

1958

Present : Sansoni, J.

G. C. A. COREA, Petitioner, and THE URBAN COUNCIL,
KOTTE, *et al.*, Respondents

*S. C. 162—In the matter of an Application for a Writ in the
nature of a Writ of Mandamus*

*Electricity Act, No. 19 of 1950—Duty of licensee to supply electricity—Enforceability
by writ of mandamus—Sections 12 (1), 13, 15, 33 (1), 64, 73, 74.*

Section 33 (1) of the Electricity Act casts a duty upon a licensee, when he is required to do so by the owner or occupier of any premises situated within 150 feet from a distributing main, to give and continue to give a supply of energy for those premises and to furnish and lay any service lines that may be necessary for the purpose of supplying that energy.

The duty cast upon the licensee is enforceable by *Mandamus* when there has been a refusal to carry it out. A criminal prosecution under section 64 is not an alternative legal remedy to *Mandamus*, and certainty is not as convenient, beneficial or effectual as *Mandamus*.

APPPLICATION for a writ of *mandamus*.

H. Wanigatunga, with Hilmy Mohideen, for Petitioner.

A. H. C. de Silva, Q.C., with A. K. Premadasa, for 1st and 2nd Respondents.

Stanley Perera, for 3rd and 4th Respondents.

Cur. adv. vult.

November 18, 1958. SANSONI, J.—

The petitioner who is the owner of premises bearing assessment No. 633/4, Cotta Road, Kotte has applied for a writ of *Mandamus* on the 1st and 2nd respondents directing them to give and continue to give a supply of electrical energy to the said premises and to furnish and lay supply lines necessary for this purpose from the supply main on Mission Road. The 1st respondent Council is the licensee appointed under the provisions of the Electricity Act No. 19 of 1950 for that area, and the 2nd respondent is its Chairman. The 3rd and 4th respondents have been joined as parties to give them notice of the application but no relief has been claimed against them in these proceedings. They are the owners of premises which intervene between Mission Road and the petitioner's premises.

The petitioner's premises are situated at a distance of 50 feet from the distributing main on Mission Road. He applied to the 1st respondent for a supply of electrical energy to be carried over the premises belonging to the 3rd and 4th respondents, and the 2nd respondent gave notice to the 3rd and 4th respondents under section 15 (2) of the Act that work would be done affecting their premises. Objections were lodged by the 3rd and 4th respondents with the Government Agent against the drawing of service lines in the manner contemplated.

An inquiry was held by the Government Agent who, by his order dated 12th February 1958, authorised the 2nd respondent to draw an electrical service main over the premises of the 3rd and 4th respondents along a particular route for the purpose of supplying electricity to the petitioner's premises. Under section 15 (9) the decision of the Government Agent is final, and, seeing that it was the 2nd respondent who gave notice that he intended to draw the service lines over the premises of the 3rd and 4th respondents, I should have thought the decision of the Government Agent allowing the 2nd respondent's application would have concluded the matter so far as these parties were concerned. Apparently the 2nd respondent changed his mind on the 14th of February 1958, for he wrote to the Government Agent on that day recommending that the lines be laid along Cotta Road to the petitioner's premises at a cost of Rs. 3,000 instead of over the premises of the 3rd and 4th respondents at a cost of Rs. 950. His reasons as set out in that letter are that it would be in the interests of the rate payers in the area to do so, and that there was strong opposition from the 3rd and 4th respondents. He added in that letter :

“ I cannot see any reason as to why I should trespass on private property against the wishes of the land owners to relieve an individual of his expenses for an electricity connection to his premises ”. Since the decision of the Government Agent had already been made, and made after taking into account the objections of the parties affected and the alternative route, it was idle for any of the respondents to raise further objections after that decision was made. But this attitude of the 2nd respondent has a bearing on the question whether there was a refusal on his part to grant the petitioner's application for a supply of electrical energy.

The 2nd respondent has stated in his affidavit that on 8th March 1958 he wrote to the petitioner regretting that he could not consider his application for a supply of electricity till a final settlement was reached in his correspondence with the Government Agent. On 25th March 1958 he returned to the petitioner the money order for Rs. 916/14 which had been deposited by the petitioner as charges for effecting the work, stating that he was unable to accept it pending the conclusion of his correspondence with the Government Agent. The refusal of the 2nd respondent to supply electrical energy is put beyond doubt in paragraph 16 of his affidavit where he states that he is not bound to give the petitioner a supply of electrical energy from Mission Road, and in paragraph 18 where he expresses his willingness to supply energy from Cotta Road. I think it is impossible in the face of these facts to uphold the argument that the present application of the petitioner was premature. There has been a clear refusal to supply energy over the premises of the 3rd and 4th respondents.

Nor can I accept the argument that the Government Agent's decision bound only the 3rd and 4th respondents and imposed no duty on the 1st and 2nd respondents. That decision is made final by section 15 (9) and it is final so far as all the parties involved in the inquiry are concerned, and I cannot accept the implied suggestion that the 2nd respondent can ask the Government Agent to hold as many inquiries as he demands without being bound by the orders made on them.

Another objection which was urged was that the Act provided an alternative remedy and no writ should issue. The alleged alternative remedy is the prosecution of the 1st respondent Council as a licensee who made default in supplying energy to the petitioner and thereby committed an offence punishable under section 64 of the Act. In a prosecution of a licensee for an offence, section 73 provides that where the licensee is a local authority the Court may, in lieu of imposing a fine, take action under section 74, and that section provides that where a licensee who is a local authority is charged with any offence under the Act, and the charge is found to be proved and the default or contravention constituting the offence is likely to prejudice the safety and convenience of the public, the Court may without proceeding to conviction report such default or contravention to the Minister. The Minister may then follow a certain course of action if it appears to him to be in the public interest to do so. Sections 73 and 74 would not, in my view, be applicable in this case because the default complained of by the petitioner does not prejudice the safety and convenience of the public. It may well be open to the petitioner to prosecute the 1st and/or 2nd respondent even at this

stage, but he is more interested, naturally, in obtaining a supply of electricity to his premises, and the institution of criminal proceedings will not avail him in that respect. I do not think that a criminal prosecution under section 64 is an alternative legal remedy to Mandamus, and certainly it is not as convenient, beneficial or effectual as the remedy he now seeks.

A further objection taken was that there was no duty on the part of the 1st and 2nd respondents to supply electrical energy because there was no provision in the Act for compensation to be paid to those who may be adversely affected by the laying of service lines. It was submitted that the Court would not order the 1st and 2nd respondents to interfere with the proprietary rights of the 3rd and 4th respondents, since no compensation is payable when the service lines are laid over private property. The argument seems to spring from an erroneous interpretation of sections 12, 13 and 15. Section 12 (1) reads: "A licensee shall carry out all works necessary for or connected with the generation, transmission, transformation, distribution and supply of energy within such period or periods as may be specified in the licence in respect of each such work". Section 13 provides that before a licensee commences any of the works enumerated in that section he must submit for the approval of the Chief Electrical Inspector certain specifications, plans and drawings. It is true that the laying of lines other than service lines is one of the works mentioned, but section 13 in no way controls the operation of section 12. In section 15 there is definite provision for payment of compensation for any disturbance, disability or damage caused to the owner of a land when the works referred to in section 12 are carried out. In my view the entire argument is built up on a wrong premise, namely, that the works contemplated in section 12 (1) do not include the laying of service lines, whereas the provision for payment of compensation contained in section 15 covers all work carried out by a licensee under section 12 including the laying of service lines.

The basis of the petitioner's application is section 33 (1) which casts a duty upon a licensee, when he is required to do so by the owner or occupier of any premises situated within 150 feet from a distributing main, to give and continue to give a supply of energy for those premises and to furnish and lay any service lines that may be necessary for the purpose of supplying that energy. There is a duty cast upon the 1st respondent by the Act and it is a duty which the petitioner is entitled to enforce by Mandamus when there has been a refusal to carry it out. I see nothing in section 33 which requires the premises of the petitioner for which energy is to be supplied to adjoin the land over which the distributing main runs.

I allow the application of the petitioners and direct that a writ of Mandamus should issue on the 1st and 2nd respondents as prayed for. The petitioner is entitled to his costs against all the respondents, because the 3rd and 4th respondents also appeared by counsel and objected to the issue of the writ.

Application allowed.