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NADIAD ELECTRIC CO. LTD.

v.

NADIAD BOROUGH MUNICIPALITY & ANR.

December 12, 1979

B [P. N. SHINGHAL AND E. S. VENKATARAMIAH, JJ.]

Indian Electricity Act, 1910 (9 *of* 1910)—*S.* 22-*A*(3)—*Scope of—Municipality entering into an agreement with company for supply of electrical energy—Obligation to continue supply after expiry of agreement—When arises—State Government to notify the establishment entitled to claim benefit—Whether necessary.*

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Section 22-A of the Indian Electricity Act, 1910 was inserted in the Act by the Electricity (Amendment) Act, 1959 (32 of 1959). Sub-section 1 of section 22-A authorised the State Government to issue direction to a licensee to supply energy to an establishment in preference to any other consumer, if in its opinion it is necessary in the public interest to give such direction and (ii) if the establishment in question is in the opinion of the State Government an establishment used or intended to be used for maintaining supplies and services essential to the community and the decision of the State Government that in its opinion the establishment is used or intended to be used for maintaining supplies and services essential to the community is notified by that Government in the Official Gazette. Sub-section (3) of Section 22-A provides that where in any agreement by a licensee, whether made before or after the commencement of the Electricity (Amendment) Act, 1959 for the supply of energy with any establishment referred to in sub-section (1) expires, the licensee shall continue to supply energy to such establishment on the same terms and conditions as are specified in the agreement until receipt of a notice in writing from the establishment requiring discontinuance of the supply.

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The Respondent-Municipality which was under an obligation to make reasonable and adequate provision for lighting of public streets, places and buildings situated within its limit, entered into an agreement on August 14, 1940 with the Appellant-Company which was licensee under the Electricity Act, 1910. The period during which the supply of electrical energy was to be made under the said agreement was 20 years from the date on which it was executed. On May 10, 1960 the Company wrote a letter to the municipality that the said agreement was to come to an end and on its expiry, the Company was not under any obligation to continue to supply energy to the Municipality as per the rates, terms and conditions stated in the agreement. The company also informed that if the municipality was not willing to purchase energy at the revised rates the supply would be discontinued on the expiry of the period of the agreement. The municipality thereafter wrote a letter on August 6, 1960 requesting the Company to renew the agreement on the same terms and conditions. The Company by its reply informed the municipality that it would not supply electrical energy on the same terms and conditions and insisted on payment being made at the revised rates as stated in its letter dated May 10, 1960. The municipality thereafter filed a suit relying upon the provisions of sub-section (3) of section 22-A

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of the Act, for a declaration that it was entitled to the supply of electrical energy from the Company on the same terms and conditions as were specified in the agreement, until the Company received a notice in writing from the municipality requiring it to discontinue the supply. The company contested the suit on the ground that the municipality was not entitled to the benefit of sub-section (3) of section 22-A of the Act as it was not an establishment to which the said provision was applicable. The Trial Court held that in the absence of a notification as required by sub-section (1) of Section 22-A of the Act the municipality was not entitled to claim the benefit of the provision and therefore no relief could be granted in the suit and accordingly dismissed the suit.

The municipality's appeal to the District Court was dismissed, but the second appeal was partly allowed by a Single Judge of the High Court, and a decree was passed granting relief in favour of the municipality declaring that the company was bound under sub-section (3) of section 22-A of the Act to continue to supply electrical energy to the municipality at the same rates and on the same terms and conditions as were specified in the agreement, dated August 14, 1960. The Letters Patent Appeal filed by the company was dismissed by the Division Bench of the High Court, which however certified the case as a fit one for appeal under Article 133(1)(c) of the Constitution.

In the appeal to this Court, on the question whether the municipality was an establishment which can claim the benefit of sub-section (3) of section 22-A of the Act.

HELD : 1. The High Court was in error in ignoring the requirements which an establishment had to satisfy before claiming the benefit of sub-section (3) and in holding that if in the opinion of the Court, the establishment satisfied that it was being used or intended to be used for maintaining supplies and services essential to the community, it could claim the benefit of sub-section (3) even though no notification had been issued by the State Government under sub-section (1) of Section 22-A of the Act. [489 H-490 B]

2. If the agreement referred to in sub-section (3) of section 22-A of the Act is an agreement entered into by a licensee with an establishment which is. at the time of the agreement, an establishment referred to in sub-section (1) of section 22-A of the Act, then the provision in sub-section (3) making it applicable to agreements made before the commencement of the Electricity (Amendment) Act, 1959 by which section 22-A was introduced becomes meaningless because the formation of the two opinions of the State Government that an establishment is being used or intended to be used for maintaining supplies and services essential to the community and that it is necessary to issue a direction in respect of it under sub-section (1) can only be done after section 22-A of the Act was introduced in the Act and there would be no establishment satisfying the requirements of section 22-A(1) before section 22-A(1) was introduced. [486 G-487 A]

3. Sub-section (1) of section 22-A of the Act was enacted by the Parliament for the purpose of enabling the State Government to issue a direction and sub-section (3) was enacted for the purpose of providing for the continuance of an agreement entered into by a licensee with an establishment referred to in sub-section (1) of section 22-A. What, is however, common to the two sub-sections is that the establishment referred to in sub-section (1) and an establishment

A referred to in sub-section (3) of section 22-A should be of the same kind that is it should be an establishment which is in the opinion of the State Government used or intended to be used for maintaining supplies and services essential to the community and the fact of formation of such opinion is notified in the Official Gazette. It should satisfy the test laid down in sub-section 22-A(1) of the Act. [487 C-E]

B 4. There is no impediment for the State Government issuing a notification under sub-section (1) of section 22-A in order that an establishment notified therein gets the benefit of sub-section (3) of section 22-A of the Act. [487 H-488 A]

5. The words 'referred to in sub-section (1)' appearing in sub-section (1) of section 22-A of the Act are descriptive of and define the establishment to C which sub-section (3) of section 22-A applies and in order to identify such establishment, recourse should be had to the latter part of sub-section (1) which lays down the criteria which such establishment should satisfy. [488 B]

6. A statutory definition or abbrevation should be read subject to all the qualifications expressed in the Statute and unless the context in which the word defined appears otherwise requires, it should be given the same meaning given D by the words defining it. [488 C]

7. The power to issue a notification under section 22-A(1) of the Act involves an element of selection and the said process of selection cannot be construed as an empty formality which can be dispensed with. Nor can that power of selection which is entrusted to the State Government by the Parliament be claimed by the Courts. It is for the State Government to notify the establishment which should be the beneficiary of a direction to be issued under E section 22-A(1) or which is entitled under section 22-A(3) of the Act to the supply of electrical energy on the same terms and conditions as are specified in the agreement entered into by it with the licensee even after the expiry of the agreement until such establishment serves a notice in writing on the licensee asking the licensee to discontinue the supply. [488 H-489 B]

8. Section 22-A of the Act, suggests that the intention of Parliament appears F to be that the State Government can issue a direction only in the case of an establishment which in its opinion satisfies the qualifications mentioned therein and that sub-section (3) should be applicable only to an establishment which in the opinion of the State Government satisfies the said qualifications. [488 E]

9. Sub-section (3) of section 22-A of the Act makes a serious inroad into the rights of the licensee flowing from a contract stipulating a specific period G during which it should subsist and compels the licensee to supply energy to the establishment even after the expiry of the agreement until a notice is issued in writing by the establishment requiring the licensee to discontinue the supply. [489 D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 358 of 1970.

H From the Judgment and Order dated 14-10-1969 of the Gujarat High Court in L.P. Appeal No. 11/63.

R. P. Bhati, K. J. John and *D. N. Misra* for the Appellant.

Y. S. Chitale, V. B. Joshi, P. C. Kapoor, Mrs. V. D. Khanna and *Miss Geeta Sharma* for Respondent No. 1. A

I. N. Shroff for Respondent No. 2.

The Judgment of the Court was delivered by

VENKATARAMIAH, J.—The question which arises for consideration in this appeal by certificate is whether the plaintiff in the suit B out of which this appeal arises i.e. Nadiad Borough Municipality Nadiad is an establishment which can claim the benefit of sub-section (3) of section 22-A of the Indian Electricity Act, 1910 (Act No. 9 of 1910) (hereinafter referred to as 'the Act'). The plaintiff instituted the said suit on August 12, 1960 against the defendant, Nadiad C Electric Supply Co. Ltd., Nadiad on the file of the Civil Judge (Senior Division), Nadiad for a declaration that it was entitled to the supply of electrical energy from the defendant on the same terms and conditions as were specified in the agreement dated August 14, 1940 entered into between it and the defendant until the defendant received a notice in writing from the plaintiff requiring it to discontinue the D supply and for an injunction restraining the defendant from discontinuing the supply till such notice was served on the defendant. The facts set out in the plaint were briefly these : The plaintiff was a Municipality which was under an obligation to make reasonable and adequate provision for lighting of public streets, places and buildings situated within its limits and for that purpose, the plaintiff had entered E into an agreement on August 14, 1940 with the defendant which was a licensee under the Act. The period during which the supply of electrical energy was to be made under the agreement was 20 years from the date on which the agreement was executed. On May 10, 1960, the defendant wrote a letter to the plaintiff that the suit agree- F ment was to come to an end on the expiry of August 13, 1960 and the defendant was not under any obligation to continue to supply energy to the plaintiff as per rates, terms and conditions stated in the agreement after its expiry and that it was willing to supply energy thereafter provided the plaintiff was willing to pay the charges for the supply at the new rates demanded by it. The defendant also G informed the plaintiff that if the plaintiff was not willing to purchase energy at the revised rates, it would discontinue the supply on the expiry of the period of the agreement. The plaintiff thereafter wrote a letter on August 6, 1960 requesting the defendant to renew the agreement on the same terms and conditions as were mentioned in the agreement dated August 14, 1940. By its reply dated August H 9, 1960, the defendant informed the plaintiff that it was not willing to supply electrical energy on the same terms and conditions men-

A tioned in the agreement after its expiry and insisted upon payment being made at the revised rates as stated in its letter dated May 10, 1960. The plaintiff thereafter filed the above suit on August 12, 1960 for the reliefs referred to above principally relying upon the provisions of sub-section (3) of section 22-A of the Act. The defendant, in the course of its written statement, *inter alia* contended that the plaintiff B was not entitled to the benefit of sub-section (3) of section 22-A of the Act as it was not an establishment to which the said provision was applicable. In the course of the trial, it was not disputed that the State Government had not issued any notification stating that in its opinion the plaintiff was an establishment used or intended to be used C for maintaining supplies and services essential to the community as required by sub-section (1) of section 22-A of the Act. The trial court held that in the absence of such a notification, the plaintiff was not entitled to claim the benefit of sub-section (3) of section 22-A of the Act and, therefore, no relief could be granted in the suit. The suit was accordingly dismissed.

D Aggrieved by the decree of the trial court, the plaintiff filed an appeal before the District Judge of Kaira at Naidad. The said appeal was transferred to the file of the 2nd Extra Assistant Judge at Ahmedabad. After hearing the parties, the 2nd Extra Assistant Judge dismissed the appeal. Against the decree of the first appellate court, the plaintiff filed a second appeal before the High Court of Gujarat. E The second appeal was allowed in part by a single Judge of the High Court of Gujarat and a decree was passed granting a declaration in favour of the plaintiff declaring that the defendant was bound under sub-section (3) of section 22-A of the Act to continue to supply electrical energy to the plaintiff at the same rates and on the same terms and conditions as were specified in the agreement dated August F 14, 1940 so long as the plaintiff continued to be an establishment used or intended to be used for maintaining supplies and services essential to the community and until the defendant received a notice in writing from the plaintiff requiring the defendant to discontinue the supply, such obligation, however, being subject to the other provisions of the G Act and the provisions of the Electricity (Supply) Act, 1948, including sections 57 and 57A and the Sixth and Seventh Schedules to that Act. The relief of permanent injunction prayed for in the suit was, however, refused on the ground that the defendant had never refused to supply electrical energy to the plaintiff at the same rates and on the same terms and conditions as were specified in the agreement dated August H 14, 1940 if it was held either that there was a covenant for renewal contained in the agreement dated August 14, 1940 or that sub-section (3) of section 22-A of the Act applied to the facts of the case.

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Against the decree passed in the second appeal, the defendant filed Letters Patent Appeal No. 11 of 1963 on the file of the High Court. That appeal was dismissed by a Division Bench of the High Court. Thereafter the Division Bench issued a certificate under Article 133(1)(c) of the Constitution certifying that the case was a fit one for appeal to this Court. On the basis of the above certificate, the defendant has filed this appeal before this Court. In the course of this appeal on an application made by the plaintiff, the Gujarat State Electricity Board has also been impleaded as a respondent.

We shall now make a brief survey of the relevant provisions of the Act. Sub-section (2) of section 21 of the Act provides that a licensee who is authorised to supply energy under Part II thereof may, with the previous sanction of the State Government given after consulting the local authority where the licensee is not the local authority, enter into an agreement with a person who is or intends to become a consumer, with conditions not inconsistent with the Act or with his licence or with any rules made under the Act and may, with the like sanction given after like consultation, add to or alter or amend any such condition; and that any conditions introduced in the agreement by the licensee without such sanction shall be null and void. The State Government may also under sub-section (3) of section 21 of the Act after like consultation add any new condition or cancel or amend any condition or part of a condition previously sanctioned after giving to the licensee not less than one month's notice in writing of its intention so to do. Section 22 of the Act provides that where energy is supplied by a licensee, every person within the area of supply shall, except in so far as is otherwise provided by the terms and conditions of the licence, be entitled, on application, to a supply on the same terms as those on which any other person in the same area is entitled in similar circumstances to a corresponding supply.

Section 23(1) of the Act prohibits a licensee from making any agreement for the supply of energy showing undue preference to any person. Sub-section (3) of section 23 of the Act provides that in the absence of an agreement to the contrary, a licensee may charge for energy supplied by him to any consumer by the actual amount of energy so supplied, or by the electrical quantity contained in the supply, or by such other methods as may be approved by the State Government, Section 24 of the Act authorises the licensee to discontinue the supply of energy to any consumer neglecting to pay the charges payable by him.

A combined reading of these provisions shows that it is open to a licensee to enter into an agreement with the previous sanction of the

A State Government with any consumer to supply electrical energy at the agreed rate subject to the other provisions of the Act and that he cannot show undue preference to any person in the matter of supply of electrical energy. The above provisions like the other provisions of the Act are subject to section 70 of the Electricity (Supply) Act, 1948 (Act No. 54 of 1948) which provides that no provision of the Act or B of any rules made thereunder or of any instrument having effect by virtue of such law or rule shall, so far as it is inconsistent with any of the provisions of the Electricity (Supply) Act, 1948, have any effect and that save as otherwise provided in that Act, the provisions of that Act shall be in addition to, and not in derogation of the Act. Section 22-A of the Act which arises for consideration in this case was inserted C in the Act by the Electricity (Amendment) Act, 1959 (Act No. 32 of 1959). It reads thus :

"22-A. (1) The State Government may, if in its opinion it is necessary in the public interest so to do, direct any licensee to supply, in preference to any other consumer, energy re- D quired by any establishment which being in the opinion of the State Government an establishment used or intended to be used for maintaining supplies and services essential to the community, is notified by that Government in the Official Gazette in this behalf.

E (2) Where any direction is issued under sub-section (1) requiring a licensee to supply energy to any establishment and any difference or dispute arises as to the price or other terms and conditions relating to the supply of energy, the licensee shall not by reason only of such difference or dispute be entitled to refuse to supply energy but such difference or dispute F shall be determined by arbitration.

(3) Where any agreement by a licensee, whether made before or after the commencement of the Indian Electricity (Amendment) Act, 1959, for the supply of energy with any establishment referred to in sub-section (1) expires, the licensee shall continue to supply energy to such establishment on G the same terms and conditions as are specified in the agreement until he receives a notice in writing from the establishment requiring him to discontinue the supply.

(4) Notwithstanding anything contained in this Act, or in the Electricity (Supply) Act, 1948, or in his licence or in H any agreement entered into by him for the supply of energy, a licensee shall be bound to comply with any direction given to him under sub-section (1) and any action taken by him in

pursuance of any such direction shall not be deemed to be a contravention of section 23."

Even though the licensee has no right to show undue preference to any person in the matter of supply of electrical energy and it is open to the licensee with the previous sanction of the Government to enter into an agreement with a consumer containing conditions including the stipulation regarding the charges payable by the consumer for a specified period subject to the other provision of the Act, section 22-A of the Act authorises the State Government to give directions to a licensee in regard to the supply of energy to an establishment referred to in sub-section (1) in preference to any other consumer and it also provides that in the case of any establishment referred to in sub-section (1) if an agreement has been entered into by a licensee whether made before or after the commencement of the Electricity (Amendment) Act, 1959 for the supply of energy, the licensee shall continue to supply energy to such establishment on the same terms and conditions as are specified in the agreement even after the expiry of the agreement until he receives a notice in writing from the establishment requiring him to discontinue the supply. In order to understand the contentions urged by the parties, it is necessary to deal with the provisions of section 22-A of the Act in some detail. Sub-section (1) of section 22-A of the Act authorises the State Government to issue direction to a licensee to supply energy to an establishment in preference to any other consumer (i) *If in its opinion* it is necessary in the public interest to give such direction and (ii) if the establishment in question is *in the opinion of the State Government* an establishment used or intended to be used for maintaining supplies and services essential to the community and the decision of the State Government that in its opinion the establishment is used or intended to be used for maintaining supplies and services essential to the community is notified by that Government in the Official Gazette. Sub-section (1) of section 22-A of the Act speaks of the State Government forming two opinions—one regarding the question whether it is necessary in the public interest to issue a direction to supply energy to an establishment in preference to any other consumer and the other regarding the character of the establishment i.e. regarding the question whether the establishment is one used or intended to be used for maintaining supplies and services essential to the community. In other words, the decision on the question whether an establishment is used or intended to be used for maintaining supplies and services essential to the community has to be taken by the State Government either before or at the time of issuing a direction under section 22-A(1). Sub-sections (2) and (4) of section 22-A of the Act are ancillary to the

A power of the State Government to issue a direction under sub-section (1) thereof.

The material provision with which we are concerned in this appeal is sub-section (3) of section 22-A of the Act which provides that where any agreement by a licensee, whether made before or after the com-
B mencement of the Electricity (Amendment) Act, 1959, for the supply of energy with any establishment referred to in sub-section (1) expires, the licensee shall continue to supply energy to such establishment on the same terms and conditions as are specified in the agreement until he receives a notice in writing from the establishment requiring him to discontinue the supply. The argument urged on behalf of the plaintiff
C which was rejected by the trial court and the first appellate court but was accepted by the learned Single Judge of the High Court in second appeal and by the Division Bench of the High Court in the Letters Patent Appeal was that the agreement entered into by it with the defendant on August 14, 1940 would continue to remain in operation by virtue of sub-section (3) of section 22-A of the Act even after its
D expiry because the plaintiff was an establishment which was 'used or intended to be used for maintaining supplies and services essential to the community' and that there was no necessity of the publication of a notification in the Official Gazette stating that the State Government was of the opinion that it was an establishment used or intended to be
E used for maintaining supplies and services essential to the community. The contention urged on behalf of the plaintiff in regard to the above proposition was that the words "any establishment referred to in sub-section (1)" in sub-section (3) of section 22-A of the Act meant 'an establishment used or intended to be used for maintaining supplies and services essential to the community' and not any establishment which
F was notified by the State Government in the Official Gazette as an establishment which in the opinion of the State Government was being used or intended to be used for maintaining supplies and services essential to the community. The very same contention is urged before us in this appeal on behalf of the plaintiff. It is argued on behalf of the defendant that sub-section (3) of section 22-A of the Act is applicable only
G in the case of an establishment which in the opinion of the State Government is an establishment used or intended to be used for maintaining supplies and services essntial to the community in respect of which a direction is issued to the licensee under sub-section (1) and a notification is issued by that Government in the Official Gazette in that behalf. The judgment delivered in the Letters Patent Appeal, which is
H an affirming one, appears to be a summary of the judgment of the learned Single Judge of the High Court. The learned Single Judge in his judgment to which our attention was drawn by the learned counsel for

the parties while dealing with sub-section (1) of section 22-A of the Act observed : A

> " 'Which is the establishment referred to in sub-section (1) of section 22-A ?' and if that question is asked, it is obvious that the establishment referred to in sub-section (1) of section 22-A is an establishment used or intended to be B used for maintaining supplies and services essential to the community. Of course, the determination of the question whether a particular establishment is an establishment used or intended to be used for maintaining supplies and services essential to the community, is as I have pointed out above left to the subjective satisfaction of the State Government; but the C establishment referred to in sub-section (1) of section 22-A is indubitably an establishment used or intended to be used for maintaining supplies and services essential to the community and it is only when a particular establishment is, in the opinion of the State Government, such an establishment that D it can be notified by the State Government under sub-section (1) of section 22-A. The establishment in favour of which a direction can be given under sub-section (1) of section 22-A must be an establishment used or intended to be used for maintaining supplies and services essential to the community but someone must have the power to determine whether a E particular establishment is such an establishment. That power is entrusted by the legislature to the State Government and the determination of the State Government in its subjective satisfaction is made final and conclusive; but it is clear that what the State Government has to find in its subjective satisfaction is the fact as to the establishment being used or F intended to be used for maintaining supplies and services essential to the community and it is because a particular establishment is such an establishment as determined by the State Government, that the State Government can notify it for the purpose of giving it preferential treatment in the matter of supply of electrical energy. It is, therefore, obvious that the G establishment referred to in sub-section (1) of section 22-A is an establishment used or intended to be used for maintaining supplies and services essential to the community and it is not the same thing as an establishment notified under sub-section (1) of section 22-A."

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Having stated so, the learned Judge proceeded to observe that the words 'any establishment referred to in sub-section (1)' in sub-section

(3) of section 22-A of the Act referred to any establishment used or intended to be used for maintaining supplies and services essential to the community and were not limited to an establishment which being in the opinion of the State Government an establishment used or intended to be used for maintaining supplies and services essential to the community was notified by the State Government in the Official Gazette, as required by sub-section (1) of section 22-A of the Act. One of the reasons given by the learned Judge in support of the above conclusion was as follows :—

> "The provisions of sub-section (3) of section 22-A become applicable only an agreement by a licensee, whether made before or after the commencement of the Indian Electricity (Amendment) Act, 1959, for the supply of electrical energy with any establishment referred to in sub-section (1) of section 22-A expires after the coming into force of the Indian Electricity (Amendment) Act, 1959. The agreement on the expiration of which the provisions of sub-section (3) of section 22-A are attracted must therefore be an agreement made by a licensee with an establishment referred to in sub-section (1) of section 22-A for the supply of electrical energy, whether before or after the commencement of the Indian Electricity (Amendment) Act, 1959. The establishment with whom the agreement has been made by the licensee must, therefore, evidently be an establishment referred to in sub-section (1) of section 22-A at the date when the agreement was made between the parties. It is at the date of the agreement that the establishment must satisfy the description given in the words "any establishment referred to in sub-section (1)" for it is only then that it can be said that the agreement was made by the licensee with an establishment referred to in sub-section (1) of section 22-A."

It is difficult to agree with the proposition set forth in the above extract of the judgment of the learned Single Judge because if the agreement referred to in sub-section (3) of section 22-A of the Act is an agreement entered into by a licensee with an establishment which is, at the time of the agreement, an establishment referred to in sub-section (1) of section 22-A of the Act, then the provision in sub-section (3) making it applicable to agreements made before the commencement of the Electricity (Amendment) Act, 1959 by which section 22-A was introduced becomes meaningless because the formation of the two opinions of the State Government that an establishment is being used or intended to be used for maintaining supplies and services essential

to the community and that it is necessary to issue of direction in respect of it under sub-section (1), can only be done after section 22-A of the Act was introduced in the Act and there would be no establishment satisfying the requirements of section 22-A(1) before section 22-A was introduced. A

The next ground relied on by the learned Single Judge to hold that the establishment referred to in sub-section (3) of section 22-A of the Act need not satisfy all the requirements of an establishment referred to in sub-section (1) of section 22-A which again is untenable was that the object of enacting sub-section (1) was different from the object of enacting sub-section (3) and therefore, there was no need to treat an establishment referred to in sub-section (1) on par with an establishment in sub-section (3). It may be that sub-section (1) of section 22-A of the Act was enacted by the Parliament for the purpose of enabling the State Government to issue a direction and sub-section (3) was enacted for the purpose of providing for the continuance of an agreement entered into by a licensee with an establishment referred to in sub-section (1) of section 22-A, but what is, however, common to the two sub-sections is that the establishment referred to in sub-section (1) and an establishment referred to in sub-section (3) of section 22-A should be of the same kind i.e. it should be an establishment which is in the opinion of the State Government used or intended to be used for maintaining supplies and services essential to the community and the fact of formation of such opinion is notified in the Official Gazette. It should satisfy the tests laid down in section 22-A(1) of the Act. B C D E

The third reason given by the learned Single Judge for holding that the establishment referred to in sub-section (3) of section 22-A of the Act could not be an establishment notified by the State Government as one which in its opinion was being used or intended to be used for maintaining supplies and services essential to the community was that the issue of a notification by the State Government under sub-section (1) of section 22-A would be unjustified except when the Government was of opinion that a direction should be issued. In other words, the learned Single Judge was of the view that when the State Government felt that there was no necessity to issue any direction, it could not issue any notification under that provision stating that an establishment was in its opinion an establishment which was being used or intended to be used for maintaining supplies and services essential to the community. We do not think that the above observation of the learned Single Judge is correct since there is no impediment for the State Government issuing a notification under sub-section (1) of section 22-A in order F G H

A that an establishment notified therein gets the benefit of sub-section (3) of section 22-A of the Act.

The Division Bench in its judgment in the Letters Patent Appeal has adopted more or less the same reasoning adopted by the learned Single Judge in upholding the contention of the plaintiff.

B The words 'referred to in sub-section (1)' appearing in sub-section (3) of section 22-A of the Act are descriptive of and define the establishment to which sub-section (3) of section 22-A applies and in order to identify such establishment we must have recourse to the latter part of sub-section (1) which lays down the criteria which such establishment should satisfy.' A statutory definition or abbreviation should be C read subject to all the qualifications expressed in the statute and unless the context in which the word defined appears otherwise requires, it should be given the same meaning given by the words defining it.'

A fair reading of section 22-A of the Act suggests that the Parliament did not intend to empower the State Government to issue a direc- D tion under sub-section (1) of section 22-A or to provide for the continuance of the agreement entered into by a licensee with an establishment in every case where the establishment was one which was being used or intended to be used for maintaining supplies and services essential to the community. The intention of the Parliament appears to be that the State Government can issue a direction only in the case of an E establishment which in its opinion satisfies the qualifications mentioned therein and that sub-section (3) should be applicable only to an establishment which in the opinion of the State Government satisfies the said qualifications. The determination of the question whether an establishment satisfies the objective test mentioned in section 22-A(1) of the Act is left to the State Government. The law also prescribes that such F determination should be made known to all concerned by a formal publication in the official Gazette. Instead of providing separately in section 22-A of the Act that an establishment referred to in any of the sub-sections of that section was an establishment which in the opinion of the State Government was one used or intended to be used for maintaining supplies and services essential to the community, the Parliament G defined the establishment to which section 22-A was applicable in sub-section (1) and instead of repeating the same definition in sub-section (3) provided that an establishment to which sub-section (3) thereof was applicable was an establishment referred to in sub-section (1).

We are of the view that the power to issue a notification under sec- H tion 22-A(1) of the Act involves an element of selection and that the said process of selection cannot be considered as an empty formality which can be dispensed with. Nor can that power of selection which is

entrusted to the State Government by the Parliament be claimed by the courts. It is for the State Government to notify the establishment which should be the beneficiary of a direction to be issued under section 22-A(1) or which is entitled under section 22-A(3) of the Act to the supply of electrical energy on the same terms and conditions as are specified in the agreement entered into by it with the licensee even after the expiry of the agreement until such establishment serves a notice in writing on the licensee asking the licensee to discontinue the supply.

Having regard to the context in which section 22-A of the Act appears and in particular to the language used in sub-sections (1) and (3) of section 22-A, we are of the view that it is not possible to hold that section 22-A(3) is applicable to every establishment used or intended to be used for maintaining supplies and services essential to the community even though the State Government has not declared in a notification published in the Official Gazette that it is of the opinion that the establishment satisfied the qualification referred to in sub-section (1). We have to bear in mind that sub-section (3) of section 22-A of the Act makes a serious inroad into the rights of the licensee flowing from a contract stipulating a specific period during which it should subsist and compels the licensee to supply energy to an establishment referred to therein on the same terms and conditions as are specified in the agreement already entered into even beyond the period of its expiry until a notice is issued in writing by the establishment requiring the licensee to discontinue the supply. If a liberal construction is placed on the words "any establishment referred to in sub-section (1)" appearing in sub-section (3) of section 22-A as referring to every establishment which is being used or intended to be used for maintaining supplies and services essential to the community irrespective of the issue of a notification by the State Government that it is in its opinion such an establishment, it is bound to impose a greater restraint on the rights of the licensee than the restraint that will be imposed on it if it is held that the establishment referred to in sub-section (3) of section 22-A is one notified by the State Government as required by sub-section (1) of section 22-A. If the State Government does not issue such a notification in the case of an establishment then such establishment would not be eligible to claim the benefit of section 22-A(3). We may also observe here that any establishment whose interests are required to be protected by the extension of the benefit of section 22-A(3), the State Government can always issue a notification under sub-section (1) stating that in its opinion the said establishment satisfies the qualification mentioned therein.

In the circumstances, we are constrained to say that the High Court was in error in ignoring the requirements which an establishment had

A to satisfy before claiming the benefit of sub-section (3) and in holding that if in the opinion of the Court, the establishment satisfied that it was being used or intended to be used for maintaining supplies and services essential to the community, it could claim the benefit of sub-section (3) even though no notification had been issued by the State Government under sub-section (1) of section 22-A of the Act.

B

In the result, we allow the appeal, set aside the judgments and decrees passed by the High Court in the second appeal and in the Letters Patent Appeal and restore the decree of the trial court as affirmed by the first appellate court dismissing the suit. Having regard to the circumstances of the case, we direct the parties to bear their own costs

C throughout.

N.V.K. *Appeal allowed.*