

CASE NO 209/86  
/CCC

IN THE SUPREME COURT OF SOUTH AFRICA

(APPELLATE DIVISION)

In the matter between

THE TOWN COUNCIL OF NIGEL

APPELLANT

and

ESCOM

RESPONDENT

CORAM: CORBETT, VAN HEERDEN, GROSSKOPF, VIVIER JJA  
et NICHOLAS, AJA

DATE HEARD: 14 November 1988

DATE DELIVERED: 28 November 1988

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J U D G M E N T

NICHOLAS AJA:

Escom (which until the coming into operation of Act 50 of 1985 was known as the Electricity Supply Commission) holds power line servitudes over land within the area of jurisdiction of the Town Council of Nigel ("the Town Council"). Such servitudes are "rateable property" within the definition of that term in s.1 (xxix) of the Local Authorities Rating Ordinance, 11 of 1977 (Transvaal) ("the Ordinance"). In the servitude areas Escom has erected power lines for the reticulation of electricity. They fall into three categories, namely,

- (a) Those which are not used for the purpose of reticulating electricity to the inhabitants of Nigel;
- (b) Those used solely for the purpose of

reticulating electricity to such inhabitants;

and

- (c) Those used for the dual purpose of reticulating electricity to such inhabitants, and to the inhabitants of areas outside Nigel.

The Town Council caused to be prepared a provisional supplementary valuation roll for the financial year 1 July 1984 to 30 June 1985, in which it included as rateable property Escom's power line servitudes falling under category (c) without, it would seem, making any provision for exemption as provided in section 10(2)(a) of the Ordinance which is referred to hereinafter. Escom objected to such inclusion.

It contended that, in regard to such power line servitudes it was entitled to exemption

from payment of any rates under s.5(1)(c) of the Ordinance. This provides that rateable property shall be exempt from the payment of any rates where

"(c) such property or portion thereof is owned by the Electricity Supply Commission constituted in terms of the provisions of section 2 of the Electricity Act 1958 (Act 40 of 1958), and such property or portion thereof is used by the said Commission for the purpose of reticulating electricity to the inhabitants of the municipality concerned to the extent that such property or portion thereof is so used."

It is clear that the exemption applies to Escom. (See s.3 of Act 50 of 1985).

The Town Council disputed Escom's contention, and it was agreed that, in order to resolve the dispute, Escom should apply to the Witwatersrand Local Division for a declaration of rights. This was duly done. The matter was heard by GOLDSTONE J, who found in favour of Escom, and granted a declaratory

order as prayed.

Leave to appeal to this court was granted by the learned judge, who directed that the costs of the application for leave should be costs in the cause of the appeal.

In his judgment, GOLDSTONE J said that the dispute between the parties related to the phrase "to the extent that such property or portion thereof is so used", and continued:

"The applicant contends that if an area of land traversed by its power lines conveys electricity to the inhabitants of Nigel it is exempt from rating whether or not that power is also carried to consumers outside the municipal area. The respondent, in turn, contends that the phrase 'to the extent that such property or portion thereof is so used' relates to the quantity of power conveyed to consumers respectively within or outside the municipal area."

This was the issue between the parties on appeal.

The first part of s.5(1)(c) is clear. In order to obtain an exemption under s.5(1)(c), it is necessary (I omit references to words not germane for present purposes) that Escom should own "rateable property", and that such property should be used by Escom for the purpose of reticulating electricity to the inhabitants of the municipality concerned. There is no dispute in regard to either of these requirements: Escom owns the servitudes and they are used for the purpose of reticulating electricity to the inhabitants of Nigel. The fact that they are also used for reticulating electricity to the inhabitants of other areas does not detract from this.

It follows that Escom is entitled to an exemption. The question then is, what is the extent of the exemption? It is the extent to which "such property is so used", that is, used by Escom for the

purpose of reticulating electricity to the inhabitants of Nigel Municipality. It may be the entire extent of the property, or it may be a part.

To interpret the phrase in the way contended for by the Town Council, (that is, as meaning that the rateable property is exempt to the extent that the power lines on the property are used for the reticulation of electricity to the inhabitants of the municipality) would be to give it a strained and fanciful interpretation - one which it cannot reasonably bear, and which does not fit in with other provisions of the Ordinance.

Such interpretation would have the result, not that any part of the "rateable property" was exempt from the payment of rates, but that a part of the rates should not be payable, ie the proportion represented by the fraction  $\frac{x}{y}$  where x is the quantity

of electricity supplied to the municipality, and y is the total quantity of electricity transmitted through the power line. In other words, there would be not an exemption of rateable property from payment of any rate; but a rebate on the rates. The word "exemption" when it is used without qualification, connotes immunity, and s.5(1) provides that "rateable property shall be exempt from the payment of any rate". (The word "any" in its natural and ordinary sense is - unless restricted by the context - an indefinite term which includes all of the things to which it relates. (Hayne & Co vs Kaffrarian Steam Mill Co Ltd 1914 AD 363 at 371)).

Phrases similar to that under consideration are contained in paras (a), (b) and (d) of s.5(1), which read as follows (the underlining is mine):

- (a) such property or portion thereof is land subject to mining title and is held, occupied or used exclusively for the exercise of any right conferred by such



mining title or for any purpose incidental to such right to the extent that such property or any portion thereof is so held, occupied or used: Provided that the exclusive use of such land or portion thereof shall be deemed not to be affected by the use thereof for any other purpose if the Administrator consents to such use;

(b) such property or portion thereof is let or used as contemplated in section 19 of the Financial Relations Act, 1976 (Act 65 of 1976), to the extent that such property or portion thereof is so let or used, whether or not the lessee or user of such property sublets it or any portion thereof to; or permits the use thereof by any other person for any purpose whatsoever;

(d) such property or portion thereof is land used exclusively for the purpose of and to the extent that such property or portion thereof is so used for

....."

(Various purposes are then set out, including public worship, a welfare organisation, a hospital, higher education and a private school).

In each of paragraphs (a), (b) and (d), it is plain, the phrase is used with reference to the physical extent of the property held, occupied, used

or let. No other interpretation is possible - see also

s.5(2):

"5(2) The provisions of subsection (1) exempting rateable property from the payment of rates shall not apply -

(a) to land or any portion thereof contemplated in paragraph (a) of that subsection to the extent that such land -

(i) is used for residential purposes or for purposes not incidental to mining operations ..."

(My underlining). It is in the highest degree improbable that the legislature could have intended that, when used in paragraph (c), the phrase should have a different reference.

Under ss(1) of s.10, the local authority is required to cause a provisional valuation roll to be prepared by the valuer in which shall be recorded all rateable property valued in terms of s.9 and which shall reflect in respect of each such property as at the date of valuation, the particulars set out,

including -

"(b) in the case of land or a right in land,  
the extent of the land concerned;"

and

"(d) the site value;"

and under ss (2), where a portion of the land concerned  
referred to in subsection 1(b) is exempt from payment of  
any rate in terms of s.5(1), the provisional roll shall  
also reflect

"(a) the extent of the portion so exempt and  
of the portion not so exempt;

(b) ....."

This clearly contemplates an exempt portion of the land,  
and a non-exempt portion. On the Town Council's  
interpretation, there could not, in a case referred to  
in s.5(1)(c), be such portions.

S.21(1) provides that a local  
authority may levy a rate or rates (to be known as a  
general rate) on rateable property recorded in the

valuation roll for a financial year to which such roll is applicable. Under s.21(3), a general rate levied shall be an amount in the rand determined by the local authority, in the first instance on the site value of land or on the site value of a right in land. Thus, the amount payable in respect of rates is a matter for simple arithmetical calculation: it is the product of the site value in rand as reflected in the valuation roll and the rate as determined by the local authority. The Ordinance gives no indication of how Escom's liability for rates would be calculated if the Town Council's interpretation is correct. Who is to furnish the values of x and y in the fraction referred to above? As at what date or dates and in what manner are they to be ascertained? The fact that it does not do so shows that the legislature could not have intended the phrase in question to bear that interpretation.

It was submitted on behalf of the Town Council that GOLDSTONE J failed to construe s.5(1)(c) in its proper context: section 5(1)(c) "constitutes an exemption of rateable property from the payment of rates and falls to be construed within the context of the actual rating clause, being section 9(5)(a) which would otherwise apply to Escom".

S.9 of the Ordinance deals with the duty of the valuer to determine values of rateable property. That duty generally is set out in ss(1). However, ss.(5) and (6) provide as follows:

"(5) Rateable property which is -

- (a) land or a right in land held by a power undertaking under any title and traversed by power lines, cables, water, air and gas pipes and railway sidings; or
- (b) a surface right permit held by a power undertaking for residential purposes or for any purpose other than a purpose contemplated in paragraph (a),

shall not be valued in terms of subsection (1)

but shall be deemed to have a site value of one rand per square metre or such lesser value as the local authority may from time to time determine.

(6) The extent of the land contemplated in subsection (5) held by a power undertaking shall be determined as follows:

- (a) in respect of land or a right in land held or used for any purpose referred to in subsection (5)(a)
  - (i) the width of -
    - (aa) overhead lattice power pole lines shall be deemed to be 30 metres;
    - (bb) overhead power lines with single or double poles shall be deemed to be 20 metres;
    - (cc) underground cables and water, air and gas pipes in the same trench, shall be deemed to be 1 metre;
    - (dd) cables and water, air and gas pipes in separate trenches shall be deemed to be 1 metre for each trench; and
    - (ee) railway sidings shall be deemed to be 4,5 metres; and
  - (ii) the length of lines, cables and sidings referred to in the said subsection shall be the actual length traversed thereby; and
- (b) in respect of land or a right in land referred to in subsection

(5)(b), the extent of the land which is the subject of such surface right permit shall be the actual extent thereof."

In my opinion ss.9(5)(a) is not "the actual rating clause" and it does not provide a context for the interpretation of s.5(1)(c). There is no connection between the two provisions, which deal with different subject-matters; s.5(1)(c) relates to the exemption of rateable property from the payment of rates, whereas section 9(5)(a) deals with the determination of the value of certain kinds of rateable property. S.5(1)(c) relates solely to Escom, and the use of property for the purpose of reticulating electricity; whereas s.9(5)(a) relates to a "power undertaking" (which by definition means "any person whose business includes the sale or supply of electricity or gas whether in bulk or otherwise" and thus includes Escom), and land or a right in land

traversed not only by power lines, but also "cables, water, air and gas pipes and railway sidings".

Ss.(6) lays down the way in which the extent of the land contemplated in ss.(5) shall be determined. The purpose of the determination is to provide data for the ascertainment of site value under ss.(5). It does not provide the answer to the question of the extent to which the property is "so used" for the purpose of s.5(1)(c). One can illustrate from an example given in Escom's founding affidavit. A power line may for part of its length carry electricity for delivery both to "inside" and "outside" users, and then from a certain point A carry electricity for delivery only to outside users. It is only up to point A that the servitude is "so used" as contemplated in the last part of s.5(1)(c); beyond point A it is not so used. Subsections (5) and (6) of s.9 have no bearing on the extent of the use.



Another submission made on behalf of the Town Council was based on the legislative history of s.5(1)(c).

The predecessor of Ordinance 11 of 1977(T) was the Local Authorities Rating Ordinance, 20 of 1933(T). S.4 of the latter Ordinance defined "rateable property" as including "every interest in land as hereinbefore defined with the following exceptions ...." "Interest in land" was defined as meaning and including inter alia "the dominium in land ..." and "any servitude over land". There was originally no exception relating to the Electricity Supply Commission. By s.1 of the Local Authorities Rating Amendment Ordinance, 1962(T), however, the following exception was added to those set out in the original definition of "rateable property":

"(g) any interest in land held by the  
Electricity Supply Commission

established under section one of the Electricity Act, 1922 (Act No. 42 of 1922), and used by the said Commission for the purpose of reticulating electricity to inhabitants within the area of the local authority concerned."

This exception remained unchanged until the enactment of s.5(1)(c) in the Ordinance in 1977 (which was a consolidating ordinance).

It was argued by counsel for the Town Council that the reason for the addition to s.5(1)(c) of the words "to the extent that such property or portion thereof is so used" was this. It was understandable that Escom should be exempted in so far as it was supplying electricity to local inhabitants, because without an exemption electricity delivered to "inside" users would cost more. But there was no reason why "outside" users should benefit from the exemption. Accordingly, it was intended by s.5(1)(c) to provide that there should be exemption only to the extent that

the property was used to provide electricity to the local inhabitants. It could be the position that the property was used to supply a minuscule quantity of electricity to the municipality, while the bulk was delivered elsewhere. This was something which the legislature could not have contemplated.

The reason suggested for the change in the wording of the exception contained in s.5(1)(c) is pure speculation for which counsel offered nothing in support. It may well be that the purpose of the phrase was simply to narrow the field of the exemption, as was done in the other paragraphs of s.5(1) which are set out above.

In my opinion therefore GOLDSTONE J's decision was clearly right.

The appeal is dismissed with costs,  
including the costs of two counsel.

NICHOLAS, AJA

CORBETT JA	)	
	)	
VAN HEERDEN JA	)	CONCUR
	)	
GROSSKOPF JA	)	
	)	
VIVIER JA	)	