

1942

Present : Soertsz J.

INSPECTOR OF POLICE v. KALUARATCHI.

668—M. C. Colombo, 36,178.

Obstructing public servant—Refusing admission to premises for effecting repairs to feeder pillar—Electricity Ordinance (Cap. 158) s. 6—Penal Code, s. 183.

The Electricity Ordinance, section 6, enacts that the Governor may, for the placing of appliances and apparatus for the supply of energy, confer upon any public officer any of the powers, which the Telegraph authority possesses with respect to the placing of telegraph lines and posts for the purpose of a telegraph established or maintained by Government. By Gazette notification the Governor conferred upon the officers of the Electricity Department "the powers which the Telegraph authority possesses with respect to the placing of telegraph lines or posts for the purpose of a telegraph established or maintained by Government".

Section 10 of the Telegraphs Ordinance gives power to do and perform all other acts, matters, things necessary for the purpose of establishing, constructing, repairing, improving, &c.

Held, that repairing is a function necessary under the Electrical Ordinance to ensure that appliances and apparatus placed under section 6 of the Ordinance continue in a condition in which they can be described as appliances and apparatus for the supply of energy and that the power to enter a land for the purpose of repairing has been given by necessary implication.

Where the accused refused to open a gate, which was locked, in order to permit an officer of the Electrical Department to enter the premises for the purpose of repairing a feeder pillar.—

Held, that the accused was guilty of offering voluntary obstruction to a public servant.

Police Sergeant, Hambantota v. Simon Silva (40 N. L. R. 534) followed.

A PPEAL from a conviction by the Magistrate of Colombo.

H. V. Perera, K.C. (with him S. de Soyza and E. A. G. de Silva), for accused, appellant.

H. A. Wijemane, C.C., for complainant, respondent.

Cur. adv. vult.

October 19, 1942. SOERTSZ J.—

The accused-appellant in this case was charged for that he did “voluntarily obstruct a public servant to wit Mr. Muthubalasureya, Assistant Engineer, Government Electrical Department, in the execution of his duty by refusing his admission into premises 164, Thimbirigasyaya road, for the purpose of effecting repairs to a feeder pillar situated in the premises, and having thereby committed an offence punishable under section 183 of the Penal Code”.

In order to sustain this charge it was necessary to prove (a) that the Public Officer referred to was entitled to enter upon this land for the purpose aforesaid; (b) that what the accused-appellant did or said amounted to voluntary obstruction. In regard to the former of these elements, the evidence of the Chief Engineer and Manager of the Government Electrical Undertakings Department, taken with his letters P 1 and P 2, sent to the appellant on July 15 and on August 7, 1941, respectively, shows that the case for the prosecution is that the Public Officer concerned in this case had the right to enter upon this land under section 6 of the Electricity Ordinance (Cap. 158), read with the Notification published in the *Government Gazette* No. 7,622 of December 23, 1927, and with section 10 of the Telegraphs Ordinance. (Cap. 147).

It is necessary to quote these sections and the notification for the purpose of examining the case for the prosecution as well as the case for the defence.

Section 10 of the Telegraphs Ordinance, so far as it is material, enacts as follows:—

“The telegraph authority may from time to time place and maintain a telegraph line under, over, along or across, posts in or upon, any immovable property; and for that purpose it shall be lawful for any officer in the employ of the Government in the Telegraph Department, and for the servants, workmen, and labourers employed by or under such officer, at all time on reasonable notice, and with all necessary carriages and animals and other means to enter upon all or any lands and to put up thereon any post, which may be required for the support of any telegraph line; and to fasten or attach to any tree growing on such land or to any building or thing thereon any bracket, or other support for such line; and to cut down any tree or branch which may in any way injure, or which is likely to injure, impede, or interfere with

any telegraph line; and also severally to do and perform all other acts, matters, and things necessary for the purpose of establishing, constructing, repairing, improving, examining, altering or removing any telegraph, or in any way connected therewith, or for performing any act, matter, or thing under the provision of this Ordinance.”

Section 6 of the Electricity Ordinance enacts as follows:—

“The Governor may, for the placing of appliances and apparatus for the supply of energy for any purpose of the Government, confer upon any public officer any of the powers which the telegraph authority possesses with respect to the placing of telegraph lines and posts for the purpose of a telegraph established or maintained by the Government or to be so established or maintained:

The notification under this section notifies as follows:—

“It is hereby notified for general information that the Governor has been pleased, in pursuance of the powers vested in him under section 6 of the Electricity Ordinance, and with the advice of the Executive Council, to confer upon the Director of Electrical Undertakings and upon all officers of the Electrical Department, duly empowered by the Director in that behalf, the powers which the Telegraph authority possesses with respect to the placing of telegraph lines and posts for the purpose of a telegraph established or maintained by the Government or to be established or maintained.

Now, Counsel for the appellant contends that this officer was not entitled to enter this land *for the purpose he had in view* when he sought admission, *namely to effect certain repairs* to what has been described as a feeder pillar erected on this land. Counsel's argument was that section 6 of the Electricity Ordinance authorises the Governor to confer powers only with respect to the *placing* of appliances and apparatus and not with respect to the *maintaining* of such appliances and apparatus by effecting repairs or otherwise. In other words, Counsel submits that while the Telegraphs Ordinance by section 10 expressly provides for both *placing and maintaining* telegraph lines and posts, and the powers conferred by that section are powers necessary for both those purposes, the effect of the operation of section 6 and the notification made thereunder is to separate from the total area of those powers such powers only as are necessary for the *placing* of appliances and apparatus and to confer them—and no more—on the persons nominated by the Governor.

At first sight there appears to be considerable force in this argument inasmuch as the word “maintain” in section 10 of the Telegraphs Ordinance is absent from section 6 of the Electricity Ordinance. But it can hardly be said that this was a deliberate omission intended to restrict the powers of officers under the Electricity Ordinance within narrower limits, and to deprive them of so essential a power as that of maintaining the appliances and apparatus, once they have been placed, in a state of working efficiency. This omission seems rather the result of somewhat inept draftsmanship that was content to direct itself by the “heading” above section 10 without a close scrutiny of the words of the section itself.

I do not, however, think that the language of the two sections in question and of the notification published under section 6 of the Electricity Ordinance, properly interpreted, drives us to the conclusion that whatever the intention of the Legislature may have been it has only succeeded in conferring powers necessary for the placing of appliances and apparatus as distinguished from powers necessary for maintaining them. It is a canon of the interpretation of statutes "that if it is possible the words of a statute must be construed so as to give a sensible meaning to them. The words ought to be construed *ut res magis valeat quam pereat*". *Curtis v. Stovin*¹. "One is not only entitled to, but one must get an exact conception of the aim and scope of a statute in order to interpret it." (see *Scheibler v. Furiss*².)

Looked at in this way, it seems clear that section 6 of the Electricity Ordinance aims at "the supply of energy". It says that "the Governor may for the placing of appliances and apparatus for the supply of energy . . . confer upon any public officer any of the powers, which the Telegraph authority possesses with respect to the placing of telegraph lines and posts for the purpose of a telegraph established or maintained by the Government. . . ."

By the *Gazette* notification already referred to, the Governor has conferred upon the officers of the Electrical Department mentioned in it "the powers which the Telegraph authority possesses with respect to the placing of telegraph lines or posts for the purpose of a telegraph established or maintained by the Government".

Now, one of the powers expressly given by section 10 of the Telegraphs Ordinance is the power "to do and perform all other acts, matters and things necessary for the purpose of establishing, constructing, *repairing*, improving, examining, altering, &c." Conceding that "repairing" is a function appropriate not to the "placing" but to the "maintaining" expressly provided for by section 10 of the Telegraphs Ordinance, still it may reasonably be said that "repairing" is a function necessary under the Electricity Ordinance to ensure that appliances and apparatus placed under section 6 of the Electricity Ordinance continue in a condition in which they can be described as "appliances and apparatus for the supply of energy" and that, therefore, the power to enter the land for the purpose of repairing has been given by necessary implication. The view contended for by the appellant would result in the breakdown, irreparably, of the system for the supply of energy. It would mean that whenever an appliance or apparatus ceases to function owing to some defect, great or small, the empowered authorities may enter the land and place new appliances and apparatus, but may not, for instance, use a screw-driver to set the machinery going again; and that would be a *reductio ad absurdum*.

I would, therefore, hold that the Assistant Electrical Engineer was entitled to enter upon this land to effect repairs to the feeder pillar.

The next question for consideration arises on the submissions made by Counsel that what the appellant did or said on this occasion did not constitute obstruction within the meaning of that word as used in section 183 of the Penal Code, but was only passive resistance.

¹ 22 Q. B. D. at p. 517.

² (1893) A. C. at p. 20.

The learned Magistrate, who tried the case, found that when the Engineer went on August 20, 1941, to effect the necessary repairs after notice had been given to the appellant by letter P 2 of August 7, acquainting him with the proposed visit, he found the gate giving access to the appellant's premises "closed and padlocked". The engineer requested him to open the gate but he "asked him to clear out and refused to open the gate" When the Engineer "tried the padlock of the gate, accused threatened him and said he would assault his men. He feared a breach of the peace and left". This seems to me to establish an activity too intense to be described as passive resistance or sullen non-co-operation.

The appellant's own version is that the Assistant Engineer came up to his gate that morning; he went to the verandah; he saw a Police Sergeant and some people near the gate; the Engineer asked him to open the gate that was locked, telling him that he was in the Electrical Department; he refused to open the gate; The engineer asked him twice; he refused twice; he told the engineer that he could climb over or creep under the gate; after some time the Engineer left.

The Magistrate preferred to accept the version given by the Engineer. It was substantially supported by the Police Sergeant who accompanied the working party. According to that version a clear case of obstruction was made out.

But assuming that the appellant's version is the true one, still on what he, admittedly, said and did, it is clear that he transgressed the limits of passive resistance or non-co-operation and was clearly in the realm of obstruction. His case is within the ruling in the case of *Police Sergeant, Hambantota v. Simon Silva (supra)*.

I dismiss the appeal, and I would add that, having regard to the status of the appellant, it seems to me that he owes more to himself than he appears to be ready to give. He may not be as fortunate in the matter of sentence if he persists in this course of action.

Affirmed.

