

CASE NO.:
Appeal (civil) 3654 of 1993

PETITIONER:
U.P. STATE ELECTRICITY BOARD

Vs.

RESPONDENT:
THE BANARAS ELECTRIC LIGHT & POWER CO. LTD.

DATE OF JUDGMENT: 12/05/2000

BENCH:
S. SAGHIR AHMAD, Y.K. SABHARWAL, & S.N. VARIAVA.

JUDGMENT:

J U D G M E N T

S. N. Variava, J.

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1. This Civil Appeal is against the Judgment dated 17th September 1987 delivered by a Division Bench of the Calcutta High Court. By this Judgment the Division Bench dismissed the Appeal filed by the Appellant against a Judgment of a learned single Judge of the Calcutta High Court which upheld the challenge of the 1st Respondent to Ordinances and Amendment Act set out hereinafter.

2. Briefly stated the facts are as follows: On 6th February, 1925 the Government of Uttar Pradesh granted to one M/s Martin & Co. a licence for supply of electric energy. This licence was subsequently transferred to the 1st Respondent. One of the terms of the licence was that at the end of the licence period the Government had a right to purchase the undertaking. The licence was for a period of 50 years. The 50 years period would thus end on 5th February, 1975. On February 1, 1974 the Appellant served a notice on the 1st Respondent, under Section 6(1) of the Indian Electricity Act, 1910 (hereinafter called the said Act). By this the Appellants called upon the 1st Respondent to sell the undertaking to the Appellant on the expiry of the period of 50 years from the commencement of the licence, i.e., at 12 O'clock in the night between the 5th and 6th February, 1975.

3. On February 4, 1975, Indian Electricity (U.P. Amendment and Validation) Ordinance No. 7 of 1975 was passed. This Ordinance amended certain provisions of the Indian Electricity Act. Subsequently this Ordinance was replaced by an Act namely Indian Electricity (U.P. Amendment and Validation) Act, 1976. The Ordinance and the Act amended amongst others Sections 6 and 7-A of the Indian Electricity Act.

4. At this stage it is necessary to see what the unamended Sections 6 and 7-A provided for. They read as follows:

"6. Purchase of undertakings. - (1) Where licence has

been granted to any person, not being a local authority, the State Electricity Board shall, -

(a) in the case of a licence granted before the commencement of the Indian Electricity (Amendment) Act, 1959 (32 of 1959), on the expiration of each such period as is specified in the licence; and

(b) in the case of a licence granted on or after the commencement of the said Act, on the expiration of such period not exceeding thirty years and of every such subsequent period, not exceeding twenty years, as shall be specified in this behalf in the licence; have the option of purchasing the undertaking and such option shall be exercised by the State Electricity Board serving upon the licensee a notice in writing of not less than one year requiring the licensee to sell the undertaking to it at the expiry of the relevant period referred to in this sub-section.

(2) Where a State Electricity Board has not been constituted, or if constituted, does not elect to purchase the undertaking, the State Government shall have the like option to be exercised in the like manner of purchasing the undertaking.

(3) Where neither the State Electricity Board nor the State Government elects to purchase the undertaking, any local authority constituted for an area within which the whole of the area of supply is included shall have the like option to be exercised in the like manner of purchasing the undertaking.

(4) If the State Electricity Board intends to exercise the option of purchasing the undertaking under this section, it shall send an intimation in writing of such intention to the State Government at least eighteen months before the expiry of the relevant period referred to in sub-section (1) and if no such intimation as aforesaid is received by the State Government the State Electricity Board shall be deemed to have elected not to purchase the undertaking.

(5) If the State Government intends to exercise the option of purchasing the undertaking under this section, it shall send an intimation in writing of such intention to the local authority, if any, referred to in sub-section (3) at least fifteen months before the expiry of the relevant period referred to in sub-section (1) and if no such intimation as aforesaid is received by the local authority, the State Government shall be deemed to have elected not to purchase the undertaking.

(6) Where a notice exercising the option of purchasing the undertaking has been served upon the licensee under this section, the licensee shall deliver the undertaking to the State Electricity Board, the State Government or the local authority, as the case may be, on the expiration of the relevant period referred to in sub-section (1) pending the determination and payment of the purchase price.

(7) Where an undertaking is purchased under this section, the purchaser shall pay to the licensee the purchase price determined in accordance with the provisions of sub-section (4) of Section 7-A."

5. Thus, under Section 6(1) a notice in writing of not less than one year was to be given and the purchase price was to be determined in accordance with the provisions of sub-section (4) of Section 7-A.

6. Section 7-A, as it originally stood, read as follows: "7-A Determination of purchase price.- (1) Where an undertaking of a licensee, not being a local authority, is sold under sub-section (1) of Section 5, the purchase price of the undertaking shall be the market value of the undertaking at the time of purchase or where the undertaking has been delivered before the purchase under sub-section (3) of that section, at the time of the delivery of the undertaking and if there is any difference or dispute regarding such purchase price, the same shall be determined by arbitration.

(2) The market value of an undertaking for the purpose of sub-section (1) shall be deemed to be the value of all lands, buildings, works, materials and plant of the licensee suitable to, and used by him, for the purpose of the undertaking, other than; (i) a generating station declared by the licence not to form part of the undertaking for the purpose of purchase, and (ii) service lines or other capital works or any part thereof which have been constructed at the expense of consumers, due regard being had to be nature and condition for the time being of such land, buildings, works, materials and plant and the state of repair thereof and to the circumstance that they are in such position as to be ready for immediate working and to the suitability of the same for the purpose of the undertaking, but without any addition in respect of compulsory purchase or of goodwill or of any profits which may be or might have been made from the undertaking or of any similar consideration.

(3) Where an undertaking of a licensee, being a local authority, is sold under sub-section (1) of Section 5, purchase price of the undertaking shall be such as the State Government, having regard to the market value of the undertaking at the date of delivery of the undertaking, may determine.

(4) Where an undertaking of a licensee is purchased under Section 6, the purchase price shall be the value thereof as determined in accordance with the provisions of sub-sections (1) and (2): Provided that there shall be added to such value percentage, if any not exceeding twenty per centum of that value as may be specified in the licence on account of compulsory purchase."

7. Section 7 is also relevant. It reads as follows:

"7. Vesting of the undertaking in the purchaser.- Where an undertaking is sold under Section 5 or Section 6, then upon the completion of the sale or on the date on which the undertaking is delivered to the intending purchaser under sub-section (3) of Section 5 or under sub-section (6) of Section 6, as the case may be, whichever is earlier -

(i) the undertaking shall vest in the purchaser or the intending purchaser, as the case may be, free from any debt, mortgage or similar obligation of the licensee or attaching

to the undertaking: Provided that any such debt, mortgage or similar obligation shall attach to the purchase money in substitution for the undertaking;

(ii) the rights, powers, authorities, duties and obligations of the licensee under his licence shall stand transferred to the purchaser and such purchaser shall be deemed to be the licensee: Provided that where the undertaking is sold or delivered to a State Electricity Board or the State Government, the licence shall cease to have further operation."

8. By the above mentioned Ordinance and the Act, the amendment which was carried out was that instead of purchase price being the market value, it was now provided that the amount payable for the undertaking would be the book value of the undertaking. Thus, instead of computing the market value, there had to be computation of the book value.

9. It must be mentioned that the above mentioned Ordinances and Amendment Act were part of the policy of nationalisation of electric companies by the Union of India. Similar amendments were made by many States. Electric companies, all over India, were sought to be so purchased. Like the 1st Respondent, a number of other Electric Companies challenged the constitutional validity of the amending Act/Ordinance. The challenge was, inter alia, on the ground that the rights under Article 19(1)(f) and Article 31(2) were being violated. It was also claimed that the Amending Act/Ordinance was invalid as it had no reasonable direct nexus to the principles under Article 39(b) of the Constitution. It was also claimed that, in effect and substance, the law was not one for acquisition of electrical undertakings but was one to acquire a chose in action and to extinguish rights, which had accrued in the Electric Companies, to get the market price. It was contended that the right to get compensation accrued on the day the notice was given. It was contended that what was being acquired was the difference between the market price which the State was obliged to pay and the book value to which the liability was now sought to be limited. It was claimed that as the Act was merely a cloak which the law was made to wear to undo the obligations arising out of intended statutory rule Article 31(c) was not attracted. It was also claimed that in any case, every provision of a statute was not entitled to protection of Article 31(c) but only those which are necessary for giving effect to the principles in Article 39(b) and accordingly the provision in the impugned law in relation to the determination of the amount do not attract Article 31(c). In all the matters it was claimed that the purchase price should be the market value.

10. A Constitution Bench of this Court in the case of Tinsukhia Electric Supply Co. Ltd. v. State of Assam, reported in (1989) 3 SCC 709, upheld the validity of the Act/Ordinance. This Court held that the Act had nexus with the principles in Article 39(b) and was therefore protected by Article 31(c). It was held that the Act was not a piece of colourable legislation. It was held that electric energy generated and distributed was a "material source of the community" for the purpose and within the meaning of Article 39(b). It was held that the idea of distribution of natural resources in Article 39(b) envisages nationalisation. It was held that on an examination of the scheme of the impugned law the inescapable conclusion was that the

legislature measure was one of nationalisation of the undertaking and this law was eligible for and entitled to protection of Article 31(c). It was held that it was not possible to divorce the economic consideration or component from the scheme of nationalisation with which the former are inextricably integrated. It was held that the financial costs of a scheme lies at its very heart and cannot be isolated. It was held that with the provisions relating to vestiture of the undertaking in the State and those pertaining to the quantification of the amount are integral and unseparable parts of the integral scheme of nationalisation and do not admit of being considered as distinct provisions independent of each other. It was held that the provisions for payment of amount to the undertaking, by reducing the market value to book value, formed an integral part of the nationalisation scheme and that economic consideration for nationalisation was not justiciable. It was held that what was being acquired was the material resources of the community. The contention that immediately upon giving of the notice the rights got crystallised was negated. It was held that the exercise of the option did not affect licensee's right to carry on business. It was held that the licensee's rights would be affected only when the undertaking was actually taken over. Similar view was taken in the cases of Maharashtra State Electricity Board v. Thana Electric Supply Co. & Ors., reported in (1989) 3 SCC 616, and Vellore Electric Corporation Ltd. v. State of Tamil Nadu, reported in (1989) 4 SCC 138.

11. This case is entirely covered by the above mentioned judgments. Dr. Singhvi fairly conceded that this case would be covered by the above mentioned Judgments.

12. In this view of the matter, the Appeal is allowed. The Judgments of the Division Bench dated 17th September 1987 as well as the learned single Judge dated 4th April 1984 are set aside. The Writ Petition filed by the 1st Respondent stands dismissed. There shall be no order as to costs.