THE AMALGAMATED ELECTRICITY CO. LTD.

*v.*

N.S. BHATHENA AND ANOTHER

*1964*

*March 30*

[A. K. SARKAR, K. C. DAS GUPTA AND RAJAGOPALA AYYANGAR, JJ.]

*Electricity Supply Act*, 1948 (54 *of* 1948), *ss.* 57, 57A, 70 *Sch. VI Indian Electricity Act*, 1910 (9 *of* 1910). *s.* 3 *Schedule —Electricity Rates—Enhancement—Powers of licensee—Limits of such power—Legality of rates—Jurisdiction of civil court—Burden of proof—*

The appellant company was supplying electricity under a licence issued in 1932 by the Government of Bombay under the Indian Electricity Act, 1910. The licence fixed the limits of the prices which the appellant could charge but these limits were altered by an order made by the Government on December 30, 1942, acting under para XI of the Schedule to that Act, Due to the conditions brought about by the second world war, the licensee was permitted to add a surcharge not exceeding 33-1/3 % to the existing charges. On September 30, 1946, the Bombay Electricity (Surcharge) Act, 1946, was passed which continued the surcharges for a period of three years. Though the Surcharge Act of 1946 expired on September 30, 1949, the appellant continued charging the consumers at rates which included the surcharge and this was sought to be justified by resort to the provisions of the Electricity Supply Act, 1948, which came into force on September 10, 1948. On September 25, 1958, the appellant gave notice to its customers that with effect from November 1, 1958, it would charge them at certain rates which the customers considered to be illegal and unauthorised on the ground that they were in excess of those prescribed in the order of December 30, 1942. In the suits instituted on behalf of the consumers challenging the legality of the rates levied by the appellant in excess of the maximum prescribed by the Government of Bombay in its order dated December 30, 1942, the defence of the appellant was that the charges were well within the limits prescribed by the Electricity Supply Act, 1948, which according to its contention, effected such a radical change in the method of determining the reasonable rate as to completely supersede the rates and the maxima fixed under the Electricity Act of 1910. The question was also raised as to whether having regard to the provisions contained in ss. 57 and 57A of the Act of 1948 a civil court would have jurisdiction to entertain a suit challenging the legality of the rates levied by the appellant.

*Held*—(i) The maxima prescribed by the State Government which bound the licensee under the Indian Electricity Act, 1910, no longer limited the amount which he could charge after the Electricity Supply Act, 1948, came into force and that the licensee had a statutory right to adjust his rates as provided by Part I of Sch. VI of the latter Act.

(ii) Where a party challenged the legality of the rates on the ground that they contravened the provisions contained in Sch. VI of the Act of 1948 there was no duty on the licensee to prove that the rates were within the limits indicated in Sch. VI and it was for the party alleging his right to relief to prove his case.

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*Per* Sarkar, J.—The respondents were not entitled to canvass in a civil court any question as to the rates of a licensee being in excess of the limit prescribed in para I of Sch. VI to the Act of 1948. A civil court could not declare that the rates charged by a licensee were illegal as they made its clear profit exceed the reasonable return. If there was such excess, the relief could be obtained only if the Government set up a rating committee, a refund became due thereupon under the last proviso to para I of Sch. VI or if relief was available under para II(1) of that Schedule.

*Per* Das Gupta and Rajagopala Ayyangar, JJ.—(i) There could be unilateral adjustment of the rates by a licensee but such an adjustment must not leave him with more than the reasonable return. Where the amount of reasonable return is exceeded, para II of Sch. VI comes into play and the excess over the reasonable return is to be distributed in the manner laid down in that paragraph.

(ii) In view of the machinery that is provided for complaints in the event of the licensee deriving more than a reasonable return as contemplated by Sch. VI, the failure consciously to adjust the rates by working out the details so as to reach at the same rate as was charged previously did not constitute a failure to adjust the rates as required by para I.

(iii) There being no express bar to the jurisdiction of the civil court, its jurisdiction could not be held to be excluded in respect of such matters which were not assigned by s. 57A of the Act of 1948 to the rating committee, or in regard to which the rating committee could not afford the consumer relief against an infraction of a statutory provision by which he was aggrieved.

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 590-591 of 1963—Appeals from the judgment and decree dated February 6, 1963 of the Mysore High Court in Second Appeals Nos. 471 and 472 of 1960.

*H. N. Sanyal, Solicitor-General, M. M. Gharekhan* and *I.N. Shroff*, for the appellant (in C.A. No. 590/1963).

*H. N. Sanyal, Solicitor-General, M.C. Setalvad, M.M. Gharekhan* and *I.N. Shroff*, for the appellant (in C.A. No. 591/63).

*Naraindas C Malkani, J. B. Dadachanji, O. C. Mathur* and *Ravinder Narain*, for the respondents (in both the appeals).

March 30, 1964. The judgment of DAS GUPTA and AYYANGAR JJ. was delivered by AYYANGAR J. SARKAR J. delivered a separate opinion.

*Sarkar, J.*

SARKAR, J.—The appellant is a company carrying on business as supplier of electricity in a certain area in the State of Bombay. The respondents Bhathena and Tendulkar were consumers of electrical energy supplied by the appellant. The

present appeals arise out of disputes between these consumers and the appellant concerning the legality of the charges made by the appellant for electricity supplied by it.

The supply of electrical energy is controlled by two statutes and the questions involved in the present cases will turn on them. These statutes are the Electricity Act, 1910 and the Electricity (Supply) Act 1948. I will first consider the Act of 1910. Section 3 of this Act gives power to the Government to grant a licence to a party to supply electrical energy in any specified area and to prescribe in the licence the limits of price to be charged by it for the supply. This section further provides that the provisions in the Schedule to the Act would, unless otherwise directed, be deemed to be incorporated in the licence. Paragraph XI of that Schedule states that a licensee would not be entitled to exceed the limits of price fixed in his licence. This paragraph, however, gives power to the Government to alter these limits on the recommendation of an Advisory Board appointed under s. 35 of the Act. It is not necessary to refer to the other provisions of this Act.

The appellant had been supplying electricity under a licence issued in 1932 by the Government of Bombay under the Act of 1910. The licence fixed the limits of the prices which the appellant could charge but these limits were altered by an order made by the Government on December 30, 1942 under paragraph XI of the Schedule and stood thereafter as follows:

A. For lights and fans annas -/5/- (= 31 nP.) per unit and,

B. For motive power, (i) upto 4 B.H.P. anna -/1/- (=0.06 nP.) per unit in addition to standing charge of Rs. 2/- per month per B.H.P connected. (ii) over 4 B.H.P. -/-/9 pies (=0.05 nP.) per unit in addition to the standing charge at the same rate of Rs. 2/- per B.H.P. per month.

Due to the conditions brought about by the Second World War, certain orders were made from time to time permitting the licensees to add a surcharge not exceeding 33⅓ per cent to the existing charges. Lastly, on September 30, 1946 an Act was passed by the Bombay legislature called the Bombay Electricity (Surcharge) Act, 1946, hereinafter referred to as the Surcharge Act, which continued the surcharge specified therein for a period of three years. This Act expired on September 30, 1949. It is said that even thereafter the appellant continued charging the consumers at rates which included the surcharge under the Surcharge Act, and, therefore, at rates in excess of those fixed by the Order of December 30, 1942 and that was illegal. The appellant on its part claims

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that its charges after the expiry of the Surcharge Act were all justified under the Act of 1948 the relevant provisions of which came into force on September 10, 1948. This Act will be referred to later.

The respondent Bathena commenced taking electricity from the appellant sometime in 1954. Soon thereafter he started disputes about the legality of the charges realised from him by the appellant in respect of energy supplied for purposes of motive power of over 4 B.H.P. and in 1955 filed a suit against the appellant for refund of amounts alleged to have been illegally collected from him in excess of the limits fixed by the order of December 30, 1942, namely, an excess standing charge of 0.69 nP. per B.H.P. per month over that fixed by the Order of December 30, 1942 and a similar excess unit charge of 0.01 nP. per unit. That suit is still pending and with the disputes involved in it I am not concerned in this judgment.

On September 25, 1958, the appellant gave notice to its customers that with effect from November 1, 1958 it would charge for motive power 0.09 nP. per unit plus a standing charge of Rs. 2.69 per B.H.P. per month. The unit charge mentioned in the notice was in excess of that prescribed in the order of December 30, 1942 by 0.04 nP. per unit. There is no dispute that this notice revised the unit charge existing at its date but it seems that it did not enhance the then existing standing charge. The notice gave rise to further disputes as a result of which two suits were filed against the appellant on March 31, 1959 in the court of the Civil Judge, Belgaum. The first of these suits was filed by the respondent Bathena acting for himself and all other consumers of electricity supplied by the appellant for purposes of motive power over 4 B.H.P. for the following reliefs:

> "(a) That a declaration be granted by this Hon'able Court that the standing charges of 2.69 nP. per B.H.P. per month and the excess sum of 0.04 nP. per unit of energy consumed, for motive power whether connected or otherwise, are illegal and unauthorised, inoperative and ultra vires of the Defendant company and the Plaintiff is not bound to pay the same and that the Defendant-Company have no authority to control or interfere in the supply of electric energy or its use, and that the restrictions imposed in Notice dated 25-9-58 are illegal, bad in law, and,
>
> (b) an injunction restraining the Defendant-Company, its servants, its agents or its representatives from levying and recovering the excess and illegal charges, (such as standing charges and per unit

of consumed energy at 0.04 nP.) from the plaintiff, by means of any coercive measures and from interfering or controlling with the electric supply".

The other suit was filed by the respondent Tandulkar also in a representative capacity in respect of the charge of 0.37 nP. per unit for electricity supplied for lights and fans, and it sought the following reliefs:

"(a) That a declaration be granted by this Hon'able Court that the excess sum of 0.06 nP. per unit of energy consumed for lights and fans, are illegal and unauthorised, inoperative and ultra vires of the Defendant-Company and the plaintiff is not bound to pay the same.

(b) An injunction restraining the Defendant-Company its servants, its agents or its representatives from levying and recovering the excess and illegal charges, i.e. 0.06 nP. per unit of consumed energy from the plaintiff by means of any coercive measures and from interfering or controlling with the electric supply".

Various persons were on their own applications later added as plaintiffs in these suits.

The suits were decreed by the trial Court but that decision was reversed on appeal by a District Judge. On second appeal, however, the High Court of Mysore set aside the decision of the learned District Judge and restored that of the trial Court. The present appeals are against the judgment of the High Court.

I will first take up the suit relating to the charges for motive power. To clear the ground it may be stated that this suit is not concerned with any charge made prior to the date that it was filed. As earlier stated, it asks for a declaration and an injunction. An injunction cannot of course be in respect of a past period and the declaration sought must also, therefore, be confined to the future. In any case, since the declaration is sought in respect of the charges as revised by the said notice as from November 1, 1958 it is clear that no question as to the legality of any charge made before November 1, 1958 was sought to be raised. It would have been noticed that the suit was concerned with disputes about two charges, namely, the unit charge of 0.09 nP. per unit fixed by the notice of September 25, 1958 and the standing charge of Rs. 2.69 per B.H.P. per month.

I will first consider the dispute about the unit charge. Could the appellant enhance the charge? It is not disputed that a licensee can on his own enhance his charges upto the maximum limit fixed in the licence or otherwise fixed by the Government. The dispute is as to the right to enhance them

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beyond that limit and in this judgment I will be discussing such enhancement only. It is not in controversy that under the Electricity Act of 1910 it could not do so but as already stated, the appellant bases its claim to enhance the charge on the Electricity (Supply) Act, 1948 as amended by Act 101 of 1956 with effect from December 30, 1956. It will be noticed that this amendment was in force when the revised rate came into force under the notice of September 25, 1958. The relevant provisions of this Act so amended are these:

*S.* 57. "The provisions of the Sixth Schedule and the Seventh Schedule 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 licensee's next succeeding year of account; and,

(b) in the case of a licence granted after the commencement of this Act, from the date of the commencement of suply,

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 (9 of 1910), and 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 to make recommendations in that behalf to the State Government:

* * * * *

(c) a rating committee shall ..... report to the State Government ..... making recommendations regarding the charges for electricity which the licensee may make .....

(d) within one month after the receipt of the report under clause (c), the State Government ..... may ..... make an order in accordance therewith fixing the licensee's charges for the supply of electricity ..... and the licensee shall forthwith give effect to such order".

*Sixth Schedule*

I. "Notwithstanding anything contained in the Indian Electricity Act, 1910 (9 of 1910), and the provisions in the licence of a licensee, the licensee shall so adjust his rates 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;

* * * * *

Now the first paragraph of the Sixth Schedule to the Act of 1948 clearly gives a licensee the power to adjust and therefore also to enhance his rates on his own. It, however, fixes a limit for the enhancement and that, is, so as not, as far as possible, to make his "clear profit", for the year exceed the amount of "reasonable return". The methods of determining "clear profit" and "reasonable return" are stated respectively in cls. (2) and (9) of paragraph XVII of the Schedule but it will not be necessary for me to go into their details. Now under paragraph I of the Sixth Schedule the rates can be enhanced "Notwithstanding anything contained in the Indian Electricity Act, 1910 (9 of 1910), and the provisions in the licence of a licensee". Nothing to the contrary, therefore, contained in the Act of 1910 or the licence can make the enhancement of the rates by the licensee in terms of this paragraph illegal. It would follow that the power under paragraph I of the Sixth Schedule would justify an enhancement of the rate beyond that fixed by the licence or any order of the Government. This seems to me to be perfectly plain. It will be remembered that paragraph XI of the Schedule to the Act of 1910 prohibited a licensee from charging a rate in excess of the maximum fixed by the licence. That provision, however, was repealed by Act 101 of 1956. This was obviously done because it was realised that paragraph I of the Sixth Schedule to the Act of 1948 made the prohibition in paragraph XI of the Schedule to the Act of 1910 quite ineffective. Then we have s. 70(1) of the Act of 1948 which provides that "No provision of the Indian Electricity Act, 1910 (9 of 1910), or of any rules made thereunder or of any instrument having effect by virtue of such law or rule shall, so far as it is inconsistent with any of the provisions of this Act, have any effect". This provision also supports the view that the power to

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enhance the rates given by the Act of 1948 is not in any way affected by anything in the Act of 1910 or the licence granted under it.

Learned counsel for the respondents, however, first contended that the power to enhance cannot be exercised by the licensee on its own. If, it wants an increase in its rates it has first to ask the Government under s. 57A of the Act of 1948 to constitute a rating committee. This contention appears to me to be entirely unfounded. No doubt a licensee can ask the Government to constitute a rating committee under that section and if the Government does so and fixes rates on the basis of the recommendations of that committee, the licensee would be bound by such fixation of rates. But I find nothing in s. 57A or anywhere else in the Act of 1948 to lead to the view that the licensee cannot increase his rates except after a rating committee has recommended such increase and the Government has permitted it. Such a view would largely render paragraph I of the Sixth Schedule nugatory. Nor do I think that there is any conflict between s. 57A and paragraph I as was contended by the respondents. Quite clearly s. 57A gives a licensee the power to call for the constitution of rating committee. If he does so, he does not take the risk of fixing an enhanced rate on his own with the possible consequences of having to refund part of the amounts collected under provisions to which reference will be made later. That seems to be the only reason why the licensee has been given the right to ask for the constitution of a rating committee. If he does not mind taking the risk of these consequences, I find nothing in the Act of 1948 requiring him to ask for the constitution of a rating committee before he can proceed to enhance the rates on his own.

Learned counsel for the respondents then relied on sub-s. (2) of s. 70 of the Act of 1948 which states that "Save as otherwise provided in this Act, the provisions of this Act shall be in addition to, and not in derogation of, the Indian Electricity Act, 1910". He contended that this showed that an attempt has to be made to harmonise the two Acts and, therefore, the power to enhance the rates given by the Act of 1948 must be confined to an enhancement upto the maxima limits specified in the licence granted or any order made by the Government. I am wholly unable to agree that sub-s. (2) of s. 70 of the Act of 1948 requires the two Acts to be harmonised. In fact sub-s. (1) of s. 70 of the Act of 1948 provides that when there is inconsistency between the two Acts, the earlier Act is not to have effect. There can be no question of harmonising unless there is inconsistency and sub-s. (1) says what is to happen in case of inconsistency; it is that one is to give way to the other and not that

an attempt should be made to harmonise the two. Furthermore sub-s. (2) of s. 70 of the Act of 1948 says that "Save as otherwise provided in this Act" the later Act is not to be read as in derogation of the earlier Act. When, therefore, it is otherwise provided in the Act of 1948, this Act might be read as in derogation of the Act of 1910. Now s. 57 of the Act of 1948 and paragraph I of the Sixth Schedule to it clearly provide that the provisions therein contained are to override the provisions of the earlier Act. It would thus be against the express terms of the Act of 1948 to attempt to harmonise the power to enhance the rates given to the licensee by it with any of the provisions of the licence or the Act of 1910.

Lastly, learned counsel for the respondents relied on *Babulal Chaganlal Gujerathi* v. *Chopda Electric Supply Co. Ltd.*(1) to support his contention that under paragraph I of the Sixth Schedule to the Act of 1948 a licensee had the power to enhance the rates only upto the maxima limits specified in the licence or Government's order but not beyond those limits. It was no doubt so decided in that case but then it turned on paragraph I of the Sixth Schedule as it stood before the amendment in 1956. Before the amendment, that paragraph did not contain the words "Notwithstanding anything contained in the Indian Electricity Act, 1910 (9 of 1910) and the provisions in the licence of a licensee". It sems to me plain that these words have made a material change in the provision and as it now stands, it cannot be said that the enhancement permitted must be restricted to the limit fixed in the licence or an order by the Government. The decision cited, therefore, is of no assistance in interpreting paragraph I of the Sixth Schedule as it stands after the amendment in 1956. Whether *Chhaganlal's* case(1) was correctly decided in view of the terms of paragraph I as it stood before the amendment is not a question which arises for determination in this case and on that question I express no opinion. I think that it must be held on the terms of paragraph I of the Sixth Schedule to the Act of 1948 as it stood at the time of the notice that a licensee had power to enhance the rates and such power was not limited to an enhancement up to the limits fixed by the licence or otherwise by any order of the Government.

On the question whether under paragraph I of the Sixth Schedule to the Act of 1948 a licensee could enhance his rates beyond the limits fixed by the Government or in the licence the High Court took the same view as I have done and held that the respondents could not claim any relief solely on the ground that the rates charged had exceeded those limits. The High Court, however, observed that the appellant had failed to establish that it had revised its rates

(1) I.L.R. [1955] Bom. 42.

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as provided by the Act of 1948 before its amendment in 1956 and, therefore, held that the appellant must be taken to have illegally continued the surcharge which it was levying under the Surcharge Act, 1946 even after its expiry on October 1, 1949. It is somewhat difficult to understand these observations. As I have earlier said, no question as to the legality of any charge made before the suit or at any rate, before November 1, 1958, arises in this case. Therefore, even if the appellant had not revised its charges prior to the amendment, no grievance on that account can be made on the plaint on which the present suit is based. Furthermore I do not see why the burden of proving that those charges were the charges duly revised under the Act of 1948 prior to its amendment should be upon the appellant. No issue on this question also appears to have been framed by the trial Court at all. Even the plaint does not say that what the appellant had done was to continue an illegal charge. I repeat that whether the charges made before November 1, 1958 were illegal or not, is not a question that arises for decision in these cases. Admittedly the notice of September 25, 1958, revised the unit charge and, therefore, in fact there was no continuation of an earlier illegal charge, assuming the earlier charge to have been illegal.

The High Court, however, also held that the appellant was under a statutory duty under the Act of 1948 to adjust its rates so that its clear profit did not exceed the amount of reasonable return and it had not established that it had done so after the Act was amended, nor had it proved that the enhancement mentioned in the notice of September 25, 1958 would not result in its clear profits exceeding the amount of reasonable return. Lastly, the High Court observed that "even otherwise the enhancement is the continuation of the illegal charges and that by itself is invalid". It was on these grounds that the High Court decided the cases in favour of the respondents. I am unable to agree with the High Court on any of these points.

I will take the last point first. With respect to the learned Judges of the High Court, I do not understand what exactly is meant by the enhancement being the continuation of the illegal charge. That there was a revision of the rates by the notice of September 25, 1958 is the respondent's own case in the plaint. I will assume that the revision raised the rates to the figures that were chargeable under the expired Surcharge Act of 1946. But the identity of the figures cannot by itself make the enhancement illegal if it was legal under the Act of 1948 as amended. Indeed as there was admittedly a revision there was really no continuation of a previous charge. This point must, therefore, be rejected.

The other points on which, as stated above, the High Court based itself, appear me to be equally untenable. These points are really one and that is whether the appellant has established that the revised rate fixed by the notice of September 25, 1958 would not make its clear profit exceed the amount of reasonable return. As already stated, it is admitted in the plaint that there was a revision of the unit charge by the notice. So it is not in dispute that after the amendment of paragraph I of the Sixth Schedule the appellant had revised its unit charge. I am unable to agree that the onus of establishing that the revision did not make the appellant's clear profit exceed the amount of a reasonable return should be on the appellant. I think that onus should be on the respondents because it is they who allege that "the rates mentioned by the defendant are exceeding the reasonable return". The more serious objection to this point, however, is that it does not seem to me that it is competent for a Civil Court to go into the question whether the enhanced rates are illegal because they take the clear profit beyond the amount of the reasonable return, and to give any relief on that basis. The reasons for this view will now be stated.

Paragraph I of the Sixth Schedule to the Act of 1948 no doubt prohibits the licensee from enhancing his rates beyond a figure which would make his clear profit exceed the amount of reasonable return. The Act, however, at the same time provided the consequences of a breach of the prohibition. Thus the fourth and the last proviso in paragraph I of the Sixth Schedule to the Act of 1948 states, "Provided further that if the rates of supply fixed in pursuance of the recommendations of a rating committee constituted under section 57A are lower than those notified by the licensee under and in accordance with the preceeding proviso, the licensee shall refund to the consumers the excess amount recovered by him from them". One consequence of the breach of the prohibition, therefore, is the liability to refund the difference between the enhanced rate which has to be notified under the third proviso and that fixed by the rating committee. But a rating committee may not have been constituted for it is constituted only where the licensee wants it, or the Government is entitled to constitute it under s. 57(1) of the Act of 1948. Where a rating committing is not constituted, there is no liability to refund but the provisions of paragraph II of the Schedule would then apply and this equally whether there is an enhancement of the charge under paragraph I and where there is none. That paragraph is in these terms:

> *Paragraph II.* . (1) If the clear profit of a licensee in any year of account is in excess of the amount of

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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.

This provision shows that where there was a revised rate and that rate exceeded the limit prescribed in paragraph I, a consumer might get a refund of a part of the excess but that too only at the discretion of the government. He had clearly no right to any refund even in such a case. Quite obviously if the consumer could obtain refund of the whole excess as determined by a civil court, these provisions would be completely meaningless. Equally obviously if a civil court could decide that the charge made had exceeded the limit and was, therefore, illegal, it could also direct a refund of the amount illegally realised. Therefore, it seems to me clear that the question of a breach of the terms of the first part of paragraph I of the Sixth Schedule was not intended to be canvassed in a civil court; a civil court has no power to decide that question nor can it give any relief in respect thereof. Indeed if this were not so, the consequences would be most anomalous. If the Civil Court could decide the question whether the enhanced rate resulted in the clear profit exceeding the amount of the reasonable return, then it is conceivable that different courts might come to different conclusion on different materials placed before them and the result of that would be to destroy the uniformity of rate chargeable by a licensee. Such a situation could not have been intended. Again the Act of 1948 did not give to the consumer the right to have a rating committee constituted. This was obviously because it would be impossible to work a public utility concern like an electric supply business if every consumer could get a rating committee to go into the question of rates. There may then be a continuous succession of rating committees and there would be no fixity of the rates chargeable. The convenience of all had to be kept in mind. Power was hence given only to the Government to take steps when a licensee committeed a breach of its obligations. Therefore, in my opinion, the High Court was in error in holding that the appellant should have shown that the enhancement did not result in its clear profit exceeding the amount of reasonable return and in deciding in favour of the

respondents on that basis. I hold that the respondents were not entitled to canvass in a Civil Court any question as to the rates of a licensee being in excess of the limit prescribed in paragraph I of the Sixth Schedule to the Act of 1948. A Civil Court could not declare that the rates charged by a licensee were illegal as they made its clear profit exceed the reasonable return. If there was such excess, the relief could be obtained only if the Government set up a rating committee, a refund became due thereupon under the last proviso to paragraph I of the Sixth Schedule to the Act of 1948 or if relief was available under paragraph II (1) of that Schedule.

Then it was said that the revision by the notice of September 25, 1958 was bad in any case because under the third proviso to paragraph I in the Sixth Schedule there could be no revision of rates under that paragraph unless a notice in writing of the intention to enhance was given by the licensee to the Government or to the State Electricity Board and no such notice was in fact given. That proviso no doubt requires a notice to be given but the contention is none the less clearly without foundation for, as I shall immediately show such a notice was in fact given. Now Ex. 62 is a copy of a letter received by the appellant from the Secretary of the State Electricity Board and it refers to a letter "No. AMAL/BEL/C-2, dated 7-8-1958" written by the appellant to the Board and the letter last mentioned, which is Ex. 60, is the notice by the appellant to the Board expressing its intention to revise the rates. It is quite clear, therefore, that notice had been given to the Board of the proposed enhancement. This point it may be stated does not seem to have been taken in the High Court.

It was also said that the notice was bad as it did not state that the standing charge was being increased from Rs. 2/- to Rs. 2.69 per B.H.P. per month. This again is an unfounded contention for the standing charge had not been increased by the notice at all. Indeed the plaint itself in paragraph 5 states that prior to November 1, 1958 the appellant had been levying standing charges at the rate of Rs. 2.69. So there was no enhancement of this charge by the notice and, hence no question of giving any notice of any enhancement of the standing charge arises.

Lastly, it was said that in the notice to the consumers it was stated that the power supply would be restricted between certain hours but the notice to the Government did not mention this restriction in the supply. The notice to the consumers no doubt stated that the revised unit charge would be in respect of restricted hours of supply but that does not make the contention of any substance. There was nothing in the notice to show that the supply would be restricted. Further

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it is neither alleged in the plaint nor does it appear from anything on the record, that there was in fact any restriction in the supply. That being so, the failure to give notice to the Government of the restriction in the supply is wholly immaterial. I have not, further been shown any provision under which notice to the Government of a restriction in the supply of electricity is necessary. It is certainly not required by anything in paragraph I in the Sixth Schedule to the Act of 1948.

I am, therefore, of the opinion that there is no reason to hold that the appellant was not entitled to levy the charge mentioned in its notice of September 25, 1948.

I come now to the standing charge of Rs. 2.69 per B.H.P. per month. As in the case of the other charge and for the same reasons, I am not concerned with any question as to its legality in respect of any period prior to the suit. It has to be remembered that there is no complaint that this rate had been increased by the notice. Lastly, as already stated, a Civil Court cannot go into the question whether a charge is illegal inasmuch as it has been revised to an amount exceeding the limit mentioned in paragraph I of the Sixth Schedule to the Act of 1948. The only ground on which this charge is questioned is put in paragraph 23 of the plaint in these words: "any standing charges along with the usual Unit Charges is against equity and law, it being double charge for the industry to pay for the enrichment of the defendants"; the legality of the standing charge is not challenged on any other ground. Now where a charge is permitted by a statute no question of its being inequitable can be raised in a Court of law, neither can the question whether the charge is in excess of the limit justified by the statute be canvassed in such a Court. Therefore, the respondents cannot in these cases challenge the legality of the standing charge.

What I have said so far disposes of the appeal in the suit concerning the rates charged for the supply of motive power. That appeal must, therefore, be allowed.

The appeal in the suit with regard to the charges for light and fans can be disposed of substantially on the grounds earlier discussed. The High Court also placed its decision in respect of this matter on the same ground on which it had disposed of the other matter. The only point made in this case is that the appellant had been wrongfully charging a rate in excess of the limit fixed by the order of December 30, 1942 by 0.06 nP. per unit. On this basis a declaration that the excess charge was illegal was sought and also an injunction restraining the appellant from levying it. It will be observed that in this case there was no notice given by the appellant of any increase in the charge. No question of the charge being illegal by reason of any enhancement, therefore, arises. The only complaint is

that the charge is illegal as it is in excess of the limit fixed by the Government. As I have said, under paragraphs I and II of the Sixth Schedule to the Act of 1948 a licensee can charge any amount so that his clear profit does not exceed his reasonable return and if he exceeds the limit he only exposes himself to the consequences mentioned in them and a consumer cannot go to a court of law for relief on the ground that the licensee had exceeded this limit. Therefore, the respondent cannot ask for any relief in a civil court on the basis that the appellant had exceeded the limit. As in the other case, in this case also I am not concerned with the legality of any charge made prior to the date of the suit; the only question is the legality of the charge made since March 31, 1959. That question has to be decided under the Act of 1948 as amended in 1956. It follows that in this case also the respondents can get no assistance from the decision in *Babulal Chhaganlal*(1) even if that case was rightly decided. I, therefore, think that this appeal also succeeds.

In the result I would allow both the appeals with costs throughout.

*Ayyangar, J.*

AYYANGAR, J.—These two appeals which come before us by virtue of special leave granted by this Court are against a common judgment of the High Court of Mysore in two Second Appeals preferred to it by the respective respondents in the two appeals. They raise for consideration a question of the legality of certain rates charged by the Appellant—company for the supply of electricity to the respondents for power and for light and fans respectively.

The Appellant-company is a licensee who is engaged in the business of supplying electricity in the town of Belgaum and other places. A licence for the supply of electricity in the town of Belgaum was granted in 1932 to two persons B. S. Ankle and A.S. Ankle. These two assigned their licence to a concern by name the Belgaum Electricity Co. Ltd. and by a further assignment by these assignees, the licence came to be owned by the Appellant who are now effecting the distribution and supply of electricity in Belgaum. The original licence was granted by the Government of Bombay under s. 3 of the Indian Electricity Act of 1910 (Act IX of 1910) which we shall hereafter refer to as the "Electricity Act, 1910" to whose provisions some reference would be necessary to be made later. Broadly speaking, under the provisions of this enactment the maximum and minimum rates which a licensee might charge its consumers were fixed by Government and licensees were afforded freedom to fix the rates to be actually charged within these limits. Under the powers so vested in them in that behalf the Government of

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Bombay within whose jurisdiction Belgaum then was, passed an order on December 30, 1942 fixing the maximum rates which could be charged by licensees for supply to consumers and these rates which applied to the Appellant were to be effective from February 1, 1943. The maximum rates for the supply of energy under the licence were, under this order, to be (1) where the energy was supplied for lights and fans 5 annas per unit; (2) where energy was supplied for power purposes i.e., for purpose other than lights and fans the maximum rate was to be (a) upto and including 4 B.H.P. one anna per unit in addition to a standing charge of Rs. 2/- per month per B.H.P. connected, and (b) for over 4 B.H.P. rate was 0.75 annas unit in addition to a standing charge of Rs. 2/- per month per B.H.P. connected. Thereafter charges at the maximum permitted rate were levied and collected by the Appellant. While so, on March, 11, 1943 a notification was issued by the Government of Bombay in exercise of powers conferred by rule 81(2)(b) of the Defence of India Rules by which relaxation was made as regards the maximum rates for the supply of electrical energy chargeable by a licensee under the Electricity Act. Such licensees were permitted to charge amounts not exceeding $33\frac{1}{3}$ per cent over the permitted maximum rates. Later this surcharge under the Defence of India Rules fixed by the notification of 1943, was withdrawn and simultaneously what is known as "War Costs Surcharge" was permitted to be levied, but it did not make any practical difference as the permitted increases over the maximum was identical. The War Costs Surcharge was continued up to the year 1946 when the Government of Bombay enacted a statute entitled the Bombay Electricity (Surcharge) Act of 1946 which came into force on September 30, 1946. It was a temporary enactment which under sub-s.(4) of s. 1 was to be in force for a period of three years only so that it lapsed on October 1, 1949. The Provincial Government was under s. 3 of that Act empowered to fix rates of surcharge and under s. 5 of that Act the existing surcharge viz., the War Cost Surcharge were to be deemed surcharges fixed under s. 3. As a result of this piece of legislation the position that emerged was that though the original licence issued under the Electricity Act, 1910 which empowered the Government to fix the maximum of the rates that could be charged by licensees for the supply of energy was determined by the order dated December 30, 1942, still practically almost from the commencement of the operation of that order a $33\frac{1}{3}$ per cent. surcharge was permitted to be levied by the licensees over the permitted maximum charge and this state of things continued until October 1, 1949.

Notwithstanding the lapse of the Act of 1946 the Appellant has continued to demand and collect practically the same charges for the supply of energy as it had done during the

period when it was in force, with a slight variation by way of increase in regard to the supply of power to which we shall immediately advert. In the case of supply for power, while the standing charges are being levied at the maximum permitted by the notification of December 30, 1942, with the addition of the surcharge, the unit charge has been increased even beyond this figure by resort to the provisions of the Electricity Supply Act, 1948 (Central Act 54 of 1948) which it will be convenient to refer to as the Supply Act. The legality of the continuance of the surcharge in regard to the standing charge from and after 1st October, 1949 and of the increase in the unit rate even beyond it are challenged in the suit which has given rise to Civil Appeal 590 of 1963. In the case of the charge for the supply of energy for lights and fans there has been no change since the 30th September 1949, but the maximum as increased by 33⅓ per cent still continues and it is the legality of this continuance of the surcharge that is impugned in Civil Appeal No. 591 of 1963. The levy or the rates impugned is in every case justified by the Appellant by reference to the terms of the Supply Act to the relevant provisions of which we shall have to make detailed reference later.

Pausing here, we might advert to the fact that the Supply Act was enacted to provide "for the rationalisation of the purchase and supply of electricity and generally for taking measures conducive to the electrical development". The Act came into force from September 10, 1948. The principal question that arises for decision in these appeals relates to the effect of the Supply Act, 1948 and the provisions that it contains on the rates to be charged by licensees which had been fixed under the Electricity Act, 1910—a matter which we shall examine in its proper place. We might even at this stage refer to s. 70 of the Supply Act which enacts:—

> "(1) No provision of the Indian Electricity Act, 1910, or of any rules made thereunder or of any instrument having effect by virtue of such law or rule shall, so far as it is inconsistent with any of the provisions of this Act, have any effect;
>
> Provided that nothing in this Act shall be deemed to prevent the State Government from granting, after consultation with the Board, a licence not inconsistent with the provisions of the Indian Electricity Act, 1910, to any person in respect of such area and on such terms and conditions as the State Government may think fit.
>
> (2) Save as otherwise provided in this Act, the provisions of this Act shall be in addition to, and not in derogation of, the Indian Electricity Act, 1910."

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We are drawing attention to this provision to indicate the inter-relation between the two Acts—the Electricity Act, 1910 and the Supply Act, 1948.

We shall now briefly narrate the course of the proceedings which have led to the present appeals. Two suits were filed by consumers of electrical energy in Belgaum receiving their supplies from the Appellant in the court of Civil Judge, Belgaum, both being representative suits under O.I.r.8 of the Civil Procedure Code. The first suit no. 133 of 1959 was in relation to the supply of energy for power. In the plaint it was pointed out that before November 1, 1958 the Appellant was charging the plaintiffs Rs. 2/11/- per B.H. Power per month as standing charges plus one anna per unit of energy consumed. It was stated that the Appellant had by a notice to the consumers dated September 25, 1958 whose terms were set out, proposed to raise from and after November 1, 1958 the unit charge from one anna per unit to 1½ anna or 9 naye paise per unit. It recited that the plaintiffs had protested and addressed letters to the Government of Mysore, (Belgaum having been made part of this State by the State Reorganisation Act) but without any result. Reference was made to the circumstance that the Appellant justified the increase with reference to the provisions of the Supply Act, particularly after the same was amended by Central Act 101 of 1956. The material averment on the basis of which relief was claimed in the plaint was that the revision effected by the notice of September 25, 1958 was illegal because it exceeded the maximum prescribed by the Government of Bombay in its order dated December 30, 1942 which, it was stated, still bound the Appellant. The plaintiffs, therefore, sought a declaration that any increase beyond the rates fixed by the notification of the year 1942 was illegal and sought a declaration (a) that the standing charge was illegal to the extent of the excess of 0.69 nP. per B.H.P. over the 2 rupees and the increase by 4 naye paise per unit of energy consumed was also illegal and prayed for an injunction restraining the Appellant from levying or collecting these illegal and excess charges.

The other suit in relation to supply of energy for lights and fans was no. 135 of 1959. That plaint pointed out that under the order of Government of Bombay dated December 30, 1942 the Appellant could charge only 5 annas per unit or decimal coinage 31 nP. and taking advantage of the surcharges that were permitted during the war period and subsequently under the Bombay Electricity (Surcharge) Act, 1946 it had been charging 6 annas per unit, and after the decimal coinage came into force 37 nP. The main point that was urged in the plaint was that on the lapse of the Bombay Electricity (Surcharge) Act, 1956 on September 30, 1959 the right of the Appellan to charge anyhting above 31 nP. ceased but that notwith-

standing this want of legal sanction it had continued to levy the same rates even afterwards. On this basis a prayer was made seeking a declaration about the invalidity of any charge beyond 31 nP. per unit and an injunction restraining the Appellant from charging this illegal excess.

The defence of the Appellant was based on the provisions contained in the Supply Act of 1948, the contention being that the charges they continued to levy or which they intended to levy by virtue of the notice of September 25, 1958, were well within the limits prescribed by the Supply Act of 1948 and consequently the plaintiffs in neither suit were entitled to any relief.

The learned trial Judge held on an examination of the provisions of the two Acts—the Electricity Act and the Supply Act—and their schedules that even after the coming into force of the Supply Act the maximum limit of charge fixed by Government under the Electricity Act of 1910 continued to govern the maximum rate that could be charged and as admittedly the rates charged or threatened to be charged by the Appellant were in excess of those rates, it granted to the plaintiffs in each suit the declaration and injunction they sought.

The Appellant thereupon filed appeals to the learned District Judge and contended that the Supply Act of 1948 effected such a radical change in the method of determining the reasonable rate as to completely supersede the rates and the maxima fixed under the Electricity Act of 1910. This contention was accepted by the Appellate Court and the appeals were allowed and the suits directed to be dismissed. The plaintiffs thereafter filed second appeals to the High Court. The learned Single Judge of the Mysore High Court who heard the appeals accepted in part the submission made by the Appellant that the maxima prescribed by the Government under the powers vested in them by the Electricity Act of 1910 ceased to be in force on the enactment of the Supply Act. He nevertheless held that the procedure prescribed for the fixing of rates to be charged by the licensees by the Supply Act of 1948 had not been followed by the Appellant with the result that it could not sustain the contention that the charges levied or to be levied were legal. On this reasoning the learned Judge allowed the appeals and restored the decrees of the trial Court in the two suits. It is from these judgments of the High Court that the present appeals have been brought by special leave of this Court.

Before setting out the arguments addressed to us on behalf of the Appellant and to appreciate them it is necessary to read the statutory provisions which bear upon the controversy in the appeal. The Appellant was, as stated earlier, the transferee of a licence granted under the Electricity Act, 1910. Section 3 of

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this Act enables the State Government, on application made to it, to grant to any person a licence to supply energy in any specified area. Under sub-s.(2) of that section "the provisions which shall have effect on licences granted under the Act" are set out and of these those relevant for our purpose are those contained in cl. (d) and cl. (f) which read:—

"(d) a license 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 be limits of price to be charged in respect of the supply of energy, and generally as to such matters as the State Government may think fit. ....."

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

(the clause contains a proviso which is omitted as immaterial).

Section 23 requires the licensee not to show undue preference to any person and enacts that "save as aforesaid, *make such charges for the supply of energy* as may be agreed upon, *not exceeding the limits imposed by his license*".

In the schedule that is referred to in s.3(2)(f) which is headed "Provisions to be deemed to be incorporated with, and to form part of, every license granted under Part II, so far as not added to, varied or excepted by the license", Paragraph XI which is the one material for our purpose reads:

"Save as provided by clause IX, sub-clause (3) (a saving not now relevant) the prices charged by the licensee for energy supplied by him shall not exceed the maxima fixed by his license, or, in the case of a method of charge approved by the State Government, such maxima as the State Government shall fix on approving the method."

It was in exercise of the powers conferred by the State Government under s.3(2) of this Act that the notification dated December 30, 1942 to which reference has already been made was issued and under it the charges for supply were fixed.

While narrating the facts we have already set out the maximum rate which was fixed as that which could be levied by licensees under the Act both for the supply of energy for power as well as for lights and fans. This notification came into force on and was effective from February 1, 1943. We have already seen how by virtue first of the notification under the Defence of India Rules and later under the War costs Surcharge and still later under the Bombay Act of 1946, the maximum was raised by 33⅓ per cent. of that specified in the notification of December 30, 1942 and how these rates continued to be validly charged by the Appellant till September 30, 1949 when the Bombay Act of 1946 lapsed.

The question that now falls to be considered is as regards the legality of the continuance of this rate beyond the maximum prescribed by the notification of December 30, 1942 subsequent to September 30, 1949. For this purpose, it is necessary to refer to the Supply of 1948 and it is on the proper construction of its provisions and their effect on the limitations prescribed by the previous law on the rates to be charged that the decision of these appeals turns. Reference has already been made to s. 70 of the Supply Act, 1948 and this provision would show that where there is any inconsistency between the two Acts, the Supply Act, 1948 would prevail and it is only to the extent that the two enactments do not cover the same field that the provisions of the Electricity Act, 1910 would continue in operation. Coming now to the provision relating to the fixation of the rates to be charged by a licensee for the supply of energy the relevant provisions of the supply Act dealing with it are those contained in ss.57 and 57A and read with Sch. VI to the Act.

Pausing here it is necessary to mention that some of the provisions of the Supply Act of 1948 were amended by Central Act 101 of 1956 and among them was s. 57. Section 57, as originally enacted, contained substantially the same provisions as are after amendment contained in s. 57 and 57A, and as thus there has been no material change effected by the Amendment for the purposes of the present appeal, we shall set out ss. 57 and 57A which were in force when the present proceedings were commenced:—

> "57. The provisions of the Sixth Schedule and the Seventh Schedule 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 or the commencement of the licensee's next succeeding year of account; and

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(b) in the case of a licence 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 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."

"57A. (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 to make recommendations in that behalf to the State Government.

Provided that where it is proposed to constitute a rating committee under this section on account of the 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 his consumers;

(b) .....

(c) .....

(d) within one month after the receipt of the report under clause (e), 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 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 the licensee shall forthwith give effect to such order;

(e) ....."

(The other sub-sections (2) to (8) are not material and so are omitted).

Schedule VI referred to in ss.57 and 57A has undergone modification as a result of the amendment effected by Act 101 of 1956 and some argument has turned on these changes. We shall set out para I and also para II of this Schedule as they stood when originally enacted and as they now read. As enacted the first two paragraphs ran:

"I. 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 the 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 7½ per

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

(3) On the purchase of the undertaking under the terms of its license 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."

These paragraphs were amended in 1956 to read:—

"I. Notwithstanding anything contained in the Indian Electricity Act, 1910, except sub-section (2) of section 32A, and the provisions in the licence of a licensee, the licensee shall so adjust his rates 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 reasonabe return:

Provided that such rates 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 rates if the clear profit in any year of account has not exceeded the amount of reasonable return by fifteen per centum of the amount of reasonable return:

Provided further that the licensee shall not enhance the rates for the supply of electricity until after the expiry of a notice in writing of not less than sixty clear days of his intention to so enhance the rates, given by him to the State Government and to the Board:

Provided further that if the rates of supply fixed in pursuance of the recommendations of a rating committee constituted under section 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.

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 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."

Paragraph 17 of this Schedule contains the definitions and among the terms there defined is 'clear profit'—an expression used in paragraphs I & II. As nothing material turns on the manner in which the 'clear profit' is to be computed which is described in para 17 we do not think it necessary to refer to the details contained there.

The questions raised before us are principally three: (1) The effect of the Supply Act, 1948 on the maxima of rates fixed by Government under s. 3(2) of the Electricity Act, 1910 which could be charged by a licensee. The submission of the appellant which was accepted by the High Court but which was contested by the respondents before us was that any changes that might be effected by a licensee acting under the provisions under s.57 of the Supply Act read with paragraph 1 of Sch. VI in revising his rates so as to derive the reasonable return permitted by these provisions, had still to be within the maxima prescribed by Government under the Electricity Act of 1910; (2) The next point was that assuming that the Appellant was right on point no. 1, whether the charges demanded by the appellant-company from the respondents were legal and

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justified by the Supply Act. It is on this point that the learned Single Judge in the High Court has upheld the contention urged by the respondent; (3) Closely related to the 2nd point, the limits of the jurisdiction of a Civil Court to afford relief to consumers who complained of excessive charges being demanded by licensees.

So far as the 1st point is concerned viz., whether the maxima prescribed by Government under the Electricity Act, 1910 still continues to bind the licensee 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. Section 57 of the Supply Act, 1948—both as originally enacted and as amended in 1956 expressly provide that the provisions of the VIth Schedule shall be deemed to be incorporated in the license of every licensee 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 licensee 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 s.70 of the Supply Act it would follow that if any restriction incorporated in the licence granted under the Electricity Act, 1910 is inconsistent with the rate which a licensee might charge under para I of Sch. VI of the Supply Act, 1948, the former would, to that extent, be superseded and the latter would prevail.

Para I 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. In support of the submission that notwithstanding the Supply Act the maxima fixed by the State Government was still binding on the licensee and that any adjustment within 1st 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 *Babulal* v. *Chopda Electricity Supply Co.*(1) It is sufficient to extract the headnote to understand the point of the decision:

> "Section 57(1) of the Electricity (Supply) Act, 1948, or cl. 1 of the Sixth Schedule to the Act, does not confer a right upon a licensee unilaterally to alter the terms and conditions on which supply may be made by a licensee 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 s. 57(1) of the Electricity (Supply) Act, 1948, impose an obligation upon the licensee 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 s.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 s.3(2)(d) or in s. 21(2) of that Act or the rates and methods of charging the same as fixed by the licence. The provision contained in s.3(2)(d) of the 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 Eectricity (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 licensee under paragraph I of the VIth 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 effected by Act 101 of 1956 to the VIth Schedule where the opening paragraph commences with the words 'notwithstanding anything

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contained in the Indian Electricity Act and the provisions in the licence of a licensee'. We, therefore, consider that the first submission of learned Counsel for the Appellant that the limit imposed by the maxima prescribed by the State Government ceased to be in force after the Supply Act of 1948 came into force is well-founded.

The next question for consideration is whether the action of the appellant-company in continuing to charge the rates that it was permitted to charge by virtue of the War Cost (Surcharge) Rules and the Bombay Electricity (Surcharge) Act, 1946 i.e., by making an addition of 33⅓ per cent. to the maxima which he was permitted by the notification dated December 30, 1942 is lawful. This would have a vital bearing on the point involved in Civil Appeal 591 of 1963 which relates to the unit charge for light and fans for domestic consumption as well as on the legality of the standing charges for the supply of power which is raised in Civil Appeal 590 of 1963. It would be recalled that in these cases the Appellant has merely continued the charges that it was making before September 30, 1949 even after that date, there being no variation in the rates charged. On October 1, 1949 the position was this. The Bombay Act of 1946 having lapsed by efflux of time, the previous charge which was 33⅓ per cent. in excess of the maxima permitted could not be continued unless recourse was had to the provisions of paragraph I of Sch. VI of the Supply Act of 1948. It was not suggested that on or before that day there was any conscious act on the part of the Appellant to determine (a) the "clear profit" on the basis formulated in Sch. VI and (b) an adjustment of its rates so as not to exceed the amount of the reasonable return permitted by paragraph I of that Schedule. In this connection there was some debate in the courts below as to the date the Appellant's license came to be governed by the provisions of s. 57(1) and the VIth Schedule. Section 57(a) fixes the period from which licenses previously in existence would be governed by Sch. VI as "the commencement of the licensee's next succeeding year of account". The controversy was as to the period which would be the date of the commencement of the Appellant's "next succeeding year of account". Two possible interpretations were suggested of this provision: (1) As the year of account of the Appellant was the financial year it was contended on behalf of the respondents that the Act became applicable to it from April 1, 1949 onwards, the contention on the side of the Appellant being that it became applicable only on April 1, 1950; but for the purposes of the cases before us it makes little difference, because assuming that s. 57 and the Supply Act 1948 became applicable to the Appellant from April 1, 1950 onwards, still the same question would arise as to whether at the commencement

of that year the requirements of paragraph 1 of the VIth Schedule had been complied with.

The material words of paragraph 1 of the VIth Schedule are "The licensee shall so adjust his rates". The normal interpretation of these words would imply that there should be a conscious act on the part of the licensee, for the Act and the Schedule for the first time specified the criteria for determining the maximum profit that shall be made by a company and gave elaborate calculations as to how the 'clear profit' and the reasonable return' were to be computed and determined. It is, however, possible to read the paragraph as meaning that it was only in those cases where either an increase or a decrease of the charge was necessary in order to ensure (a) that a licensee obtained a reasonable return or that the profit that he made exceeded or fell below the amount of reasonable return that the rates had to be modified. In other words, where no change is needed, it might be presumed that no adjustment was needed. In view of the machinery that is provided for complaints in the event of the licensee deriving more than a reasonable return as contemplated by the VIth Schedule we consider that the failure consciously to adjust the rates by working out the details so as to reach at the same rate as was charged previously does not constitute a failure "to adjust the rates" as required by paragraph 1.

This leads us to the further questions (1) as to whether assuming that the rates had been adjusted by the licensee as required by paragraph 1 and the licensee is charging the rates so adjusted whether the rates now charged (a) for lights and fans, and (b) as standing charges for the supply of motive power, could be successfully impugned as not conforming to the requirements of the VIth Schedule, (2) and closely related to this, and that is the third question we have specified earlier, whether having regard to the provisions contained in ss. 57 and 57A of the Supply Act, a Civil Court would have jurisdiction to entertain a suit for the reliefs claimed in the present plaints.

Taking up, first, the question of lights and fans (and the standing charges for the supply of power would be governed by similar considerations) the position would be that the Appellant must be deemed to have adjusted his rates under paragraph 1 of the VIth Schedule when after the lapse of the Bombay Act of 1946 it continued to levy the same charges. When in 1949 or 1950 it is deemed to have made this adjustment paragraph 1 which empowered it to make this adjustment contained a proviso which we shall recall:

> "Provided that the licensee shall not be considered to have failed so to adjust his rates if the clear profit

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in any year of account has not exceeded by more than 30 per cent of the amount of the reasonable return".

The proviso, no doubt, uses a double negative "*not* be considered *to have failed*" but expressed in positive terms it would mean that where the licensee adjusted his rates so that his clear profit exceeds by more than 30 per cent the reasonable return to which it was entitled, it could not be said to have adjusted his rates. In other words, such an adjustment would not be an adjustment at all as is contemplated by paragraph 1. Paragraph 2 of the VIth Schedule proceeds on the basis that there is an adjustment within paragraph 1; in other words, that the rate charged would yield to the licensee a clear profit which would not exceed the reasonable return by more than 30 per cent. It is only on that basis that the percentages specified in paragraph 2 could be properly appreciated, for it proceeds to take the excess over the reasonable return, divide it by 3 and of that ⅓rd allot a proportion not exceeding 7½ per cent. over to the licensee himself. Of the balance half is to be appropriated to the Tariffs and Dividend Control Reserve and the other half is directed to be given to the consumers by granting them proportional rebates. From the percentage named in para II read in conjunction with the absolute prohibition against a rate which would yield more than 30 per cent. over the reasonable return it appears to us that the lawfully adjusted rate contemplated by paragraph 1 is one where the amount of clear profit does not exceed the "reasonable return" by more than the maximum specified i.e., 30 per cent. The other paragraphs of the VIth Schedule deal with the creation and disposal of certain funds and reserves to which it is not necessary to refer.

We thus reach the position that there could be a unilateral adjustment of the rates by a licensee but that such an adjustment must not leave him with more than the reasonable return plus another 30 per cent, this being an absolute limitation on the power to "adjust". Where the amount of "reasonable return" is exceeded paragraph 2 comes into play and the excess over the reasonable return is distributed in the manner laid down in that paragraph.

We have next to consider that effect of the amendment to para 1 of the VIth Schedule brought about by Central Act 101 of 1956 by which the maximum rate permitted to a licensee became reduced from one which yielded him not more than 30 per cent. beyond the "reasonable return" to one which yielded him not more than 15 per cent. The result of this would obviously be that there should have been a further

adjustment by licensees so as to conform to the revised pattern. Here again, the question would arise whether there should be a conscious readjustment. Applying the rule of construction we have explained earlier in relation to "adjustment" in 1949 or 1950 it would be seen that if the rate previously charged yielded a profit over the "reasonable return" of 15 per cent. or less there need be no readjustment and if the rate charged yields more than this permitted profit there should be a readjustment. The result would, therefore, be that unless it is established that the rate charged by the Appellant for lights and fans and for the standing monthly charge for supply of power resulted in a profit to it of more than 15 per cent. over the "reasonable return", the Appellant would be held to have properly adjusted these rates in conformity with the requirements of the relevant provisions of the Supply Act as amended by Act 101 of 1956.

We shall, when dealing with the question relating to the jurisdiction of a Civil Court to entertain suits relating to infractions by licensees of their obligations under Para 1 of the VIth Schedule which is the last of the matters debated before us, also examine the question as to the party on whom the burden of proof would lie to establish that the adjustment which is made or which could be deemed to be made by a licensee by the continuance of a pre-existing rate contravenes the statutory provisions.

Coming next to the unit charge for supply for power, the impugned rate was that which had been stepped up from that which had been continued from before September 1949, by action taken in compliance with the 3rd proviso to paragraph 1 of Sch. VI as amended by Act 101 of 1956. The licensee notified to the consumers on September 25, 1958 his intention to enhance the unit rate for the supply of power. Previous thereto in terms of that proviso a notice in writing had been issued to the State Government intimating its intention to enhance the rate, and thereafter the consumers were notified of this increase in rates. It would be seen that the 3rd proviso to para 1 requires a notice to the State Government of the intention of the licensee to enhance the rates. On August 7, 1958 the Appellant intimated the Government of Mysore setting out the clear profit it had made in 1957-58 and the estimated working position in 1958-59 and its intention to increase the unit rate for supply of power from 6 nP. to 9 nP. unit. Thereafter, on September 25, 1958, it notified the consumers that on and after November 1, 1958 it would be charging the enhanced unit rate together with the previously existing standing charges of Rs. 2.69 per B.H.P. per month. The only point that was suggested as invalidating the notice to the Government was that the Government were not informed that the licensee was effecting an

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enhancement of the rates as regards the standing charges and that the notice was, therefore, bad. We do not consider that there is any substance in this objection. Rs. 2.69 was the charge which had been made prior to the notice as standing charges and if, as we have held, that was the rate which must be deemed to have been adjusted and which the appellant was entitled to charge when Sch. VI as it originally stood, the continuance of the same charge after the amendment of the Schedule would not make it an enhancement.

There is however one circumstance to which it is necessary to advert. As already stated, the rate charged prior to the Supply Act, 1948 and which was continued thereafter would be a lawful rate only if the profit that it left to the licensee was less than 30% over the reasonable return. This was the position when the Supply Act, 1948 came into force. By reason of the amendment effect by Act 101 of 1956 the percentage of permissible profit was reduced to 15% and so the adjusted rate would be valid if it was within this permissible limit. Unless the adjusted rate prior to the amendment of 1956 was in excess of 15 per cent permitted by the 1st proviso to paragraph 1 the continuance of such rate could not be objected to as an enhancement or as a violation of paragraph 1 of the VIth Schedule. The question as to the burden of proof as regards this requirement and whether the same has been discharged in these cases we shall reserve for later consideration. Subject to this so far as regards the unit charge, the requirement of the third proviso to paragraph 1 was complied with. There was thus no illegality or invalidity attaching to the notice to the Government issued under proviso 3 to paragraph 1 and the contention raised in that behalf by the respondents must be rejected.

The question next to be examined is as to the jurisdiction of the Civil Court to entertain the suits from which these appeals arise for the reliefs prayed for therein. Section 57 of the Supply Act, 1948 which incorporates the VIth Schedule in the licence of every licensee lays an obligation on the licensee to comply with the provisions of the said Schedule. Then comes S. 57-A under which where the Board or the State Government, where there is no Board, "if satisfied that the licensee has failed to comply with any of the provisions of the VIth Schedule and shall when so requested by the licensee in writing, constitute a Rating Committee". It is unnecessary to refer to the provisions relating to the procedure to be followed by the Rating Committee but it is sufficient to recall that the Rating Committee is empowered to fix the rates to be charged by licensees and the duty is cast on the Rating Committee to recommend a rate which would ensure to the licensee a clear profit sufficient to afford it a reasonable return as defined in the VIth Schedule during the

next three years of account. The provisions in s. 57-A have to be read in conjunction with the last proviso to paragraph 1 of the VIth Schedule under which where the rates are fixed in pursuance of the recommendations of the Rating Committee and they are lower than those adjusted by the licensee under the Schedule, the licensee is directed to refund to the consumers the excess amount recovered by him from them.

The argument of the learned Solicitor-General was that as the Supply Act had by s. 57A made special provision and created a special machinery for the determination of a proper rate to be charged by a licensee on its consumers, a suit in a civil court by the consumer for obtaining the same relief was impliedly barred. The procedure prescribed by s. 57A was (1) where a consumer complained that a rate charged was excessively high he should first approach the Board or where there was no Board, the State Government, (2) the Board or the State Government should, on considering the complaint, be prima facie satisfied about the reasonableness of the complaint and it was in their discretion to appoint a Rating Committee, (3) if the Board or the State Government decided that it was not necessary to appoint a Rating Committee there was an end of the matter. If, however, a committee was appointed the Rating Committee would take evidence and, applying the provisions of the Act and the Schedules, would arrive at a rate which would yield the licensee an amount not less than the reasonable return that is provided for him under the Act. It was submitted that this procedure was wholly incompatible with the continued existence of the jurisdiction of the civil court to determine any question as to whether a licensee had failed to comply with the requirements of Sch. VI and in particular as to the reasonableness of the rate to be charged. Besides, attention was also drawn to the last proviso to paragraph 1 of the VIth Schedule under which provision is made for refund to consumers in cases where an excess amount is collected from them beyond what was fixed as a reasonable rate by the Rating Committee.

It is undoubted that these provisions have laid down a specific procedure for violations by the licensee of the requirements of Sch. VI. There being no express bar to the jurisdiction of the Rating Committee; or expressed in other scope and extent of the bar that could be implied from the existence of these provisions. One thing, however, is clear; the bar cannot extend beyond the scope and limits of the jurisdiction of the Rating Committee; or expressed in other words, the jurisdiction of the civil court could not be held to be excluded in respect of those matters which are not assigned by s. 57A to the Rating Committee, or in regard to which the Rating Committee cannot afford the consumer relief against an infraction of a statutory provision by which he is aggrieved

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Before turning to the facts of the present case with a view to examine whether the relief sought by the respondents viz., a declaration and injunction could be granted by a civil court, we shall deal with the major argument of the learned Solicitor-General that for no infraction by a licensee of his obligations under the schedule could a suit be filed in a civil court. This was based on the words of s. 57A-(1)(a)(i) which empowers the Board or the State Government to appoint a Rating Committee if satisfied "that the licensee has failed to comply with *any of the provisions* of the Sixth Schedule"

The learned Solicitor-General further contended that the provisions contained in s. 57A were wholly incompatible with the existence of a right in a consumer to move a civil court for obtaining a refund even of an illegal collection which the licensee is prohibited from charging. It was in this connection that he invited our attention to the provision for refund contained in the last proviso to paragraph 1 of Sch. VI and relying on this he submitted that the scheme of s. 57A could obviously not have contemplated a procedure by which one consumer went to a civil court and obtained redress, the civil court holding that the rate charged so far as the particular plaintiff was concerned was illegal and therefore entitling him to a refund of a particular sum, while another consumer approached the Government who appointed a Rating connection that he invited attention to the provision for it did provide, for a different amount of refund. This is doubtless a serious argument which requires careful examination. In this context and in support of this submission stress was laid down on the words "the licensee has failed to comply with any of the provisions of the Sixth Schedule" occurring in s. 57A-(1)(a)(i) and it was urged that for any and every default of the licensee resort must be had to the Board or the Government and could not be had to the civil courts. But from these provisions it does not, in our opinion, follow that the jurisdiction of a civil court is barred in respect of the infraction of every obligation cast on a licensee by Sch. VI. Broadly speaking, the utmost that could be urged would be that the bar to the jurisdiction of a civil court would be co-extensive with and be restricted to the powers of the Rating Committee and the reliefs which the committee could grant under s. 57A. A few examples of breaches of Sch. VI which a licensee may commit and in regard to which a reference to the Rating Committee is not contemplated would make our meaning clear. The first proviso to paragraph 1 specifies that "such rates shall not be enhanced more than once in any year of account". Let us suppose that the licensee contravenes this prohibition and enhances the rate more than once. There is no provision in s. 57A for the Rating Committee to control the licensee in the event of his transgressing a positive

prohibition of this sort and, indeed, it would be most anomalous to say that the statute having made a provision that the rates shall not be enhanced more than once in a year, the consumer is left without a remedy if the Government does not choose to appoint a Rating Committee which, as we said earlier, has no power to afford redress to the affected consumer. In such a case it appears to us that by no principle of construction can the jurisdiction of a civil court to grant a declaration and an injunction be denied. It would also follow that if that rate is collected, the court could order a refund of the illegal collection. Take next the case where a licensee in contravention of the 3rd proviso enhances the rates for the supply of electricity without giving the requisite notice of his intention to tbe Government and to the Board. Here again, the Rating Committee does not come into the picture for preventing the continued charging of the rates in contravention of the 3rd proviso and here we consider it impossible to contend that the jurisdiction of the civil court to grant a declaration and an injunction are affected by the provisions of s. 57A. We therefore arrive at this position that notwithstanding the generality of the words in s. 57A(1)(a)(i) referring to the failure on the part of the licensee in complying with the requirements of the Sixth Schedule" there are some "failures" in regard to which the jurisdiction of the civil court. it is clear, not barred.

The next question would be whether the same principle is not applicable to a case where the 2nd proviso is contravened i.e., where the licensee so adjusts his rates as to yield him a profit beyond 15% over the reasonable return. The proviso casts an absolute obligation on the licensee not to exceed this limit. There is thus a statutory prohibition against the licensee of fixing a rate which would yield such excessive profit, and if he does so he would not be acting in terms of the VIth Schedule at all or by virtue of a power conferred by that Schedule and therefore he would be amenable to the jurisdiction of the court which would be competent to issue an injunction restraining him from charging that rate. No doubt, the proviso also adds that if he does so he would be failing to comply with the requirement of the main part of paragraph I. It would therefore follow that in a case where in adjusting his rate the licensee fixes it so high as to contravene this proviso, it would be open to the aggrieved consumer to approach the Board or the State Government to appoint a Rating Committee. But from this circumstance we are not prepared to hold (a) that the action of the licensee in charging a prohibited rate is any the less an illegality not countenanced by the statute and (b) that where such an illegality is made out the jurisdiction of a civil court to afford relief is ousted. It is possible to hold, and we do not desire

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to express a final opinion on a point which is not directly involved in these appeals, that the jurisdiction of the court may be confined to granting a declaration as to the invalidity of the adjustment and injunction against the violation of the statutory prohibition, and not to grant a refund. It is only necessary to add that the relief sought in these 2 suits was merely a declaration regarding the invalidity of the rates charged and an injunction restraining the Appellant from continuing to charge them.

We are, therefore, satisfied that the mere existence of s. 57A does not by itself, and without reference to the particular violation complained of by the licensee, bar the jurisdiction of a civil court and the argument in the extreme form presented to us by the learned Solicitor-General must be rejected.

The next and the last question that arises is whether the respondents have established that the appellant has violated any of the provisions of the Supply Act and in particular those contained in Sch. VI, paragraph 1 of the Supply Act. We have already dealt with the objection that there was no "adjustment" of rates in 1949 or 1950. Again, we have already held that in regard to the unit rate for power in regard to which alone there was an enhancement there was a valid notice issued to Government as required by the 3rd proviso to paragraph 1. In the circumstances of this case the only ground upon which the respondents would have been entitled to the relief of declaration and injunction that they claimed was that they had established that the rate charged by the Appellant offended the second proviso, in that it yielded a profit in excess of 15 per cent of the reasonable return. The learned Judge in the High Court has held that the onus of proving that the rate which the Appellant charged was within this limit was on it and that as no evidence had been led by it on this point he granted the plaintiffs the declaration and injunction they sought. We consider that the learned Judge was in error in this respect. There is no presumption that the rate charged by a licensee contravenes the statutory prohibition. It is for the party who alleges his right to relief to establish the facts upon which such relief could be obtained. It was, therefore, for the plaintiffs to prove by facts placed before the court that the rate charged offended the statutory provision. This they admittedly failed to do and we, therefore, hold that they were not entitled to the declaration and injunction which the learned Judge of the High Court granted.

We accordingly allow the appeals and direct the dismissal of the suits. The appellant would be entitled to its costs here and in the High Court—one hearing fee.

*Appeals allowed*