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IN THE FIJI COURT OF APPEAL

Appellate Jurisdiction

Civil Appeal No. 86 of 1984

Between:

WAIDROKA TRUST LIMITED

Appellant

- and -

FIJI ELECTRICITY AUTHORITY

Respondent

B.C. Patel & C.B. Young for the Appellant
A. Patel for the Respondent

Date of Hearing : 16th July, 1985.

Delivery of Judgment : 20th July, 1985.

JUDGMENT OF THE COURT

Roper, J.A.

This appeal from the judgment of Sadal J. raises a very narrow issue and the basic facts are not in dispute.

The question posed in the lower Court was whether the Respondent Authority had power, pursuant to Regulation 62(1) of the Electricity Regulations to require the Appellant, who was already a consumer, to pay a deposit of \$12,700 or alternatively furnish a bank guarantee for that sum. Sadal J. held that the Respondent did have such power.

The Appellant company is the owner of the Suva Courtesy Inn and since 1975 has been supplied with

electricity by the Respondent Authority and its predecessor, the Suva City Council.

In September 1981 the Appellant received this letter from the Authority :-

"Dear Sir,

ACCOUNT NO 78600057

Because of numerous changes in business with amalgamation of takeover, it has become necessary for us to update our consumers records.

Hence we require :-

- 1. You to complete the attached and agreement for supply form which is to be signed - in the case of Company by a Director and Secretary and in other cases by a responsible officer in charge.
- 2. Pay us a deposit of \$12700.00 or
- 3. Forward us a bank guarantee to this amount.

The requirements for (2) and (3) above have been made necessary under Clause 62(1) of the Electricity Ordinance of 1968, which states that a consumer shall deposit with the Authority a sum equivalent to twice the average monthly consumption. Your average bill as based on the last two months usage is \$12700.00.

Attached also is prototype of irrevocable guarantee form in duplicate. You may ask your Bankers to complete and return the original to us, where cash deposits are not paid.

We seek your prompt attention please."

The attached agreement is headed "Application And Agreement For Supply" and the relevant part reads :-

"I/we hereby apply for a supply of electricity for use at the address stated below, to commence on the date shown, for which I/we agree to pay in accordance with the Authority's scale of charges in force from time to time and which may be varied by seven days notice in a newspaper circulating in the Dominion and to observe the Electricity Act 1966 or any statutory amendments and any regulations made thereunder."

Regulation 62(1) reads :-

"(1) As security for the due payment for energy to be supplied to him and for hire of the Authority's apparatus, every person desiring to become a consumer shall deposit with the Authority before connexion of his circuits to the supply, and thereafter maintain with the Authority, a deposit of sum estimated by the Authority to be equal to the total amount of all charges likely to be incurred by the consumer for the supply of energy and hire of apparatus for two months but not being less than ten dollars."

The Appellant's case in the Court below was that as it had been a consumer since 1975, and was not a person "desiring to become a consumer", the Regulation had no application.

When the Appellant became a consumer of the Suva City Council in 1975 it paid the Council a deposit of \$3,000. When the Respondent compulsorily acquired the Council's electricity undertaking in 1978 deposits, including the Appellant's \$3,000, were taken over by the Respondent. This earlier deposit has tended to confuse the real issue before the Court for determination. Sadal J. approached the case on the basis that the Appellant had already paid a deposit under Regulation 62(1) and he saw the issue as whether

an increased deposit could be demanded in order to "maintain" it at the rate specified in the Regulation.

That is not the issue, and, so far as the Appellant is concerned, never has been. The deposit of \$3,000 was not paid pursuant to Regulation 62(1) for the Suva City Council was not subject to the Electricity Regulations, though it had by-laws of its own. The real question before the Court was whether an existing consumer, who had never paid a deposit, could be called upon to do so.

In our opinion the obligation imposed by the Regulation is clear. A person "desiring to become a consumer" must pay a deposit, not one who is already a consumer. Mr. A. Patel submitted that in fact the Appellant was not "a consumer" in that it had not entered into a contract with the Respondent in terms of Section 15(1) of the Electricity Act (Cap.180) which provides :-

"15.-(1) Subject to the provisions of subsection (2), in so far as it is able to do so, the Authority shall supply energy to any person, other than a licensee, requiring a supply of energy, if such person undertakes to enter into a contract with the Authority, giving such security as the Authority may require, to become a consumer and to undertake, or continue to receive, and to pay for a supply of energy upon such terms and conditions as the Authority may determine."

It is not clear to us how the Appellant came to be supplied by the Respondent with electricity but there can be no doubt that it was "a consumer" as defined in the Act at the time demand was made for a deposit. This is the definition :

" 'consumer' means a person who is supplied with energy or whose premises are for the time being connected for the purpose of a supply of energy with any public installation or Authority public installation;"

We therefore declare that the Respondent has no power pursuant to Regulation 62(1) to require one who is already a consumer to furnish a deposit. We leave open the question whether a consumer who paid a deposit on the application for supply can be called on later to provide an increased deposit.

The appeal is allowed with costs to the Appellant in this Court and the Court below as taxed by the Registrar if the parties cannot agree.

[Handwritten Signature]
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Vice President

[Handwritten Signature]
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Judge of Appeal

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Judge of Appeal