

ALECKMAN
v.
KOCHCHIKADE TOWN COUNCIL

COURT OF APPEAL
ABDUL CADER, J., AND H.A.G. DE SILVA, J.
CA(SC) 103/74.
D.C. NEGOMBO 2621/M
MARCH 24 AND 25, 1982.

Town Council Ordinance, sections, 128, 218. - Time limit to institute action - Electricity Act, section 2(1), 33 - Local Authorities - Licensees to supply electricity - Breaches and wrongs as such licensee - Applicability of Electricity Act.

The plaintiff-appellant was a resident in the Kochchikade Town Council area and the defendant Town Council supplied electricity to the plaintiff. On 20.9.72 the defendant terminated the supply to the plaintiff appellant on the ground that the premises to which the electricity was supplied was not owned by the plaintiff and that the building was not in conformity with the Housing and Town Improvement Ordinance.

The defendant Council argued that in terms of section 218(1) the appellant could not maintain this action as action was not filed within the six month period. The plaintiff argued that the defendant was in fact acting under the provisions of the Electricity Act and that there is no time limit under the Electricity Act.

Held -

That the defendant was a licensee under the Electricity Act and that this action arose out of defendant's alleged failure of duties and obligations cast upon it by the Electricity Act and hence the time limit imposed by the Town Council Ordinance does not apply.

Cases referred to:

1. *Negombo Municipal Council v. J. Fernando*, (1961) 63 N.L.R. 512, 520
2. *Weerasooriya Arachchi v. Special Commissioner, Galle Municipality* (1967) 69 N.L.R. 437.
3. *Municipal Council of Batticaloa v. Eliyathamby Vijayalachchi SC. 20/74 Inty - D.C. Batticaloa 5680/81 - S.C. minutes of 19.3.76.*
4. *Feilding v. Municipal Council of Colombo*, 2 *Browne's Reports* 196.

APPEAL from judgment of the District Court of Negombo.

C. Ranganathan, Q.C., with *P. Somatilakam, C. Chelvarajah, K. Logasunderam* and *S.H.M. Reeza* for the plaintiff-appellant

H.W. Jayewardene, Q.C. with *J.W. Subasinghe, S. A., V. Siriwardene* and *Miss P. Seneviratne* for the defendant-respondent.

Cur. adv. vult

June 25, 1982.

DE SILVA, J.

The plaintiff-appellant on 3rd May 1973 instituted an action against the Kochchikade Town Council, the defendant-respondent, alleging that the defendant Council had on 20th September 1972 wrongfully and in breach of the provisions of the Electricity Act (Cap.205) discontinued the supply of electricity to the premises of the plaintiff. The plaintiff claimed damages in a sum of Rs. 25,000/- and prayed for a mandatory injunction for the restoration of the supply of electricity. Two preliminary issues of law were raised by the defendant, viz:

- (1) Has the plaintiff filed this action in Court within 6 months of the date when the cause of action arose?
- (2) If not, can the plaintiff have and maintain this action in view of the provision of section 218 of the Town Councils Ordinance?

Both these issues were answered in the negative by the learned District Judge and accordingly the plaintiff's action was dismissed with costs. It is from this order that the plaintiff-appellant has appealed.

According to the plaint, the defendant Town Council was the licensee under the Electricity Act (Cap.205) as amended by Acts Nos 59 of 1967 and 17 of 1969, for the distribution of electricity within the local limits of the defendant-Council. The plaintiff applied for and obtained a supply of electricity to the premises situated

within the local limits of the defendant-Council. The defendant/Council continued to supply the electricity till 20th September 1973, and on that date wrongfully and in breach of the provisions of the Electricity Act discontinued the supply and failed, neglected and refused to restore the supply to the premises thereafter. As a result of this failure the plaintiff alleged that he had been suffering great hardship and inconvenience, had incurred heavy expenses in making alternative arrangements for the supply of electricity to the said premises and had also suffered great humiliation, pain of mind and loss of reputation. The plaintiff estimated the damages suffered by him at Rs. 25,000/-.

The defendant Council in its answer took up the position that the supply of electricity was given as stated by the plaintiff to the said premises on the belief of the representation made by the plaintiff that he was the owner of the said premises. The defendant Council further stated that after such supply was given it was found that the building to which the electricity was supplied was not in conformity with the requirements of the Housing & Town Improvement Ordinance so as to enable the said premises to be lawfully occupied by the plaintiff which necessitated the defendant Council withdrawing the Certificate of Conformity issued in respect of that building which had been mistakenly, irregularly or unlawfully issued. Accordingly, as the defendant Council would not have been acting lawfully if it continued to supply electricity to such a building, the defendant Council was obliged to and did lawfully terminate the supply of electricity on 20th September 1972. The defendant Council further averred that the plaintiff had failed to commence this action within six months next after the accrual of the cause of action, and in view of section 218(2) of the Town Council Ordinance, could not have and maintain the action.

Section 218(1) of the Town Councils Ordinance states that -

“No action shall be instituted against any Town Council.....for anything done or intended to be done under the powers conferred by this Ordinance or any by-law made thereunder until the expiration of one month next after notice in writing shall have been given to the Council.....”

It is common ground that by letter D1 of 29th January 1973 the plaintiff gave the defendant Council the required notice of his intention to file an action against the defendant Council for the reliefs stated therein.

Section 218(2) of the said Ordinance states - "Every action referred to in subsection (1) shall be commenced within six months after the accrual of the cause of action and not afterwards".

Admittedly the cause of action arose in this case on 20th September 1972, the date on which the electricity supply was discontinued and the action was filed on 3rd May 1973, well after six months after the cause of action arose.

Mr. Ranganathan for the appellant contends that the supply of electricity since the promulgation of the Electricity Act in 1950 is under that Act and the defendant Council though empowered to supply electricity under the Town Councils Ordinance, is in fact acting within the provision of the Electricity Act in so doing, and since there is no six month limitation for the filing of an action under the Electricity Act, the present action is not time-barred.

Section 128(e) of the Town Councils Ordinance empowers a Town Council to establish and maintain for the benefit of the persons in its area within the town, a supply of electric light or power.

Section 2(1) of the Electricity Act (Cap.205) prohibits any person unless he is authorised in that behalf by a licence granted by the Minister from -

- (a) establishing or maintaining any installation for the generation of electrical energy for the purpose of transmitting, or distributing such energy for use in any place which is not the property of that person, or
- (b) for any fee or reward supplying electrical energy to any other person.

Section 33(1) of the Electricity Act (as amended by the Ceylon Electricity Board Act.No. 17 of 1969) states that a "licensee shall upon being required to do so by the owner or occupier of any premises situated within one hundred and fifty feet from any distributing main of the licensee..... give and continue to give a supply of energy for those premises in accordance with the provisions of this Act and the regulations made thereunder....."

It will therefore be seen that the defendant Town Council is a licensee and is obliged to supply electricity to the consumer in accordance with the provisions of the Electricity Act.

Mr. Ranganathan, Counsel for the appellant, points out that in para 3 of the Complaint the plaintiff avers the defendant Council's position as a licensee under the Electricity Act (Cap.205) as amended, and

in para 8 he alleges that the discontinuance of the supply of electricity was wrongful and in breach of the provisions of the Electricity Act. His contention is that this action is in respect of the failure of the duties and obligations of the defendant Council, the licensee, cast upon it by the Electricity Act, and as such, this action will not attract to itself the provisions of the Town Councils Ordinance.

He cites in support of this contention a number of authorities of the Supreme Court which have held in dealing with analogous provisions of the Municipal Councils Ordinance that the Municipal Council acts under the provisions of the Electricity Act when it supplies electrical energy to consumers and therefore an action filed in respect of such activity is not time-barred by any provision to that effect under the Municipal Councils Ordinance.

In *Negombo Municipal Council v. J. Fernando*, (1) H.N.G. Fernando, J. as he then was, stated,

“But for the licence granted to the Council under the Act, the Council would have no right to supply electricity and would indeed be committing an offence in so doing. The fact that a Municipal Council is empowered by the 1947 Ordinance to supply electricity and to enter into contracts for the purpose is of no avail, since those powers cannot now be exercised save in conformity with the Electricity Act, which is a later special enactment governing the supply of electricity. The “scheme” of the Act, as I have held, is that a licensee is bound to supply electricity in accordance with conditions laid down by the legislature itself or else prescribed by regulations made under the Act; and just as the mode and condition of supply are comprehensively controlled by the Act, so also is the relationship between the licensee and the consumer similarly controlled”.

In the case of *S.M. Weerasooriya Arachchi vs. Special Commissioner, Galle Municipality*, (2) it was held that -

“Section 307(2) of the Municipal Councils Ordinance is not applicable to a case, where the cause of action arose from an act which was done under section 16 of the Electricity Act and which a Municipal Council has no power to perform under any of the provisions of the Municipal Councils Ordinance”. It may be said in respect of this case that the Court had failed to consider Section 40(1)(U)(iii) of the Municipal Council Ordinance (Cap.252) which empowers a

Municipal Council to establish and maintain the supply of electric light or power but the next case cited by Mr. Ranganathan by which decision he submits this Court is bound, did in fact take into account these provisions of the Municipal Councils Ordinance.

In the case of *Municipal Council of Batticaloa vs. Eliyathamby Vijayalatchi*, (3) the plaintiff-respondent sued the Municipal Council of Batticaloa for damages in a sum of Rs.30,000/- in respect of the death by electrocution of her son. The issue whether the action of the plaintiff was prescribed in view of section 307 of the Municipal Councils Ordinance was taken up first and the Trial Judge decided that issue in favour of the plaintiff and held that although the action was filed after 3 months of the electrocution that section was not applicable to that action. Thamotheram, J. in the course of his judgment stated -

"The question we have to answer is whether the plaintiff in filing this action was doing so for anything done or intended to be done under the provisions of the Municipal Councils Ordinance The death in this case was the result of electrocution the only relevance of the fact that the person who was sued was the Municipal Council is that it is a co-operative body capable of being sued. The more important fact in this case is that it is a licensee under the Electricity Act. By becoming a licensee it undertook certain duties and responsibilities

The rights the Municipal Council enjoys in relation to the supply of electrical energy is under the Electricity Act. The very supply of electrical energy is controlled by the provisions of the Act.

The complaint therefore that the deceased died of electrocution due to negligence relates to something done or intended to be done really under the Electricity Act and not under the Municipal Councils Ordinance.....

We are therefore of the view that the provisions of section 307 of the Municipal Councils Ordinance have no application to the present case as the cause of action relates to something done or intended to be done under the provisions of the Electricity Act. We note that in the plaint the plaintiff sued the Municipal Council as a licensee under the Electricity Act".

Section 40 (1)(U)(iii) of the Municipal Councils Ordinance (Cap.252) empowers a Municipal Council to establish and maintain the supply of electric light or power.

Section 307(1) of this Ordinance states -

“No action shall be instituted against any Municipal Council..... for anything done or intended to be done under the provisions of this ordinance or of any by-law, regulation or rule made thereunder until the expiration of one month next after notice in writing shall have been given to the Council.....”

Sub-section 2 thereof states -

“Every action referred to in sub-section 1 shall be commenced within three months next after the accrual of the cause of action and not afterwards”.

The provisions of section 128(e) of the Town Councils Ordinance (Cap.256) and of section 40(1)(U)(iii) of the Municipal Councils Ordinance (Cap.252) are couched in similar terms and empower the respective Councils to supply electric light or power. They are in the present context empowering sections but by virtue of section 2 of the Electricity Act (Cap.205) no person can supply electricity unless he is authorized in that behalf by a licence granted by the Minister. The rights, duties, obligations and liabilities of a local authority as a licensee for the supply of electricity arise not under the Town Councils Ordinance or the Municipal Councils Ordinance but under the various provisions of the Electricity Act and therefore any action by or against such a licensee must be brought under, and would be governed by the provisions of the Electricity Act.

Mr. Jayewardene for the plaintiff-respondent contended that the cases referred to above have no application to the instant case in that, they interpret the sections of the Municipal Councils Ordinance vis-a-vis the provisions of the Electricity Act and not those of the Town Councils Ordinance. Mr. Jayewardene contends that there is a significant difference in the wording between section 218(1) of the Town Councils Ordinance and that of section 307(1) of the Municipal Councils Ordinance. He submits that while section 218 of the Town Councils Ordinance speaks of “powers conferred by this Ordinance”, section 307(1) of the Municipal Councils Ordinance postulates “provisions of this Ordinance”. He therefore submits that the cases relied on by the plaintiff-appellant would have no relevance and would not be binding on this Court in that they do not interpret words “in pari materia”. In my view the distinction sought to be drawn by

Mr. Jayewardane is a distinction without substance. Whether the word used is "powers" or "provisions", they in effect amount to the same thing. Both section 128(c) of the Town Councils Ordinance and section 40(1)(U)(iii) of the Municipal Councils Ordinance are sections which empower their respective Local Authorities to supply electric light or power. Various powers are derived from provisions of these Ordinances and the time limits specified in section 218(2) of the Town Councils Ordinance and section 307 (2) of the Municipal Councils Ordinance apply to actions relating to activities of these Councils done and performed exclusively within empowering provisions of their respective Ordinances and have no effect on actions brought against these Councils for duties cast upon them by other enactments such as the Electricity Act which do not contain such limitations.

Mr. Jayewardane also cited the case of *Feilding vs. Municipal Council of Colombo*. (4) In that case the horses of the plaintiff becoming frightened by being squirted by a watering cart, owing to the negligence of the defendant Company's servant, bolted, one of them injuring itself so severely that it had to be subsequently shot two months afterwards. Soon after the accident the plaintiff gave notice in writing of his intended action to the Chairman of the Council but did not institute his action until nearly five months after the accident. It was held that notice was necessary and that the notice given was sufficient. It was held further that the action was in time having been brought within three months of the horse's death. Lawries, A.C.J. in his judgment at page 198 states -

"One of the powers conferred on the Chairman of the Municipal Council in Ceylon by the Ordinance No.7 of 1887 is to water the streets.

"An action of this kind is one for damages for an act done under the provisions of the Ordinance; an act done, but done negligently without proper precautions against injury to the public.

In my opinion the plaintiff was obliged to give the notice and to bring the action within the time mentioned in the 218th section of the Ordinance".

This case has no application to the present case. There the injury was caused by a servant of the defendant Council in performing a public duty empowered and controlled solely by the Municipal Councils Ordinance while in the instant case the local authority is acting as a licensee under the Electricity Act and under its provisions. Further this action, as evidenced by the plaintiff's averments in paras 3 and

8 of the plaint, is for damage for discontinuance of supply of electricity which the licensee is obliged to maintain under the provisions of the Electricity Act. All the actions of the licensee in supplying electricity are controlled by the provisions of the Electricity Act. Whether this Court is bound or not by the decisions relied on by the plaintiff-appellant, I prefer to follow them and in that view of the matter, it is not necessary for me to refer to the various submissions and authorities on *stare decisis* relied on by Mr. Jayewardene.

I am therefore of the view that the time limit placed by the Town Councils Ordinance would not operate in the case of an action filed for a breach of a duty cast on the local authority, as licensee, by the Electricity Act.

For the reasons given above, I allow the appeal and I answer both issues raised at the trial in favour of the plaintiff. The case will now proceed to a trial on any other issues that may be raised by the parties to the action. The plaintiff-appellant will be entitled to the costs of this appeal.

ABDUL CADER, J. — I agree.

Appeal allowed.