get the same refunded to the consumers.

The law declared by the Amending Act does not affect any, right or privilege, accrued under the repealed provision. It merely prescribes as to what could or should be done in future. Therefore there is no basis for saying that it affects vested rights. For finding out the power of the licensee to alter the charges one has to look to the terms of the licence in the light of the law as it stands- the past history of that law being wholly irrelevant. If the terms of the licence, including the deemed terms permit him to unilaterally alter the charges then he has that right. If we merely look at those terms, as we think we ought to,

then there is no dispute that the respondent was within its rights in enhancing the charges as admittedly it has followed the procedure prescribed by law. We also do not agree with Mr. Chagla in his contention that there is no inconsistency between the present scheme relating to the enhancement of charges vis a vis the scheme provided under the Supply Act prior to its amendment in 1956. The two schemes are substantially different.' Under the former scheme once the Government fixes the charges the licensee cannot alter

848

it but at present at the end of the period order the licensee has a unilateral right to accordance with the conditions prescribed fixed in the Government enhance the charges in in the VI Schedule. Therefore in view of s. 57 the provisions contained in that schedule have an over-riding effect.

In Amalgamated Electricity 'Co., Ltd. v. N. S. Bhathena and Anr.(1) this Court was called upon to consider the scope of s. 57.(A) and the Sch. VI as it stands now. Therein the controversy was whether the appellant therein was entitled' to levy charges more than the maximum charges prescribed in its licence issued in 1932. It may be noted that in that case the notice of enhancement of the charges was given on September 25, 1958. This Court held that the maximum stipulated in the licence no longer governed the right of the licensee to enhance the charges; his rights were exclusively governed by the provisions contained in paragraph 1 of Sch. VI of the Supply Act. It is true that in that case this Court was considering the right of the licensee under the Supply Act vis-a-vis his right under the licence granted under the Indian Electricity Act, 1910 but that difference is not material. What this Court in fact considered was the right of the licensee under the existing law to enhance the charges. Dealing with the scope of paragraph 1 of Sch. VI, Ayyangar, J. who spoke for the majority observed thus :

"para 1 of Sch.-VI both as it originally stood and as amended, as seen already, empowered the licensee "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 licensee 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 licensee under the Electricity Act of 1910 no longer limited the amount which a licensee 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." ,

For the reasons above, these appeals fail and they are dismissed with costs. One hearing fee.

G.C. Appeals dismissed.

(1) [1964] 7 S.C.R. 503.
849

JUDIS