

LILANTHI DE SILVA
v.
ATTORNEY-GENERAL AND OTHERS

SUPREME COURT
FERNANDO, J.
DHEERARATNE, J. AND
WEERASEKERA, J.
SC (FR) NO. 428/2000
25TH SEPTEMBER, 2000

Fundamental Rights - Public Security Ordinance - Emergency (Restriction on Consumption of Electricity) Regulations - Discrimination - Article 12(1) of the Constitution.

Regulation 6 of the Emergency (Restriction on Consumption of Electricity) Regulations No. 1/2000 published on 31.05.2000 required every consumer of electricity to reduce his monthly consumption of electricity by twenty percentum of his average monthly consumption based on the consumption for the months of March, April and May, 2000 in default of which he was made liable to a surcharge amounting to twenty five percentum of the amount of his monthly electricity bill.

Held :

Regulation 6 was made applicable equally to all namely (a) public spirited consumers who had reduced consumption of electricity during the relevant period (b) consumers who being indifferent or anti-social increased their consumption (c) consumers who used electricity sparingly for essential purposes; (d) others more affluent who used electricity more lavishly for non-essential purposes as well. The regulation treated unequals equally; it is an unreasonable exercise of the power conferred by the Public Security Ordinance, ultra vires and violative of the petitioner's right under Article 12(1) of the Constitution.

APPLICATION for relief for infringement of fundamental rights.

Manohara de Silva with David Weeraratne, Athula Perera, Nalinda Indatissa and Ms. Kishali Pinto Jayawardena for petitioner.

Palitha Fernando, DSG for respondents.

Cur. adv. vult.

September 25, 2000.

FERNANDO, J.

In this application the Petitioner complains that Regulation 6 of the Emergency (Restriction on Use of Consumption of Electricity) Regulations No. 1/2000 published in Government Gazette Extraordinary No. 1134/21 of 31.05.2000 was *ultra vires* of the Public Security Ordinance and infringed her fundamental right under Article 12(1).

Regulation 6 provides:

“6(a) Every person who consumes electricity shall reduce his monthly electricity consumption by twenty percentum of his average monthly consumption.

(b) Every person who fails to comply with this regulation shall be liable to a surcharge amounting to twenty five percentum of the amount of his monthly electricity bill.

For the purpose of this regulation, “average monthly consumption” of a person shall be the average of his electricity consumption for the months of March, April and May 2000.”

Admittedly, it was known in January 2000 that the amount of water stored in the reservoirs was relatively low, and that a power crisis was anticipated by the 2nd Respondent, the Ceylon Electricity Board, by the end of May. In that context, a mandatory reduction in electricity consumption and/or a surcharge on excessive consumption were legitimate measures “for the maintenance of supplies and services essential to the life of the community”. However, the question that arises in this case is whether the **basis** of such reduction and/or surcharge was so arbitrary and unfair to the extent that it infringed Article 12(1).

The complaint in respect of the mandatory reduction, imposed as from June 2000 and based on average March-May

consumption, is that Regulation 6(a) failed to take account of the fact that as at June all consumers could not be treated as being similarly circumstanced.

From one point of view, consumers fell into three categories. Thus, in response to the crisis which was anticipated in January 2000, some public-spirited consumers would have voluntarily reduced their consumption in March-May; others would have been indifferent; and some anti-social consumers might even have increased their consumption. Whether consumers had reduced or increased consumption would have been readily ascertainable from the records of the 2nd Respondent. Hence to compel a uniform 20% reduction, by reference to average March-May consumption, would have imposed a greater burden on public-spirited and conservation-minded consumers than on others (and not *vice versa*).

From another point of view, consumers fell into two categories: a large number who - by necessity or choice - used electricity sparingly, for essential purposes only, and therefore consumed little; and others - more affluent - who used electricity more lavishly, for non-essential purposes as well. The mandatory reduction and surcharge operated unequally on these two categories: the former would have to curtail use for essentials, while the latter would only have to cut down on "luxuries". The failure to recognize, at least to some extent, the special needs of the former was unfair and arbitrary.

As for the surcharge, the consumer who made an honest effort to curtail consumption, and the one who did not, were made equally liable to a surcharge of 25% on total consumption (and not just on the excess). Thus one consumer who reduced monthly consumption from 800 units to 650, a second who maintained his consumption at 650 units, and a third who increased his consumption from 500 units to 650, would all be liable to the identical surcharge of 25% (on monthly consumption of 650 units). Regulation 6(b) thus treated unequals equally.

Learned Deputy Solicitor-General who appears for the Respondents could suggest no basis whatever to justify Regulation 6. His only submission was that it was enacted to achieve the lawful and desirable objective of conserving electricity. However legitimate and proper the objective, the means selected were in violation of Article 12(1) and were not a reasonable exercise of the power conferred by the Public Security Ordinance.

We therefore hold that Regulation 6 is *ultra vires* and in violation of the Petitioner's fundamental right under Article 12(1), and we award her a sum of Rs. 3000/- as costs payable by the 2nd Respondent.

DHEERARATNE, J. - I agree.

WEERASEKERA, J. - I agree.

Relief granted.