

1961

Present : Weerasooriya, J.

MOHAMED, Appellant, and URBAN COUNCIL, WATTEGAMA,
Respondent

S. C. 293—M. C. Panwila, 896

- (i) *Electricity Act—Sections 2 (1), 11, 60 (2) (h), 62 (1), 69 (2)—Generation of electrical energy—Installation set up by a person for use in his own property—Inapplicability of provisions relating to requirement of permit from local authority.*
- (ii) *Criminal procedure—Charge in respect of a continuing offence—Mode of framing it.*

(i) The accused-appellant, who was the owner of certain premises within the administrative limits of an Urban Council, ran a cinema, known as the Royal Cinema, on the premises. He supplied electricity to the cinema through his own generating plant without obtaining a permit from the local authority. He was charged with committing a breach of section 11 (a), read with section 69 (2), of the Electricity Act.

Held, that section 11 of the Electricity Act must be read with section 2 (1) of that Act. Since the accused was the proprietor of the premises, the requirements of section 2 (1) as to a licence did not apply, even if the cinema was a "public place". Section 11 is merely an enabling provision whereby a person, who is not a licensee, may obtain a permit to generate and supply electrical energy in circumstances where, if he does not obtain such a permit, he would be acting in contravention of section 2 (1).

(ii) Before an accused person can be convicted of a continuing offence, a charge alleging the commission of such an offence should be framed against him. Accordingly, where the only continuing offence mentioned in a charge is stated to have been committed during a specified period of time, an order imposing a fine at the rate of a certain sum per day beyond that period is illegal.

APPEAL from a judgment of the Magistrate's Court, Panwila.

H. W. Jayewardene, Q.C., with *S. H. Mohamed*, for the accused-appellant.

K. Sivasubramaniam, with *D. S. Nethsinghe*, for the complainant-respondent.

Cur. adv. vult.

June 2, 1961. WEERASOORIYA, J.—

The accused-appellant is the owner of certain premises within the administrative limits of the Urban Council, Wattegama, where he ran a cinema known as the Royal Cinema. Electricity for operating the cinema and illuminating the premises was supplied by the accused through his own 15 kilowatt generating plant. Section 11 of the Electricity

Act, No. 19 of 1950, provides, *inter alia*, that where “ a temporary supply of electrical energy is required in any place to which electrical energy cannot be supplied by a licence or by the Chief Engineer, then, if such supply is for any fee or reward or such place is a public place, a permit to generate and supply electrical energy in such place may, upon application made in the prescribed form and manner, be granted to any person ” The authority empowered to grant such a permit within the administrative limits of the Wattegama Urban Council is its Chairman. Although the Council is said to be authorised by licence to supply electrical energy within that area, it would appear that no supply of electrical energy to the Royal Cinema is possible through the Council's distributing mains because they are too far away.

In terms of section 11 and the regulations made under section 60 (2) (b) of the Electricity Act, the accused applied by P2, dated the 6th September, 1957, to the Chairman of the Wattegama Urban Council for a permit to generate and supply electrical energy for a period of one year from the 3rd July, 1957, at the Royal Cinema. Under the relevant regulation an applicant is required to pre-pay a fee calculated at the rate of Re. 1 for each kilowatt of energy to be supplied for each day. As the accused failed to comply with this requirement no permit was issued to him. He continued, however, to supply electrical energy to the cinema from his generating plant, and the present prosecution is the sequel.

The charge against the accused, as set out in the summons dated the 17th March, 1958, reads as follows :

“ . . . that you did on the 1st day of January, 1958, and all continuing dates up to date at Rasella Estate, Wattegama, generate and supply electrical energy to the Royal Cinema, Wattegama, and which place is a public place, without obtaining the necessary permit from the Chairman, Urban Council, Wattegama in breach of section 11 (a) of the Electricity Act, No. 19 of 1950, and that you did thereby commit an offence punishable under section 69 (2) of the Electricity Act No. 19 of 1950.”

After trial he was convicted and sentenced to pay a fine of Rs. 75 and a further fine at the rate of Rs. 15 per day for the period 1st January, 1958, to the 30th April, 1958, amounting to Rs. 1,800. From this conviction and sentence he has appealed.

As regards the period 18th March to 30th April, 1958, no charge was brought against the accused that he committed a continuing offence during that period. It is a fundamental rule of procedure that before an accused can be convicted of an offence, a charge alleging the commission of such an offence should be framed against him. In the charge framed in the present case the only continuing offence alleged was in respect of the period 1st January to the 17th March, 1958. The order imposing a fine of Rs. 15 per day in respect of the period 18th March to the 30th April, 1958, is, therefore, illegal and cannot, in any event, be allowed to stand.

Section 11 of the Electricity Act, which the accused is alleged to have acted in breach of, must be read with section 2 (1), which is as follows:

“Save as hereinafter expressly provided, no person, unless he is authorised in that behalf by a licence granted by the Minister, shall—

- (a) establish or maintain 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 supply electrical energy to any other person:

Provided that the requirements of the preceding provisions of this section as to a licence shall not apply to the establishment or maintenance of any such installation or the supply of electrical energy—

- (i) for any purpose, by the Chief Engineer, or
- (ii) in the circumstances and for the purposes specified in section 11, by the holder of a permit issued under that section.”

Section 62 (1) makes a contravention of the provisions of section 2 (1) a punishable offence.

Since the accused is the proprietor of the Royal Cinema, the requirements of section 2 (1) as to a licence do not apply to the establishment or maintenance by him of any installation for the generation of electrical energy for the purpose of transmitting or distributing such energy for use in that place. It was, perhaps, for this reason that no charge was brought against the accused for a contravention of section 2 (1). The charge that he committed an offence punishable under section 69 (2) is on the basis of an alleged breach of section 11 (a). Section 69 (2) imposes a general penalty where a person, not being a licensee, makes any default, not otherwise provided for, in complying with any of the provisions of the Act or of any regulation made or order issued thereunder or contravenes any such provision. The substantial question, therefore, is whether the accused acted in breach of section 11 (a).

The prosecution case is that since the Royal Cinema is a public place, though owned by the accused, it was obligatory on him to have obtained a permit before he made available a temporary supply of electrical energy in such place. No argument was addressed to me by Mr. Jayewardene on behalf of the accused that the Royal Cinema is not a “public place” within the meaning of that expression in section 11. But he contended that section 11 is merely an enabling provision whereby a person, who is not a licensee, may obtain a permit to generate and supply electrical energy in circumstances where, if he does not obtain such a permit, he would be acting in contravention of section 2 (1). I think that this contention is correct. In the present case there was, in my opinion, no need for the accused to obtain a permit under section 11 for the doing of that which, even in the absence of such a permit, did not amount to a contravention of section 2 (1). He did not, therefore, act in breach of section 11 in not having obtained a permit.

I express no opinion on the question whether, in a case where in the absence of a permit under section 11 a person would be acting in contravention of section 2 (1), default on his part in obtaining the permit would also render him guilty of an offence punishable under section 69 (2).

The conviction and sentence appealed from are set aside and the accused acquitted. The fine, or any part thereof, if already paid by the accused, will be refunded to him.

Appeal allowed.