THE MYSORE STATE ELECTRICITY BOARD

1962

November, 15

v.

BANGALORE WOOLLEN, COTTON AND SILK MILLS LTD. & ORS.

(S. K. DAS, J. L. KAPUR, A. K. SARKAR, M. HIDAYATULLAH and RAGHUBAR DAYAL, JJ.)

Electricity—Revision of rates of supply by Government after expiry of agreement—Dispute raised by consumer—If liable to arbitration—Electricity (Supply) Act, 1948 (54 of 1948) s. 76,49,60, Indian Electricity Act, 1910 (9 of 1910), s. 52.

Disputes arose between the respondent mills and the appellant Board relating to the payment of revised rates to the appellant or its predecessor, the Government of Mysore under the Electricity (Supply) Act, 1948. Prior to the constitution of the Board under that Act in September, 1957, the Government of Mysore was generating and supplying electricity under the Electricity Act of 1910. In 1945 agreements were entered into between the Government and the respondents for supply of electricity to them at certain rates for a period of five years. The agreements expired in 1949-50. In March, 1953, the Government increased the rates. It again increased the rates from April, 1956. These revisions were not made by the Government under s. 49 of the 1948 Act as that section came into force in 1957. The respondents did not pay at the enhanced rates and moved the High Court under Art. 226 of the Constitution for restraining the Government as also the Board, which after its constitution was added as a party, from levying at the increased rates. It was urged on their behalf that the State Government was not entitled to increase the rates and that the dispute between them on the one hand and the Government and the Board on the other with regard to increased rates was liable to be decided by arbitration under s. 76 of the Act of 1948, which had come into force in the State of Mysore on December 30, 1956. The High Court decided the first point in favour of the Government but did not decide the second. The respondents did not pay the arrears at the revised rates and the Board threatened to cut off the supply. The respondents then nominated their arbitrator under s. 76 of the Act. The Board filed applications before the District Judge under s. 33 of the Arbitration Act for a declaration that the dispute was not referrable to arbitration

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under s. 76 of the Electricity (Supply) Act. The additional District Judge who heard the matter held in favour of the Board. The respondents moved the High Court in revision. That Court held that s. 76 applied and the respondents were entitled to call for an arbitration. The Board appealed to this Court. It was urged on its behalf that in view of the decision of the High Court on the writ petition, the claim of reference to arbitration under s. 76 of the Act was barred by *res judicata* and that the expression "other person" in sub-s. (1) of that section, read *ejusdem generis* could not include a consumer of electrical energy nor was such a consumer entitled to the benefit of sub-s. (2) of that section as no provision of the Act of 1948 read with the Act of 1910 authorised reference of such a dispute to arbitration.

Held, that it was well-settled that in order to judge whether a decision in an earlier litigation operated as *res judicata* the court must consider the nature of the litigation, the issue raised in it and the actual decision. The right of the Government or the Board to revise the rates and the right of the respondents if any, to raise a dispute as to the revised rates and seek arbitration thereupon, a question which was expressly left open by the High Court, were two different matters and the decision on the former could not operate as *res judicata* in respect of the latter.

The relevant provisions of the Act of 1910 and the Act of 1948, read together, made it clear that the Mysore State Government in the years 1953-56 was free to contract with the consumers of electricity to supply at such rates as it thought fit. When therefore the agreements with the respondents came to an end in 1949-50 it was not bound to continue the supply at the old rates. The matter rested in the region of contract, express or implied, and could not raise a question under the Electricity (Supply) Act of 1948 so as to attract s. 76 of that Act.

It was not correct to say that ss. 49 and 60 of the Act of 1948 brought the dispute within the purview of the Act and that, therefore, it was to be determined by arbitration under s. 76(1) of the Act. The revision of the rates could not be said to be for any of the purposes of the 1948 Act as required by s. 60 of the Act nor did s. 49 of the Act, properly construed, attract s. 76(1).

Ryota of Garbandho v. *Zamindar of Parlakimedi* (1943) L. R. 70 I. A. 129, referred to.

None of the provisions of the 1910 Act or the 1948 Act under which certain questions were to be determined by arbitration, mention the present dispute as a matter for arbitration either under s. 52 of the former or s. 76 (2) of the later.

Although the words used by s. 76 (1) were of wide amplitude, it obviously implied that the question must be one that arose under the Act or had relation to it. It would be anomalous to hold that a dispute regarding revision of rates made by the Government before the Board was constituted was one under the Act of 1948.

Since the dispute could not be said to have arisen under the Act of 1948, it was not necessary to decide whether the rule of *ejusdem generis* applied in interpreting the expression "other person" in s. 76(1) of the Act.

Per Hidayatullah, J.—The dispute relating to revision of rates was not one that could be referred to arbitration under s. 76 of the Electricity (Supply) Act, 1948. It was not necessary to invoke the rule of *ejusdem generis* to interpret the expression "other person" in that section so as to bring a consumer disputing the rates thereunder since no provision in the Act permitted such inclusion.

William v. *Golding*, (1865) L. R. 1 C. P. 69, held inapplicable.

Although s. 76 of the Act is very wide in its language, a qualification has to be read into it that the dispute it contemplates must be one relating to a matter with the purview of the Act. The Electricity Act of 1910 and the Electricity (Supply) Act of 1948, read together, clearly show that a dispute between the Government or the Board on the one hand and a consumer on the other relating to rates of supply, apart from any contract entered into, cannot at all arise under the Act of 1948.

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 629 to 632 of 1961.

Appeals from the judgment and orders dated August 19, 1960, of the Mysore High Court in C.R.P. Nos. 611 to 613 and 622 of 1959.

M. C. Setalvad, Attorney-General for India, T. Rangaswami Ayyangar, B. R. L. Iyengar and *P. D. Menon*, for the appellants.

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A. V. Viswanatha Sastri, D. N. Mukherjee and *B. N. Ghosh*, for respondent No. 1 (in C. A. No. 629/61).

N. C. Chatterjee, V. L. Narasimhamoorthy and *S. S. Shukla*, for respondent No. 1 (in C. A. No. 630/61).

V. L. Narasimhamoorthy and *S. S. Shukla*, for respondent No. 1 (in C. A. Nos. 631 and 632/61).

1962. November 15. The Judgment of S. K. Das, Kapur, Sarkar and Dayal, JJ., was delivered by S. K. Das, J., Hidayatullah, J., delivered a separate Judgment.

Das, J.

S. K. DAS, J.—These are four appeals on a certificate of fitness granted by the High Court of Mysore under Art. 133(1)(c) of the Constitution. The appeals have been heard together and this judgment will govern them all. The appellant is the Mysore State Electricity Board, Bangalore (hereinafter referred to as the Board) in all the four appeals. The respondents are four textile mills, each mill being respondent in one of the appeals. These four textile mills are : (1) the Bangalore Woollen, Cotton and Silk Mills Ltd., Bangalore, (2) the Minerva Mills Ltd., Bangalore, (3) Sri Krishna Rajendra Mills Ltd., Mysore, and (4) the Mysore Spinning and Manufacturing Co. Ltd., Bangalore.

The appeals raise a common question of law, viz., whether under s. 76 of the Electricity (Supply) Act, 1948 (LIV of 1948), the respondents are entitled to call for an arbitration in respect of an alleged dispute between them and the Board relating to the revision of rates payable by them for electric energy supplied by the appellant or its predecessor. The provisions of two Acts, the Indian Electricity Act, 1910 (IX of 1910) and the Electricity (Supply)

Act, 1948 (LIV of 1948), have to be considered in these appeals, and it will be convenient to cite the Indian Electricity Act, 1910, as the 1910 Act and the Electricity (Supply) Act, 1948, as the 1948 Act.

We proceed first to state the facts which have led to these four appeals. The 1910 Act and the 1948 Act were extended to the State of Mysore on April 1, 1951, by the Part B States (Laws) Act, 1951 (III of 1951). But the sections of the two Acts did not come into force in the State of Mysore all at once. Some sections of the 1948 Act came into force at once, and some came into force on later dates. It is sufficient for our purpose to know that s. 76 of the 1948 Act came into force in Mysore on December 30, 1956; and s. 5 thereof came into force on September 30, 1957. The Board was constituted under s. 5 by a Government notification dated September 27, 1957, to come into effect from September 30, 1957. Prior to the constitution of the Board, the Government of Mysore was generating electric energy and supplying it to consumers of both high tention and low tension power. On different dates in the year 1945, written agreements were entered into between the Government of Mysore and the four textile mills for the supply of electric energy to these textile mills at the rate of O. 55 of an anna per unit of day power and O. 35 of an anna per unit of night power, subject to the payment of certain monthly minimum charges. These agreements were for a period of five years and expired on different dates in 1949-50. By an order dated March 23, 1953, the Government of Mysore revised the rates for the supply of electric energy and increased the same to O. 65 of an anna per unit of day power and O. 45 of an anna per unit of night power. Subsequently, an expert committee, under the Chairmanship of Prof. M. S. Thacker, the then Director of the Institute of Science, Bangalore, was appointed to go into the question of rationalisation of the rates for power supply in the State of Mysore.

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On the recommendation of that Committee, the rates for the supply of electric energy were again revised with effect from April 1, 1956. This was done by means of an order dated March 1, 1956. On April 26, 1956, the four textile mills filed four writ petitions in the High Court of Mysore in which they prayed that the State Government and the Board (which Board, after its constitution in 1957, was added as the second respondent to the pending writ petitions) be restrained from levying or collecting the increased rates as per the order of March 1, 1956, and that they be directed to continue to levy the same rates for the supply of electric energy as were agreed to between the parties in the agreements of 1945. Two points were urged in support of these writ petitions. One was that the State Government was not legally competent to increase the rates for the supply of electric energy. The second point urged was that there was a dispute between the textile mills and Government and later the Board, with regard to the rates for the supply of electric energy and such a dispute must be decided by arbitration as provided under s. 76 of the 1948 Act. We shall read s. 76 of the 1948 Act at a later stage. We may here observe that of the two points urged in support of the writ petitions, the High Court dealt only with the first point and held that the Government of Mysore was legally competent to revise the rates for the supply of electric energy. The second point arising out of s. 76 of the 1948 Act the High Court did not decide. It said that it expressed no opinion as to "whether or not the contention of the textile mills that the dispute was covered by s. 76 of the 1948 Act and should be determined by arbitration" was sound. The High Court expressed the view that that question would have to be determined if and when the textile mills wanted to enforce their rights under the procedure laid down under the Arbitration Act, 1940 (X of 1940). On the finding that the Government of

Mysore was legally competent to revise the rates, the four writ petitions were dismissed on January 29, 1958. By March 31, 1958, the four textile mills were in heavy arrears with regard to the payment of the increased rates for the supply of electric energy to them, though they had paid in full according to the old rates. After the constitution of the Board in September, 1957, the Board made repeated demands on the basis of the increased rates and asked the textile mills to clear all arrears due by them according to the revised rates. The textile mills having failed to do so, they were informed that the Board would cut off the supply in exercise of its power under s. 24 of the 1910 Act. The textile mills thereupon contended that a dispute had arisen between them on one side and the Board on the other and the dispute had to be submitted to arbitration under the provisions of s. 76 of the 1948 Act. The four textile mills then nominated their arbitrator. On November 13, 1958, the Board filed four applications before the District Judge, Bangalore, under s. 33 of the Arbitration Act, in which it asked for a declaration that the dispute between the four textile mills and the Board was not liable to be referred to arbitration under s. 76 of the 1948 Act and also for a direction to restrain the four textile mills from seeking arbitration in respect of the alleged dispute. These four applications gave rise to four miscellaneous cases which were dealt with by the learned Additional District Judge, Bangalore, by a common order. The learned Additional District Judge allowed the petitions and held that the four textile mills were not entitled to the benefit of s. 76 of the 1948 Act, because the dispute between the Board and the four textile mills as to the rates for the supply of electric energy was not liable to be referred to arbitration under that section. The order of the learned Additional Dis rict Judge by which he disposed of the four petitions was dated April 17, 1959. From that order the textile mills

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preferred petitions in revision to the High Court of Mysore. Four such petitions were filed in respect of the four miscellaneous cases. By a common order dated August 19, 1960, the High Court allowed the petitions in revision holding that s. 76 of the 1948 Act applied, and the respondent textile mills were entitled to call for an arbitration in respect of the dispute between them and the Board in the matter of the revised rates. The Board then asked for and obtained a certificate of fitness from the High Court and on that certificate of fitness, these four appeals have come to this court from the aforesaid order of the High Court dated August 19, 1960. It may perhaps be stated here that after the constitution of the Board in 1957, anothere xpert committee was appointed to rationalise the various tariffs prevailing in the State of Mysore with regard to the supply of electric energy and on the recommendations of this Committee the rates were revised a third time. But these last revised rates came into effect from July 1, 1959, when presumably the revision petitions in the High Court were pending.

Before we embark on a discussion of the principal question involved in these appeals, it is perhaps necessary to say a few words about the interrelation of the two Acts, the 1910 Act and the 1948 Act. Section 70 of the 1948 Act indicates that relation. It states *inter alia* that no provision of the 1910 Act or any rules made thereunder shall have any effect so far as it is inconsistent with any of the provisions of the 1948 Act; where, however, the provisions of the two Acts are not inconsistent, the provisions of the 1948 Act shall be in addition to, and not in derogation of, the 1910 Act. It would, therefore, be necessary for us to refer to the relevant provisions of the two Acts on two points which bear upon the principal question mooted before us. These two points are—(a) what are the powers of the Board

or its predecessor Government to revise the rates for the supply of electric energy and can a dispute be raised by the textile mills with regard to such revision; and (b) what are the provisions in the two Acts for the settlement of disputes by arbitration and who are the persons who can be parties to such a dispute ? In considering the aforesaid two points, a distinction has to be kept in mind. We are concerned in this case with two periods. The first period is from 1953 to September 30, 1957, when the Board was constituted. The second period is the period of the Board commencing from September 30, 1957, till November 13, 195t8, when the applications under s. 33 of the Arbitraion Act were made. As we have stated earlier, the revision which is in dispute in these cases took place in the first period, that is, before the constitution of the Board. We have pointed out earlier that the third revision of rates took effect from July 1, 1959, when the revision petitions in the High Court were pending.

We think it advisable and convenient to refer to the relevant provisions of the two Acts at a later stage and in their relation to the points which we have stated above. We do not think that quoting the sections at this stage and out of relation to the two points which fall for consideration will serve any useful purpose. We, therefore, desist from quoting the relevant sections at this stage, but are content to refer here to the difference in the scheme of the two Acts, namely, the 1910 Act and the 1948 Act.

Very briefly put, the scheme of the 1910 Act was to empower the State Government, on an application made in the prescribed form and on payment of the prescribed fee, if any, to grant a license to any person to supply electric energy in any specified area. A person holding such a license was called the licensee. The State Government had certain powers to give directions to the licensee in regard to

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the supply of electric energy, and to control the distribution and consumption of electric energy etc. Section 28 of the 1910 Act laid down that no person other than a licensee shall engage in the business of supplying energy to the public except with the previous sanction of the State Government and in accordance with such conditions as the State Government may fix in that behalf. Therefore, under the 1910 Act there were two classes of persons who could supply electric energy, a licensee and a sanction holder. The 1948 Act made some radical changes in the scheme. One such change was that the expression 'licensee' was given an extended meaning to take in not merely a licensee licensed under Part II of the 1910 Act but also a person who had obtained sanction under s. 28 of the 1910 Act. The expression did not, however, include the State Electricity Board which was constituted for the first time under the 1948 Act. Next, the 1948 Act brought into existence two important authorities, one called the Central Electricity Authority under s. 3 of the Act and the other the State Electricity Board constituted under s. 5 of the Act. Section 26 of the 1948 Act, to which a detailed reference will be made later, lays down that subject to the provisions of the 1948 Act, the Board shall, in respect of the whole State, have all the powers and obligations of a licensee under the 1910 Act, and the 1948 Act shall be deemed to be the license of the Board for the purposes of the 1910 Act. There is a proviso which excepts the Board from the obligation of certain provisions of the 1910 Act. Chapter V of the 1948 Act contains provisions indicating the nature of the works which the State Electricity Board may undertake and its trading procedure; it includes provisions giving the Board power to establish its own generating stations to supply electric energy to licensees and to other persons requiring such supply. Under the 1948 Act, every licensee has to comply with such reasonable directions as the Board from time to time

may give for the purpose of achieving the maximum economy and efficiency in the operation of the undertaking. Chapter VI deals with the Board's finance, accounts and audit and in it occurs s. 60 which says *inter alia* that all debts and obligations incurred, all contracts entered into and all matters and things engaged to be done by, with or for the State Government for any of the purposes of the 1948 Act before the first constitution of the Board shall be deemed to have been incurred, entered into or engaged to be done by, with or for the Board etc. Chapter VII deals with miscellaneous provisions one of which is arbitration under s. 76, a section which we shall quote so far as it is relevant for our purpose.

> "76. ARBITRATION.—(1) All questions arising between the State Government or the Board and a licensee or other person shall be determined by arbitration.
>
> (2) Where any question or matter is, by this Act, required to be referred to arbitration, it shall be so referred—
>
> (a) in cases where the Act so provides, to the Authority and on such reference the Authority shall be deemed to have been duly appointed as Arbitrators, and the award of the Authority shall be final and conclusive; or
>
> (b) in other cases, to two arbitrators, one to be appointed by each party to the dispute.
>
> (3) Subject to the provisions of this section, the provisions of the Arbitration Act, 1940 (10 of 1940) shall apply to the arbitrations under this Act.
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> xx xx xx xx xx."

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The arguments presented before us on behalf of the appellant may be put in two categories : (1) the first line of argument is that the question of the power to revise the rate for the supply of electric energy to the four textile mills during the first period (1953 to 1956) by the Government of Mysore having been decided against the respondents by the High Court on the writ petitions, that decision is binding on them and the respondents cannot raise a dispute as to it by reason of the application of the principle of *res judicata*, (2) the second line of argument is that on a proper construction of sub-section (1) of s. 76, it should be held that the words "other person" occurring therein must be read *ejusdem generis* or *noseitur a sociis* with 'licensee' and so read, a consumer of electric energy will not be entitled to the benefit of that sub-section; furthermore, sub-s. (2) of s. 76 will not help the respondents, because no provision of the 1948 Act read with the 1910 Act requires to be referred to arbitration a dispute of the nature which is alleged to have arisen in the present case between the Government or the Board on one side and the textile mills on the other.

We shall now deal with these two arguments in the order in which we have stated them. First, as to the argument based on the principle of *res judicata*. We may first refer to the pleadings in the writ petitions. In paras. 7 and 8 of the affidavits which the textile mills filed in support of the writ petitions, they raised two main contentions : (a) firstly, that the Government of Mysore had "no right to increase the rates for supply of electrical energy in the manner they have done"; it was stated that there were prior agreements (referring to the agreements of 1945) and the supply had to be made at the same old rates since all the terms and conditions of the agreements were observed by both the parties; (b) secondly, it was stated that the increase of rates was arbitrary and unfair by reason

of the provisions of the Sixth Schedule of the 1948 Act. A reference was made to s. 26 of the 1948 Act and the Sixth Schedule thereof. That Schedule *inter alia* provides that 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" determined in accordance with certain rules laid down in the Schedule. It was pleaded on behalf of the textile mills that it was possible to find out from the rules the maximum rate which a licensee could charge under the rules, and in view of those rules, the revised rates fixed by the Government of Mysore were unfair and excessive.

The prayer which was made in the writ petitions was in these terms :

> "The High Court may be pleased to issue a writ of prohibition or a writ of *mandamus* or such other appropriate writ, direction or order restraining the respondent (meaning the Government of Mysore and later the Board) from levying or collecting the increased rates as per the Government order dated March 1, 1956, and that the respondent be directed to continue to levy at the rates agreed to between the parties in the agreements of 1945."

The decision of the High Court on the writ petitions makes it clear that the only point which was urged before the High Court on behalf of the textile mills was that under s. 26 of the 1948 Act the Board had all the powers and obligations of a licensee under the 1910 Act and as the provisions of the Sixth Schedule and the Seventh Schedule of the 1948 Act were, under s. 57 of that Act, deemed to be incorporated in the license of every licensee, the Board which had the same obligations as a licensee could not demand charges for the supply of electricity

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which were not in consonance with the principles laid down in those Schedules. This argument was repelled by the High Court, and the High Court pointed out that the Board was not a licensee within the meaning of the 1948 Act and was not subject to the rules of the Sixth Schedule thereof. Section 26 of the 1948 Act is in these terms :

> "Subject to the provisions of this Act, the Board shall, in respect of the whole State, have all the powers and obligations of a licensee under the Indian Electricity Act, 1910, and this Act shall be deemed to be the licensee of the Board for the purposes of that Act."

The High Court expressed the view that having regard to the definition clause in s.2(6) which in clear terms stated that the Board was not a licensee within the meaning of the 1948 Act, s. 26 was of no assistance to the textile mills. The High Court decided that the plea of the textile mills based on the provisions of s. 26 read with the Sixth Schedule of the 1948 Act was unsound and could not be accepted.

Now, the question is, does this decision operate as *res judicata* in the matter of a reference to arbitration under s.76 of the 1948 Act when the High Court, in express terms, left that question open ? The learned Attorney General appearing for the appellant has put his argument in the following way. He has submitted that s.26 of the 1948 Act came into force in Mysore on September 30, 1957, and the disputed revision of rates was made by the Government of Mysore in 1956 when s.26 of the 1948 Act was not in force there; but under s.60 of the 1948 Act, all matters and things engaged to be done by, with or for the State Government for any of the purposes of the 1948 Act before the first constitution of the Board, shall be deemed to have been done by, with or for the Board etc; therefore, the Board was entitled to ask for payment of all arrears of electric charges at

the rates revised by the State Government, provided the State Government had the right to revise the rates in 1956. That right having been found for the State Government and against the textile mills, the latter could not re-agitate the question and ask for a reference to arbitration under s.76 of the 1948 Act.

As against this line of argument, it has been submitted on behalf of the textile mills that having regard to the pleadings in the writ petitions and the decision of the High Court thereon, all that the High Court decided was that the Sixth Schedule of the 1948 Act did not apply to the Board and the revised rates could not be challenged on the ground that there was no compliance with the principles laid down in that Schedule. The question whether the dispute shall be determined by arbitration under s. 76 of the 1948 Act was specifically left open by the High Court and, therefore, that question cannot be shut out by the operation of the principle of *res judicata*.

We do not think that these appeals can be decided on the narrow ground of *res judicata*. There was some argument before us as to whether a decision on a question of law operates as *res judicata*, and the learned Attorney General relying on the Full Bench decision in the *Province of Bombay* v. *The Municipal Corporation of Ahmedabad*(1)has contended that a decision given by a court on a question of law may not bind the same parties when they are litigating with regard to a matter different from the one on which the decision was given : but a decision of law would be binding between the same parties as *res judicata* if the right that a party claimed was the same in the former litigation as in the later. We do not think that it is necessary for us to consider in the abstract to what extent a decision on a question of law operates as *res judicata* between the same parties. It is well settled that in order to decide whether a

(1) A.I.R. 1954 Bom. 1.

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decision in an earlier litigation operates as *res judicata*, the court must look at the nature of the litigation, what were the issues raised therein and what was actually decided in it. In the cases before us the High Court decided on the writ petitions that the Board was not a licensee within the meaning of s. 26 of the 1948 Act and was not bound by the principles laid down in the Sixth Schedule thereof. This was the actual decision of the High Court. It is indeed true that what becomes *res judicata* is the "matter" which is actually decided and not the reason which leads the court to decide the "matter." We find it difficult, however, to agree with the learned Attorney General that the matter which was actually decided on the writ petitions necessarily embraced or included the question of the right of the textile mills to call for an arbitration under s. 76 of the 1948 Act. The right of the State Government or of the Board to revise the rates, and the right, if any, of the textile mills to raise a dispute as to the revised rates, are two different matters and the decision on one cannot operate as *res judicata* with regard to the other. As to the right of the textile mills to call for an arbitration, the High Court, in express terms, left that matter open.

While we do not agree with the learned Attorney General that these cases can be decided on the narrow ground of *res judicata*, we do think that a much larger question arises, and this question has two facets, namely, whether the alleged dispute about the revision of rates made by the State Government in 1956 is a question which at all comes under the 1948 Act and if it does, do the textile mills come within the category of "other person" occurring in s. 76(1) of that Act ?

Let us first consider whether the dispute at all comes under the 1948 Act. What were the powers of the State Government to revise the rates in

1953-1956? No provision of the 1910 Act as it stood at the relevant time has been brought to our notice which imposed any restriction on the State Government in the matter of charging for the electric energy which it supplied, though s. 23 of the 1910 Act and some of the clauses in the Schedule of that Act imposed restrictions on a licensee in the matter of charging for electricity which the licensee supplied. The State Government was not, however, a licensee, either under the 1910 Act or the 1948 Act, and was not bound by those restrictions. Speaking generally, the Board takes the place of the State Government under the 1948 Act. Section 49 of the 1948 Act states.

> "Subject to the provisions of this Act and of any regulations made in this behalf, the Board may supply electricity to any person not being a licensee upon such terms and conditions as the Board may from time to time fix having regard to the nature and geographical position of the supply and the purpose for which it is required :
>
> Provided that in fixing any such terms and conditions the Board shall not show undue preference to any person."

It is worthy of note that this section came into force in Mysore on September 30, 1957, and the revision of rates made in 1953-1956 by the State Government was not in exercise of the powers given to the Board under s. 49. The position in 1953-1956 was that the State Government of Mysore was free to contract with the consumers of electric energy to supply at such rates as it thought fit. The agreements which the State Government had entered into with the four textile mills in 1945 had come to an end in 1949-1950 and the State Government was not bound to continue to supply electric energy to those mills at the old rates. The matter rested in the region of

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contract, express or implied, and it could not be said to raise a question under the 1948 Act. If it was not a question which arose under the 1948 Act, s. 76 thereof would not be attracted thereto.

Learned counsel for the respondents has sought to meet this difficulty in the following way. He has first referred to s. 60 of the 1948 Act. It is perhaps necessary to quote sub-s. (1) of that section here.

> "60 (1). All debts and obligations incurred, all contracts entered into and all matters and things engaged to be done by, with or for the State Government for any of the purposes of this Act before the first constitution of the Board shall be deemed to have been incurred, entered into or engaged to be done by, with or for the Board; and all suits or other legal proceedings instituted or which might but for the issue of the notification under sub-section (4) of section 1 have been instituted by or against the State Government may be continued or instituted by or against the Board."

The argument is that the revision of rates made by the State Government in 1956, looked at either as a matter of contract between the parties or as something done by the State Government in exercise of its powers to fix such rates as it thought fit, shall be deemed under sub-s. (1) of s. 60 to have been done by the Board, and if at the time when the revision was made there was a dispute between the parties which dispute has continued with the Board by reason of the Board demanding the arrears at the revised rates, it must be held that the dispute arises under the 1948 Act and may be determined by arbitration under s. 76 (1) thereof. Learned counsel for the respondents has further argued that even if the Board had revised the rates in exercise of its powers under s. 49, a section which we had earlier

quoted, such power would be subject to the provisions of the 1948 Act and would attract s. 76. Therefore, the argument of learned counsel for the respondents is that the effect of ss. 60 and 49 is that the dispute is one which arises under the 1948 Act and must be determined by arbitration as required by s. 76 (1).

We doubt the correctness of this line of argument. First, as to s. 60 of the 1948 Act. The revision of rates which was made by the State Government in 1953-1956 rested, as we have said earlier, either on contract or on the unilateral action of the State Government. In either case, it was outside the 1948 Act and was not referable to any provision thereof. A pre-requisite condition for the application of s. 60 is that the contract made by the State Government or the thing done by it must be "for any of the purposes of the 1948 Act." If it was for the purposes of that Act and was entered into or done by the State Government before the first constitution of the Board, then the contract or the thing done shall be deemed to have been made or done by the Board and all suits or other legal proceedings which might have been instituted against the State Government could be instituted against the Board. We have earlier pointed out that there was no provision in the 1910 Act as it stood at the relevant time which applied to the State Government in the matter of the rates which it charged for applying electricity to consumers. In the 1948 Act also, there is no section which regulates the State Government in the matter of what it will charge for electric energy supplied by it. That being the position, how can it be said that the revision of the rates by the State Government gave rise to a question under the 1948 Act ?

We now turn to s. 49. That section came into force in Mysore, we have said earlier, on September

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30, 1957. That section applied to the Board after is was constituted. It had no application in 1956, and we are unable to see how it can be said that any dispute as to the revision of rates made by the State Government in 1956 was a question which arose under the 1948 Act. The learned Attorney General has indeed accepted the position that the Board is the successor-in-interest of the State Government and the supply of electricity is one of the purposes of the 1948 Act. That does not, however, mean that the revision of rates in 1956 and a dispute raised as to such revision, became a question under the 1948 Act by reason of the demand made by the Board of the arrears due in respect of the revised rate. The true nature of the question remained what it was in 1956, namely, the right of the State Government to revise the rates, a right which has no reference to the 1948 Act.

Furthermore, we are unable to accept the argument advanced on behalf of the respondents that the expression "Subject to the provisions of this Act" occuring in s. 49 attracts s. 76. Section 49 seems to give the Board a right to supply electricity to any person not being a licensee upon such terms and conditions as the Board may from time to time fix having regard to the nature and geographical position of the supply and the purposes for which it is required. The proviso to the section states that in fixing any such terms and conditions, the Board shall not show undue preference to any person. We are unable to agree with the learned counsel for the respondents that the section contemplates that the consumers may raise a dispute with regard to the terms and conditions and on such a dispute being raised, it shall be determined by arbitration as required by s. 76 (1) of the 1948 Act. The expression "Subject to the provisions of this Act" merely means that if there are any provisions regulating the Board in the matter

of supplying electricity to any person not being a licensee, then the supply by the Board will be subject to those provisions. No provision has been brought to our notice which regulates the Board in the matter of the charges which it may fix for the supply of electricity. It has been argued before us that the expression "having regard to the nature and geographical position of the supply and the purposes for which it is required" indicates that a dispute may arise between the Board and the consumer of electricity in the sense that the consumer may allege that in fixing the charges for the supply of electricity the Board had no regard to the nature and geographical position of the supply and the purposes for which it was required. The expression "have regard to" or "having regard to" has been the subject of judicial interpretation. In *Ryots of Garbandho* v. *Zamindar of Parlakimedi* (1) their Lordships of the Privy Council dealt with the meaning of the expression. They said :

> "The view taken by the majority of the Collective Board of Revenue in making the order dated October 19, 1936, which is now complained of, is that the requirement to "having regard to" the provisions in question has no more definite or technical meaning than that of ordinary usage, and only requires that these provisions must be taken into consideration."

We do not therefore think that that expression contemplates that a consumer of electricity can raise a dispute as against the Board on the footing that the Board did not pay due regard to the nature and geographical position of the supply and the purposes for which it was required.

It is necessary here to refer to those provisions of the 1910 and 1948 Acts which require certain questions to be determined by arbitration. In the

(1) (1943) L.R. 70 I.A. 129, 168.

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1910 Act, the main section dealing with arbitration is s. 52 which was in these terms at the relevant time.

> "Where any matter is, by or under this Act, directed to be determined by arbitration, the matter shall, unless it is otherwise expressly provided in the license of a licensee, be determined by such person or persons as the State Government may nominate in that behalf on the application of either party; but in all other respects the arbitration shall be subject to the provisions of the Arbitration Act, 1940.
>
> xx xx xx xx xx."

The section lays down that where any matter is by or under the 1910 Act directed to be determined by arbitration, the matter shall be determined by arbitration in the manner laid down in that section. The scheme is that arbitration will take place only when any matter is by or under the 1910 Act directed to be determined by arbitration. There are several sections, such as s. 7-A, s. 13(2), s. 14 (3), s. 15 (5), s. 16 (3), s. 19 (2), s. 21 (4), s. 22, ss. 22-A (2) and s. 32 (3) which require certain matters to be determined by arbitration. None of these, however, relate to the rates for the supply of electricity by the State Government. In the 1948 Act the main section dealing with arbitration is s. 76 which we have already set out earlier in this judgment. There is some difference in the scheme of s. 76 from that of s. 52. Section 76 is in two parts : the first sub-section states, in general terms, that all questions arising between the State Government or the Board on one side and a licensee or other person on the other shall be determined by arbitration; the second sub-section states that where any question or matter is by the 1948 Act required to be referred to arbitration, it shall be so referred to the persons specified in cls. (a) and (b); in cl. (a) the authority named by the Act shall be the

arbitrator and in cl. (b) the reference shall be to two arbitrators, one to be appointed by each party to the dispute. Sub-section (2) to s. 76 corresponds, more or less, to s. 52 of the 1910 Act, but sub-sec. (1) of s. 76 is more general in nature. The 1948 Act also contains several provisions besides s. 76 (1) which require certain matters to be referred to arbitration. These provisions are s. 19 (4), s. 40, s. 44(3), s. 45(3), s. 55 (2) and some clauses of the First and the Fourth Schedule. Some of these provisions constitute the Central Electricity Authority, constituted under s. 3 of the 1948 Act, as the arbitrating authority. Section 19 (4) states that if any question arises under sub-s. (1) thereof as to the reasonableness of the terms or conditions or time therein mentioned, it shall be determined as provided in s. 76. Now, s. 19 (1) deals with the powers of the Board to supply electricity to any licensee or person requiring such supply in any area in which a scheme sanctioned under Ch. V is in force. It is clear that s. 19 (4) does not apply in the present case. If it did, then the respondents might be entitled to claim an arbitration under sub-s. (2) of s. 76.

Thus, it appears from what we have stated above, that none of the provisions of the 1910 Act or the 1948 Act make the present dispute a matter directed or required to be referred to arbitration either under s. 52 of the 1910 Act or s. 76 (2) of the 1948 Act. Therefore, the respondents can call for an arbitration under s. 76 (1) of the Act, if they can establish that the dispute in the present case is a question which arises under the 1948 Act. It is indeed true that sub-s. (1) of s. 76 uses words of wide amplitude. It states that "all questions arising between the State Government or the Board and a licensee or other person shall be determined by arbitration." We, however, think that it is implicit in the sub-section that the question is one which arises under the 1948 Act. Obviously, it could not have

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been contemplated that any question arising between the State Government on one side and any person on the other shall be determined by arbitration. If that were the meaning of the sub-section, then all litigation between the State Government on one side and any person on the other will have to be referred to arbitration. We do not think that that can be the meaning of the sub-section. When the sub-section states "all questions arising between the State Government etc.," it must mean questions which arise under or have relation to the 1948 Act. A dispute between the Government and a private citizen or a dispute between the Government and its employee, unrelated to the 1948 Act, cannot be subject of an arbitration under this sub-section. If that be the correct interpretation, then the respondents, before they can succeed, must establish that the dispute as to revision of rates made by the State Government in 1956 is a dispute which arises under the 1948 Act. It would be anomalous to hold that a dispute regarding revision or fixing rates of supply made by Government before the Board was constituted arises under the 1948 Act, when even a revision of rates made by the Board under s. 49 of the 1948 Act will not be referable to arbitration. We are, therefore, of the view that the dispute in these cases is not one which arises under the 1948 Act.

Now, we proceed to the third and the last question. Assuming that the dispute is one which arises under the 1948 Act, do the respondents, viz., the four textile mills, come within the expression "other person" occurring in sub-section (1) of s. 76 ? The learned Attorney General has very strenuously contended that the scheme of s. 76 (1) is that in the matter of a dispute, the State Government or the Board is placed on one side as a party to the dispute and the licensee or other person is placed on the other, and having regard to the entire scheme of the 1948 Act, the expression "other person" must take

colour from the word 'licensee' preceding it. He has further contended that the word 'licensee' in the context of the 1910 and the 1948 Acts denotes a genus or category and on the application of the principle of *ejusdem generis* the expression "other person" means persons who are of the same genus or category. He points out that under the 1910 Act, 'licensee' means a person licensed under Part II of that Act to supply electric energy and 'consumer' means any person who is supplied with energy by a licensee or the Government or by any other person engaged in the business of supplying energy tc the public under the 1910 Act or under any other law for the time being in force.

There is, however, another class of persons who may supply electric energy and that class consists of persons who may be called sanction-holders under s. 28 of the 1910 Act. The 1948 Act includes both these classes of persons in the definition of licensee, but does not include the Board. The argument of the learned Attorney General is that having regard to these definition clauses, the word 'licensee' denotes a genus or category of persons who supply electric energy to consumers. There is a third class of persons (other than the Board) who may supply electric energy and it is this class of persons who are sought to be included by the expression "other person" occuring after the expression 'licensee'. It is clear from s. 49 of the 1948 Act that the Board may supply electricity to any person not being a licensee upon such terms and conditions as the Board may from time to time fix. A similar power is given to the Board also under ss. 18(c) and 19(1) of the Act. These persons to whom the Board may supply electricity may, in their turn, supply electricity to consumers on such terms and conditions as the Board may lay down. It is clear, therefore, that the 1948 Act contemplates a class of persons (other than licensees) who may get their supply of electricity

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from the Board and may, in their turn, supply the same to consumers within the meaning of the definition of that word in the 1910 Act. The argument of the learned Attorney General is that it is this class of persons who are contemplated by the expression "other person" occurring in sub-s. (1) of s. 76.

The learned Attorney General has sought to fortify his argument by the further circumstance that s. 76(1) obviously does not contemplate that as between a licensee and a consumer, there can be a dispute in respect of which the consumer can call for an arbitration. It is argued that this is obvious from the scheme of s. 76(1) because the licensee or other person is put on the same side, vis-a-vis, the State Government or the Board. The argument of the learned Attorney General is that it will be incongruous to hold that s. 76(1) does not take in a dispute detween a licensee and a consumer, but takes in a dispute between the State Government or the Board on one side and a consumer on the other, and he points out that so to hold will be to put the Government or the Board in a much worse, position than the licensee. He has drawn our attention to the proviso to s. 26 of the 1948 Act which excludes the Board from certain clauses of the Schedule to the 1910 Act and thereby exempts the Board from arbitration in respect of matters referred to therein. The argument is that in view of the proviso to s.26 of the 1948 Act, it could not have been contemplated by the Legislature that the Board would be in a worse position than a licensee.

The learned Attorney General has also drawn our attention to ss.75 and 77 of the 1948 Act. According to him, sub-s. (3) of s. 75 gives a clue to the meaning of the expression "other person" occurring in s. 76 (1). Sub-section (3) of s. 75 states *inter alia* that the Board may require any licensee or person supplying electricity for public or private purposes or generating electricity for his own use to

furnish it with such information and accounts relating to such supply or generation and in such form and manner as the notice may specify. This sub-section, so the learned Attorney General has argued, shows that there are persons other than licensees who may, as required by the Board, supply electricity for public or private purposes or even generate electricity for their own use. According to the learned Attorney General, these are the persons who are referred to as 'other persons' in s. 76 (1). Section 77 is the penal section and read with s.4 it makes it clear that there is a third class of persons besides licensees or sanction-holders who may supply electricity for public or private purposes. Section 4 states that it shall be the duty of each State Electricity Department or other licensee or person supplying electricity for public or private purposes or generating electricity for its or his own use, to furnish to the Central Electricity Authority such accounts, statistics and returns as may be required. All these sections indicate clearly enough that besides licensees holding a licence under Part II of the 1910 Act and sanction-holders holding a sanction under s. 28 of the 1910 Act, there is a third class of persons who may supply electricity for public or private purposes. This third class of persons is subject to control by the State Government, The Central Electricity Authority or the Board. The contention of the learned Attorney General is that a dispute between this third class of persons on one side and the State Government or Board on the other is the dispute contemplated by the use of the expression "other person" occurring in sub-s.(1) of s. 76. The learned Attorney General has placed reliance on the decision in *Williams* v. *Golding*(1). There the question for consideration was the meaning to be given to the expression "or other person" in the 108th section of the Metropolitan Building Act, 1855 (18th and 19th Vict. c. 122). It was held that the expression "or other person" meant persons *ejusdem generis* with a district surveyor, that

(1) 1865 (1) L.R.C.P. 69.

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is, persons having an official duty. The decision in *United Towns Electric Co.* v. *Attorney-General-Newfoundland* (1) explains the application of the principle of *ejusdem generis,* and it was held that there is no room for the application of that principle in the absence of any mention of genus, since the mention of a single species does not constitute a genus.

As against these contentions of the learned Attorney General, it has been argued on behalf of the respondents that the main principle on which we must proceed is to give to all the words of s. 76 their common meaning; and the *ejusdem generis* rule which is not automatically applicable really means that there is implied into the language some restriction which is not there; it is argued that no restriction can be implied from the language of s. 76 so as to exclude a consumer from the expression "other person" occurring in sub-s. (1) of s. 76. Ithas been further submitted that the word 'licensee' preceding the expression 'other person' does not denote a genus or category of suppliers of electricity so as to attract the operation of the rule of *ejusdem generis.* In this connection our attention has been drawn to ss. 28, 34, 39, 41 and 43 of the 1948 Act.

These contentions urged on both sides would require careful consideration in a more appropriate case where a dispute arises under the 1948 Act. In view of our finding, however, that the dispute in the present case does not arise under the 1948 Act, the question whether the rule of *ejusdem generis* applies or not in interpreting s.76 is purely academic. We do not propose to determine that academic question here.

Before we conclude, we may refer to another argument advanced by the learned Attorney General. The learned Attorney General has submitted that if a question between the Board and a consumer is to be

(1) 1939-1 All. E.R. 423.

referred to arbitration, then in cases where the Board itself supplies electric energy there may be thousands of consumers each of whom may raise a dispute and call for arbitration. In that event, there will be thousands of arbitrations and the legislature could never have contemplated such a situation. This is really an argument based on inconvenience, and we do not think that inconvenience is a decisive factor in interpreting a statute.

Learned counsel for the respondents drew our attention to s.51-A of the 1910 Act. That section states that where the State Government engages in the business of supplying energy to the public, it shall have all the powers and obligations of a licensee under the 1910 Act. There is a proviso similar to the proviso to s.26 which excludes the State Government from the operation of some of the provisions of the Act. This section is of no materiality for the consideration of the cases before us, for it was inserted in the 1910 Act in 1959.

For the reasons given above, we allow these appeals, set aside the orders of the High Court dated August 19, 1960, and restore those of the Additional District Judge, Bangalore dated April 17, 1959. The appellant will be entitled to its costs throughout, one hearing fee.

HIDAYATULLAH, J.—I agree that this appeal should be allowed. I am of the opinion that this is not the kind of dispute which can come within s. 76 of the Electricity (Supply) Act, 1948. That section provides :— *Hidayatullah, J.*

> "76. Arbitration.—(1) All questions arising between the State Government or the Board and a licensee or other person shall be determined by arbitration."

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I am of opinion that the *ejusdem generis* rule invoked by the apellant to interpret 'other person' in the section is not required to limit the generality of the expression because a consumer disputing rates cannot come within the expression "other person", regard being had to the provisions of the Act.

The facts of the case have been set out exhaustively by my brother Das and for my purpose I need only mention that the respondents in these appeals are four companies receiving electrical energy in their mills from the appellant. Formerly there was a contract under which the rate was fixed but the contract expired sometime in 1949-50 and the State Government has now fixed the rates higher. The respondents have paid the charges for the energy consumed by them at the old rates and large arrears have accumulated representing the difference between the charge at the old and the new rates. The first revision of rates, it may be mentioned, was in 1953 and the second in 1956. The present appellant was constituted in 1957 and in all proceedings to which reference has been made in the judgment of my learned brother, the appellant has been joined. The respondent companies admit that they are liable to pay for the energy consumed by them at the rates agreed in the expired agreements but demur to payment at the new rates and this has raised a dispute which they claim must be referred to arbitration as required by s.76.

The short question in this appeal is whether such a dispute is compulsorily referrable to arbitration. Of course, if the dispute is one to which s. 76 applies and the respondent companies in their position as consumers, are proper parties to take advantage of s. 76, then the dispute, such as it is, must be referred. The language of s. 76 is both wide and intractable. But a dispute need not go to arbitration if it is not a dispute to which s. 76 can apply.

Also, the section can hardly be invoked if consumers (such as the respondents) do not come within the expression "other person", on the principle of *ejusdem generis* or otherwise.

The Electricity (Supply) Act, 1948 (54 of 1948) was passed in 1948 and it was a measure, as the long title and the preamble show, to rationalise the production and supply of electricity and generally for taking measures conducive to electrical development. The Act deals with the supply of electrical energy and its rationalisation, whether such energy be generated by a State Government, State Electricity Board, a licensee under the Indian Electricity Act, 1910 (9 of 1910) or a person who, having obtained sanction under section 28 of the 1910 Act, engages in the supply of electrical energy. The Electricity (Supply) Act, 1948, does not deal with other matters relating to the supply and use of electrical energy which are governed by the earlier Act of 1910. The latter Act deals with the grant of licenses to produce electrical energy, and contains provisions for the supply, transmission and use of electrical energy by licensees and non-licensees and generally with matters connected thereto. Both the Acts are required to be read together but where they differ the later Act prevails. Both the Acts provide for arbitration in disputes. The Act of 1910 provides this by s. 52 which reads :—

> "52. Where any matter is, by or under this Act, directed to be determined by arbitration, the matter shall, unless it is otherwise expressly provided in the license of a licensee, be determined by such person or persons as the State Government may nominate in that behalf on the application of either party; but in all other respects the arbitration shall be subject to the provisions of the Arbitration Act, (1940).

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Provided that where the Government or a State Electricity Board is a party to a dispute, the dispute shall be referred to two arbitrators, one to be appointed by each party to the dispute."

This section enjoins arbitration only in disputes which are expressly directed by the 1910 Act to be determined by arbitration and admittedly none of those provisions applies. Section 76 is more general. It enjoins that "all questions" arising between the State Government or the Board on the one hand and a licensae or other person on the other shall be determined by arbitration. Though the section does not say this, the question must be one which *can* arise under the Supply Act. The section does not mean, notwithstanding its extreme width, that disputes which have no relation to the Supply Act or its provisions must also be resolved by arbitration for to hold so would mean that neither the State Government nor the Board can sue or be sued in courts. It is, therefore, quite plain that one must read a qualification into the section that the dispute must be one touching a matter within the Supply Act. Some of these disputes are required by the Act itself to go before the Central Electricity Authority, one of its duties being to "act as arbitrators in matters arising between the State Government or the Board and a licensee or other person as provided in this Act", vide s. 3 (1) (II). Other disputes are required to go before two arbitrators : one to be appointed by each party. Indeed the four companies have nominated their arbitrator, given a notice to the Board and the Board has filed in the District Court four applications under s. 33 of the Arbitration Act, in which it has asked for a declaration that the dispute is not liable to be referred to arbitration. This declaration was given by the Additional District Judge, Bangalore, but it was

disallowed by the High Court of Mysore by an order passed on revision. The High Court granted certificates on which the present appeals were filed.

Before dealing with the arguments, it is necessary to refer briefly to the scheme of the two Acts to discover whether this kind of dispute as to rates can arise between the State Government or the State Electricity Board on the one hand and the consumer on the other, so as to require a reference to arbitration. The 1910 Act deals with the supply of energy by licensees and the transmission and use thereof. It regulates the grant of licenses to licensees and confers on the Government the right to control the distribution, supply and consumption of electrical energy. In addition to the licensees the 1910 Act gives power to the State Government (s. 28) to sanction generation, supply, transmission and use of electrical energy by persons other than the licensees. The 1910 Act also contains provisions for supervising the work of licensees and persons given sanction under s. 28 with a view to seeing that they observe the provisions of the Act. The 1910 Act contains a schedule divided to-day into XVI clauses. Formerly, two more clauses which were numbered XI and XIA were also in the schedule bringing the number of clauses to XVIII. Clauses XI and XIA were omitted by the Indian Electricity (Amendment) Act 1959 (32 of 1959). Clauses IX,X, XI, XIA and XII deal with charges for the supply of electrical energy and the fixation of the rates.

Under the Electricity (Supply) Act of 1948 the State Electricity Board has all the powers and obligations of a licensee under the Indian Electricity Act, 1910, and under s. 26 of the 1948 Act that Act itself is deemed to be the license of the Board for the purpose of that Act. There are, however, two exceptions to this. The first exception is mentioned in the proviso

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to s. 26 by which certain provisions of the 1910 Act are made inapplicable to the Board and these include clauses IX to XII of the schedule which deal with charges for the supply of electrical energy. The other exception is in the definition of "licensee" in which it is said that notwithstanding the provisions of s. 26 the term "licensee" as used in the Supply Act 1948, does not include the Board. In other words, though the Board carries on work as a licensee for the purposes of the 1910 Act, it is not a licensee in the true sense of the word and duties and obligations of a licensee in the matter of charges and fixing of rates for consumption of electrical energy are not applicable to the Board. It is, therefore, quite clear that no dispute between a consumer and the State Electricity Board can arise under the 1948 Act in the matter of the rates at which the Board supplies electrical energy. In the present cases, there is a still stronger reason for coming to the conclusion that there was no dispute under the Act which could be referred to arbitration because the rates were fixed by the State Government in 1953 and 1956 and the Board itself came into existence in 1957. When we questioned Mr. Vishwanath Sastri, how he said that this was a dispute arising under the 1948 Act, he referred us to s.60 of the Supply Act which makes the Board a successor of the State Government in respect of the matters to which the Act applies. He said that if the State Government was incompetent to revise the rates in 1953 and 1956, the Board as its successor would be the appropriate party with which the dispute can be raised. In my opinion such a dispute between the State Government and or Board on the one hand and a consumer on the other in respect of the rates of electrical energy (apart from any contract that might have been entered into) does not arise under the 1948 Act at all. No provision of the 1948 Act has been brought to our notice which would embrace such a dispute and as I have already pointed out above that it is only a dispute arising under

the 1948 Act which can be compulsorily referred to arbitration.

The next question is whether a consumer is included in the expression "other person". The learned Attorney-General seeks to apply the *ejusdem generis* rule and argues that the expression "other person" must take its colour from the word immediately preceding, i. e., licensee. He took us through the two Acts to show who were the persons who could be said to belong to the genus "licensee" and said that persons generating electricity with the sanction of the State Government under s. 28 of the 1910 Act would be another such class belonging to the same genus. He relied upon the case of *William* v. *Golding* (1), to support his contention that even a single category may be regarded as a genus to control the amplitude of the general words next following. That case arose under an Act in which the expression "District Surveyor" was followed by the words "other person" and the words "other person" were given a limited meaning on the *ejusdem generis* principle. The section gave protection to persons exercising official duties and was in the nature of a public authorities protection clause and the words "other person" could not be extended to cover a private party not performing official duties. I doubt whether that ruling can be applied to the present case. I have already stated that the dispute must be one which can arise under the Act, If the whole Act is scanned it will be found that consumers have no place in it. Wherever the Act uses the word "other person" it invariably means persons who generate and supply electrical energy and not those who consume it. The only section to which our attention was drawn in which a dispute was likely to arise between the Electricity Board and a possible consumer (not a licensee as defined in the Act) is s.49. That section requires that the Board may supply electricity to any person not being a licensee upon

(1) (1865) L. R. 1 C. P. 69.

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such terms and conditions as the Board may from time to time fix having regard to the nature and geographical position of the supply and for purposes for which it is required without showing undue preference to any person. Mr. Vishwanath Sastri contended that a dispute might arise if the Board unreasonably refused to supply electricity to a private consumer or showed undue preference to someone else and such a dispute might be taken to arbitration under s. 76. I do not wish to pronounce any opinion upon this matter because the present dispute is not a dispute of this character. For these reasons I am of opinion that the Additional District Judge, Bangalore, was right in granting the declaration sought by the appellants. I would, therefore, set aside the order of the High Court and restore that of the Additional District Judge, Bangalore, with costs on the respondents throughout. One hearing fee.

Appeals allowed.

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November, 15.

INCOME-TAX OFFICER & ANOTHER, BOMBAY

v.

THE SIMPLEX MILLS LTD., BOMBAY

(S. K. DAS, J. L. KAPUR, A. K. SARKAR, M. HIDAYATULLAH and RAGHUBAR DAYAL, JJ.)

Income Tax—Reassessment—Validity—Advance payment of tax found refundable in part on assessment—Payment of legal interest to assessee—Amendment of law reducing amount—Recovery of excess—Indian Income-tax Act, 1922 (11 of 1922), ss. 34, 18 A (1), (5), (8), (11).

The assessee respondent made advance payment of tax under s. 18 A (1) of the Income-tax Act for the assessmetn