(1919) 08 CAL CK 0039

Calcutta High Court

Case No: Nos. 879 and 1168 of 1918

Nagendra Lal Das and Others		APPELLANT
	Vs	
The Chairman, Chittagong Municipality		RESPONDENT

Date of Decision: Aug. 20, 1919

Final Decision: Dismissed

Judgement

1. The facts of the suit out of which Appeal No. 879 of 1918 has arisen are simple. The Plaintiffs are certain rate-payers of the Municipality of Chittagong, the Defendants are Commissioners of the Municipality. The Plaintiffs wished to have house connection with the main water service pipe. The Municipality were willing to allow the connection only on the condition that a water meter to measure the amount of water consumed was put in by the Plaintiff at their own expense in accordance with certain rules framed by the Local Government under sec. 290 of Act III of 1884 (The Bengal Municipal Act) as amended by Act IV of 1894.

2. The Plaintiffs contended that these rules were ultra vires and that they were entitled to have the house connection they asked for without paying for the meter and they asked for an injunction to restrain the Defendant Municipality from cutting off the water connection which the Municipality threatened to do if the price of the meter was not paid, the Plaintiffs having been allowed, on the understanding that they would pay for the meter if it was found that they were liable to pay for it, to make the desired house connection. The Court of first instance decreed the suit holding that the rules framed under sec. 290 were ultra vires. On appeal the learned District Judge decreed the appeal and dismissed the suit. He held that the rules framed under sec. 290 were not ultra vires and they did not conflict with sec. 295 of the same Act.

3. Against this decree the Plaintiffs have appealed to this Court. The question in controversy between the parties though very simple is a question of considerable importance and has been argued at some length.

4. Sec. 290 of the Bengal Municipal Act is as follows :-

Whenever the Commissioners deem it practicable and consistent with the maintenance of an efficient water supply, they may at a meeting and subject to such rules and conditions as the Local Government may make and impose, allow the owners and occupiers paying the water rate hereinbefore mentioned to lay down communication pipes from the service pipe of the Commissioners, for the purpose of leading water to their premises for domestic purposes.

5. It is quite clear that this section by itself gives the Local Government the power to make and impose the rules and conditions under which the Municipal Commissioners may allow house connection with the service water pipes. Sec. 291, sec. 292, and sec. 293 which have been referred to by Counsel for the Appellants give the Commissioners the necessary powers to ensure the connection being properly made and kept in proper order to prevent the water being wasted. Under the powers conferred on them by sec. 290, the Local Government did make certain rules which were made final on the 24th October 1916.

6. The two particular rules with which we have to deal are r. 4 and r. 9 which run as follows :-

4. (1) The owner or occupier of the holding in respect of which the connection is required must bear the entire cost thereof, including the cost of the supply and fixing of the fittings referred to in r. 9.

(2) The applicant for the connection will also be liable for the cost of such alterations in, or repairs to, roads, drains, sewers, gas or water mains, or pipes, and the cost of such other works as may be necessitated by, or result from the work of making such connection and also all charges for which the Commissioners may become liable in respect of any of the matters referred to in this sub-rule.

9. A holding connection shall comprise the following parts or fittings.

(a) A brass or gunmetal ferrule inserted in the main supply pipe.

(b) A galvanised iron communication pipe from the ferrule to the meter.

(c) A stop cock and its rurface box.

(d) A meter.

(c) Service pipes from the stop cocks to the taps.

(f) And taps.

7. The r. 4 provides that the owner or occupier must pay the entire cost of the fittings as defined in r. 9. R. 9 (d) provides that a meter is included as one of the fittings necessary for a household connection. It has been argued that sec. 290 gives the Local Government no power to define what are fittings; therefore the Local

Government are not empowered to make a rule under that section defining what are the fittings required for a house connection.

8. No doubt the section does not provide that the Local Government shall define what are the fittings required for a house-connection, but it does empower the Local Government to make rules and conditions under which the occupiers or owners may have a house connection and the provision of a meter at the occupiers'' or owners'' expense is one of the conditions they impose.

9. It is quite immaterial whether a meter is called a fitting or not.

10. Neither can it be successfully contended that the rules in question are unreasonable.

11. It is the manifest duty of the Municipality to see that the public in general have their due supply of water. The capacity of any given installation is obviously limited and unless the Municipality can prevent waste, the general public distributed over a large area are bound to suffer. The installation of a meter is one of the most obvious means of preventing waste and as a house connection must be regarded more or less in the light of a luxury, it is only reasonable that the person who has the benefit of it should pay all the necessary expenses. It would obviously be inequitable that the cost of a luxury should fall on the general body of rate-payers and not on the person who really gets the benefit of it.

12. It has also been contended that these rules as framed by the Local Government under sec. 290 contravene the express provision of the Act as set forth in sec. 295.

13. Sec. 295 provides : The Commissioners at a meeting may determine what quantity of water shall be supplied to the occupier of every house free of further charge, for every rupee paid to the Commissioners as water rate on account of such house.

14. If the Commissioners have reason to believe that the occupier of any house consumes more water than he is entitled to as aforesaid, it shall be lawful for them to provide a water meter at their own expense and to attach the same to the water pipes of the said house and any water which may be used over and above the quantity to which the occupier is entitled as aforesaid shall be paid for by him at such rate as the Commissioners at a meeting may determine.

15. It is argued that sec. 295 sets forth the circumstances under which the Commissioners may provide a meter and this section states that they may do so at their expense. It is said as this section provides that the Commissioners may have meters fixed at their expense, it is unlawful for the rules to order that a meter should be fixed at the consumers'' expense. There is, however, nothing inconsistent between the rules as framed by the Local Government and sec. 295. Sec. 295 makes it lawful in certain circumstances to have a meter fixed at the expense of the Municipality and to expend the Municipal funds for the purpose. That certainly does

not preclude the Local Government from making it one of the conditions of a house connection that the Occupier or owner shall provide a meter at his expense.

16. A further argument has been put forward that by insisting that the owner or occupier should provide the meter, the Commissioners are imposing a charge or tax on the rate-payer and that no charge or tax can be imposed which is not expressly and in very clear terms authorised by the Act itself. This argument has no substance. No one is obliged to have a house connection. Therefore whether a person may, or does not, pay the charge is entirely within his own discretion. It is not a tax on the public. If the Municipality had to provide at their expense meters free of cost to the user, that would mean taxing the public, it is to prevent it that the rules seem to have been framed. It is also to be noted that the Local Government has control over" the expenditure of Municipal funds under sec. 69 (1). We are therefore of opinion that the rules as framed by the Local Government under sec. 290 are intra vires and the occupier or owner must pay for the cost of the meter. It has lastly been contended, the Municipal Commissioners cannot cut off the water supply in default of the Plaintiffs paying the cost of the meter. The argument put forward to support the contention is that sec. 297 is the only section which authorises the Commissioners to cut off the water supply and that the section provides that the water can only be cut off on account of the non-payment of the water rate. There is some force in this contention, but the point is not a fair one to raise as these persons have been allowed to make the connection on the understanding that they would abide by the rules made under sec. 290, if it were found these rules were intra vires.

17. The same argument, however, applies as has already been applied to the proper construction of sec. 295. Sec. 295 applies to things in statu quo and sec. 290 to future necessity.

18. The water has, we understand, not been cut off although notice may have been given to cut off under r. 24 (c) made under sec. 290. It cannot be said that this rule conflicts or is inconsistent with sec. 297.

19. R. 24 (e) is, we consider, intra and not ultra vires. It seems to us to be a reasonable provision.

20. In the view we have taken, it is needless to discuss the cases which were cited before us, the general principles enunciated in which were not disputed. The Court has received the assistance of having both points of view thoroughly argued. We think it only right to add that we ought not to interfere with rules and conditions, authority for which has been expressly provided for as in this case, unless they are clearly in conflict with some legal principle.

21. The result is that the decree of the lower Appellate Court cannot be successfully assailed and the present appeal must be dismissed with cost. Our judgments also govern Second Appeal No. 1168 of 1918 (Chittagong) which is also dismissed with

costs.