PETITIONER:
VELLORE ELECTRIC CORPORATION LTD. AND ANR.

Vs.

RESPONDENT:
STATE OF TAMIL NADU & ORS.

DATE OF JUDGMENT13/04/1989

BENCH:
VENKATACHALLIAH, M.N. (J)
BENCH:
VENKATACHALLIAH, M.N. (J)
RANGNATHAN, S.
PATHAK, R.S. (CJ)
MUKHARJI, SABYASACHI (J)
NATRAJAN, S. (J)

CITATION:
1989 AIR 1741 1989 SCR (2) 475
1989 SCC (4) 138 JT 1989 Supl. 105
1989 SCALE (1)1103

ACT:
Constitution of India, 1950: Articles 14, 19, 31, 31-C, 39(b) and 39(c).
'Material Resources of the Community'--Whether include electrical energy generated and distributed by private undertakings.
Acquisition of undertakings--Compensation--Justiciability of.
Procedure under Indian Electricity Act, 1910--Alternative concurrent procedure envisaged under Tamil Nadu Private Electricity Supply Undertakings (Acquisition) Act, 1973--Whether discriminatory and unconstitutional.
Tamil Nadu Private Electricity Supply Undertakings (Acquisition) Act, 1973: Sections: 2-6, 10(f) and 23.
Constitutional validity of--Object of the Act--Whether has nexus to objects of Article 39(b) and (c) of the Constitution and therefore protection of ArtiCle 31-C.
Procedure for acquisition of undertakings initiated under Tamil Nadu Electricity Supply Undertakings (Acquisition) Act, 1954--Proceedings interrupted by Courts order--Fresh acquisition proceedings under subsequent Act of 1974 Whether acquisition of 'choses-in-action'.
Provision relating to liability of licensee to account to Government in respect of possession of and any benefit derived from undertaking after date of vesting--Whether arbitrary or unconstitutional.
'Compensation Amount'--Provision for exclusion of works paid
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for by the consumers--Whether unconstitutional.
Sums due to Government and Electricity Boards from licensee-Provision for deduction from compensation amount--Whether unconstitutional.
Acquisition--Property belonging to undertaking--Non-delivery of--Loss sustained by Government--Computation of--Basis--Market value--Whether unconstitutional.
Acquisition--"Accredited Representative"--Time granted to signify choice as to basis of determination of amount--Whether unreasonably short and arbitrary.

HEADNOTE:

The petitioner companies viz., Veilore Electric Corporation Ltd., Kumbakonam Electric Supply Corporation Ltd. and Nagapatam Electric Supply Corporation Ltd. were grantee of licences under the Indian Electricity Act, 1910 by the Government of the then Presidency of Madras for supply of electrical-energy in their respective areas.

In exercise of its power under Section 4(1) of the Madras Electricity Supply Undertakings (Acquisition) Act, 1954, the State Government issued orders dated 12.1.1968 taking over the undertakings of the Petitioner Companies viz., Kumbakonam Electricity Supply Company and Nagapatam Electric Supply Company declaring that their undertakings shall vest in the Government with effect from the dates specified in their respective orders.

These two petitioner companies filed writ petitions in the High Court of Madras challenging the constitutional validity of the 1954 Act, which were dismissed.

The Writ Appeals filed by them were also dismissed by a Division Bench of the High Court. Thereafter appeals were filed in this Court, which were however, later withdrawn.

Though proceedings for the acquisition of the undertakings of these two companies had been initiated under the 1954 Act but full effectuation thereof had been interrupted by the interlocutory orders made by the courts staying delivery of possession of the undertaking.

Subsequently the Tamil Nadu Private Electricity Supply Undertakings (Acquisition) Act, 1973 came into force which, inter alia, nul-

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lifted the effect of the action taken under the 1954 Act. On 30.10.1973 the State Government issued fresh orders under Section 4(1) of 1973 Act declaring that the undertakings of these two petitioner companies shah vest in Government with effect from 1.12.1973.

A similar order was passed b.v the State Government under Section 4(1) of 1973 Act in respect of the third petitioner company viz. Vellore Electric Corporation Ltd., declaring that the undertaking of this company shall vest in the Government with effect from 7.1.1974. By an order dated 2.2.1978 the State Government also rejected the application of the petitioner Vellore Electric Corporation seeking a change in the basis for determination of amount from basis A to basis B under the 1974 Act.

Writ Petitions were filed in this Court under Article 32 of the Constitution by the three affected companies challenging the constitutional validity of the Tamil Nadu Private Electricity Supply Undertakings (Acquisition) Act, 1973, as well as the orders made under Section 4(1) on the ground that the 'Act', which envisages the acquisition of the Electric Supply Undertakings of petitioners as violative of Articles 14, 19(1)(f), 19(1)(g) and 31 of the Constitution.

Dismissing the Writ Petitions,

HELD: 1. The electricity generated and distributed by the undertakings of the petitioner-companies constitute "material resources of the community." for the purpose and within the meaning of Article 39(b).

1.1 The idea of distribution of the material resources of the community in Article 39(b) is not necessarily limited to the idea of what is taken over for distribution amongst the intended beneficiaries. That is one of the modes of

"distribution". Nationalisation is other mode.

1.2 On an examination of the scheme of the impugned law the conclusion becomes inescapable that the legislative measure is one of nationalisation of the undertakings and the law is eligible for and entitled to the protection of Article 31-C.

1.3 The economic cost of social and economic reform is, perhaps, amongst the most vexed problems of social and economic change and constitute the core element in National-isation. The need for constitutional immunities for such legislative efforts at social and economic
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change recognise the otherwise unaffordable economic burden of reforms. It is, therefore, not possible to divorce the economic consideration or components from the scheme of the nationalisation with which the former are inextricably integrated. The financial cost of a scheme of nationalisa-tion lies at its very heart and cannot be isolated. Both the provisions relating to the vestitute of the undertakings in the State and those pertaining to the quantification of the 'Amount' are integral and inseparable parts of the integral scheme of nationalisation and do not admit of being consid-ered as distinct provisions independent of each other.

Tinsukia Electric Supply Co. Ltd..v. State of Assam, [1989](3) S.C.C. 709; applied.

1.4 In view Of the fact that what was acquired in the instant case were not merely "choses-in-action" but the undertakings themselves, it is not necessary to go into the question whether a "choses-in-action" can at all be ac-quired.

State of Madhya Pradesh v. Ranojirao Shinde & Anr., [1968] (3) S.C.R. 489 and Madan Mohan Pathak v. Union of India & Ors., [1978] (3) S.C.R. 334; referred to.

2. The subject matter of the grant in relation to dis-tribution in the community of such material resources be it electricity, water, gas or other essential amenities of life has a special nature.

New Orleans Gaslight Co. v. Louisiane Light & Heat Producing & Mfg. Co., 115 U.S. 650; The Okara Electricity Supply Co. Ltd. v. The State of Punjab, A.I.R. 1960 S.C. 284; referred to.

2.1 The impugned law is within the legislative compe-tence of the State Legislature and such State law, with the Presidential assent, prevails and is not over-borne by the Central law. The impugned State law, by its 22nd section, expressly excludes the operation of any provisions of the Electricity Act, 1910, in so far as such provision is incon-sistent with the provisions of the Stare Law. The Constitu-tional immunity afforded to the State law prevents any challenge to it on grounds based on Article 14 or 19.

3. There is nothing unreasonable about the provision which merely recognises the obligation of a licensee to account for its acts in relation to a property which has already vested in Government. There-
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fore Section 4 which pertains to the liability of the licen-see to account to Government in respect of possession of and any benefit derived from the undertaking after the date of the vesting is not arbitrary and unconstitutional.

4. The deduction envisaged by Section 10(d) from the amount payable towards and on account of arrears of elec-tricity charges payable by the licensee to the Government or the Electricity Board as the case may be for the supply of Electricity made by them to the licensee is a legitimate item of deduction. It cannot be held to be arbitrary on the

apprehension that even a disputed and untenable claim in that behalf becomes entitled to deduction. Section 13(1)(e) makes such a dispute as one of the arbitrable disputes and no deduction of a disputed claim can be justified by the Government if the arbitrator--who is or has been a District Judge or a retired High Court Judge-holds that the deduction is unjustified.

5. If a debt is deducted from the "amount", the debt is satisfied and is extinguished and no further debt remains outstanding to get itself attached to and becomes an encumbrance upon the substituted security viz., the 'amount'. Section 6(2) and Section 10(e) must be construed harmoniously and in a reasonable manner. There is no scope for any apprehension of a possible double recovery of the same debt. Therefore the Act cannot be challenged on the ground of possible double recovery of the same debt under Section 6(2) and Section 10(e).

6. The measure of the reimbursement for an asset withheld by the licensee is the corresponding expenditure to be incurred by Government for replacement which, in eminently conceivable cases, could be the market value of the asset which is so withheld by the licensee and which has to be replaced to keep the undertaking functioning. Therefore Section 10(f) cannot be held to be arbitrary on the ground that it is an instance of application of double standards because while recovery of "market value" is sought to be made for non-delivery of the item whereas in computing the "amount" only the "book value" of such "property" or "right" is taken.

7. It cannot be said that the accredited representative is, under Section 8(1), given only a month's time from the date of his appointment to signify the choice under Section 5 as to the basis of determination of the amount. Section 8(1) also provides 'or such further time as may be granted by the Government'. If the exercise of this power is arbitrary or capricious the licensee has remedies in Administrative

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Law. But the provision itself cannot be held to be bad or invalid on the ground that time granted under the Section to signify choice under Section 5 is unreasonably short.

8. The order of the Government dated 2.2.1978 rejecting the application of the Petitioner, Vellore Electric Corporation and refusing a change in the basis for determination of amount from basis A to basis B is set aside and the Government is directed to consider the matter afresh.

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition No. 5 (N) of 1974.

(Under Article 32 of the Constitution of India).

Soli J. Sorabjee, Harish N Salve, A.K. Verma, K.J. John, Srinivasamurthy, Ms. Naina Kapur, J.B. Dadachanji and Joel Pares for the Petitioners.

Shanti Bhushan and A.V. Rangam for the Respondents.

The Judgment of the Court was delivered by

VENKATACHALIAH, J. In these writ-petitions under Article 32 of the Constitution of India, three electric supply undertakings in the State of Tamil Nadu, namely, Vellore Electric Corporation Ltd., Nagapatam Electric Supply Co. Ltd., and Kumbakonam Electric Supply Corporation Ltd., challenge the constitutional validity of the Tamil Nadu Private Electricity Supply Undertakings (Acquisition) Act, 1973, ('Act' for short) on the ground that the 'Act', which

envisages the acquisition of the Electric Supply Undertakings of three petitioners, as violative of Articles 14, 19(1)(f), 19(1)(g) and 31 of the Constitution.

These writ-petitions were heard along with Writ Petition (Civil) Nos. 457 and 458 of 1972, pertaining to the acquisition of Tinsukhia Electric Supply Co. Ltd., and Dibrugarh Electric Supply Co. Ltd., under the provisions of the Tinsukhia and Dibrugarh Electric Supply Undertakings (Acquisition)Act, 1973, (Assam Act 1973) and the main contentions touching the constitutionality of such State laws, providing for acquisition of private electricity undertakings--independently of and without recourse to the option to purchase envisaged by the terms of licences and under the provisions Sections 6, 7 and 7A of the Electricity Act 1910--are considered in the main judgment in the said WP
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Nos. 457 & 458, separately rendered today.

2. The scheme and the broad features of The Tamil Nadu Private Electricity Supply Undertakings (Acquisition) Act, 1973, which received the assent of the President on 30th September, 1973, are that the "Act" enables and provides for the acquisition of the private undertakings engaged in the business of supplying electricity to the public other than those belonging to and are under the control of the State Electricity Board or the local authorities.

Section 2 of the Act declares that the "Act" is for giving effect to the policy of the State towards securing of the Directive Principles, specified in clauses (b) & (c) of Article 39 of the Constitution of India. Section 3 is the interpretation clause. Section 4 empowers the State Government to declare, by order in writing, that any undertaking shall vest in Government on the date specified in such order. The proviso to Section 4 enables the Government to modify, by advancing or postponing, the date originally fixed in such order, or the modified date; or to cancel such order. The proviso is, however, subject to a limitation which is in terms following:

> "So, however, that no such order shall be modified or cancelled after the undertaking has vested in the Government but such cancellation shall not be deemed to prevent the Government from taking any proceeding de novo in respect of such undertaking under this Act."
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> The mode of promulgation and the incidence and consequence of an order under sub-section (1) of Section 4, are envisaged in subsection (3) (4) & (5) of Sections 4 and 6 of the Act. Sub-sections (3), (4) and (5) of Section 4 provide:
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> "(3) Every order under sub-section (1) shall be--
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> (a) served on the licensee in the prescribed manner; and
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> (b) published in such manner as the Government may deem fit.
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> (4) On the vesting date the undertaking, to which the order under sub-section (1) relates, shall, subject to the provisions of section 6, stand transferred to, and vest in, the Government.
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> (5) Every licensee who, after the vesting date, was in possession of, or deriving any benefit from the undertaking vested in

> the Government under sub-section (1), shall be liable to pay to the Government, for the period, after such vesting, for which he was in such possession or deriving such benefit, an amount as compensation for the use, occupation or enjoyment of that undertaking as the prescribed authority may fix in the prescribed manner. Such authority shall take into consideration such factors as may be prescribed."

We shall refer to Section 6 and its impact at an appropriate stage later.

Section 5 of the "Act" envisages the "amount" to be given to the licensee on whom an order has been served under Section 4 and provides for its determination on two alternative basis--Basis (A) or Basis (B)--as may be chosen by the licensee in the exercise of the option given under Section 8. Section 7(1) contemplates and requires the appointment of an ,Accredited-Agent" by the licensee within three months of service of the order under Section 4(1). Such accredited-agent is required within one month of his appointment or with such further time as may be granted by Government, signify the choice of the Basis for the determination of the "Amount". Section 8(2) says that the choice of the Basis once intimated shall not be open to revision except with the concurrence of the Government. 'Basis (A)' provides that the amount to be given shall be equivalent to 12 times of the average net annual profits of the undertaking during a period of any five Account-years at the option of the licensee within a period of seven consecutive account-years immediately preceding the vesting date. 'Basis (B)' contemplates a different mode of determination of the amount. It provides for payment of the aggregate value of the sums specified in clauses (i) to (ix) of sub-section (2) of Section 5. Section 10 speaks of the deduction that the Government is entitled to make for the amount. They are specified at clauses (a) to (i) of Section 10. Section 11 provides for the manner of payment of the "Amount". Section 13(1) renders any dispute "in respect of any of the matters in clauses (a) to (e) of Section 13(1)" arbitrable. The Arbitrator is required, by Section 11(2), to be a District Judge or a person who is a retired District Judge or a retired High Court Judge.

Chapter III of the Act, comprising Sections 14, 15, 16 and 17 contemplate and provide for the termination of agreements between the licensee on the one hand and the managing-agent or the managing-

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director, as the case may be, on the other; the continuation under the Government or the Electricity Board, of services of persons on the staff of the licensee taking an inventory of the assets and for information in regard to the documents maintained by the licensee and other incidental matters.

Sections 18 and 19 of Chapter IV deal with offences, penalties and procedure therefore Chapter V, comprising Sections 20, 21, 22, 23 and 24, deals with miscellaneous matters. Two sections in Chapter V are of particular relevance. Section 22(i), inter-alia, provides that no provisions of Electricity Act, 1910, or the Electricity Supply Act, 1948, in so far as such provisions are inconsistent with any of the provisions of the Act, shall have any effect. Section 23 refers to and deals with the action initiated under the earlier State law viz., the Tamil Nadu Electric Supply Undertaking (Acquisition) Act, 1954, (Tamil Nadu Act 29 of 1954) which is repealed by the 'Act'. Sub-section (1) of Section 23 says that the said Act 29 of 1954 shall

cease to apply to any undertaking as defined in Section 3(12) of the 'Act' which has "not vested with and taken possession of by the Government under the provisions of the 1954 Act" before the commencement of the 1973 Act. Sub-section (2) and (3) of Section 23 envisage and provide for situations where some action had been initiated by the 1954 Act but such action had not culminated in the vesting of the undertaking and possession thereof being taken-over by Government. Sub-section (2) and (3) of Section 23 provide:

> "(2) Notwithstanding anything contained in the 1954 Act, if, in pursuance of any order under sub-section (1) of section 4 of the 1954 Act in respect of any undertaking as defined in section 3 (12) of this Act, the Government have not taken possession of such undertaking before the commencement of this Act that order shall lapse and be of no effect and such undertaking shall not vest and shall be deemed never to have vested in the Government under the 1954 Act and in respect of such undertaking it shall be lawful for the Government to make an order under subsection (1) of section 4 of this Act and the provisions of this Act shall accordingly apply to such undertaking."
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> "(3) Notwithstanding anything contained in the 1954 Act, where, in respect of any undertaking as defined in section 3(12) of this Act, the Government have postponed the date of vesting under the proviso to sub-section (1) of
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> section 4 of the 1954 Act, that undertaking shall not vest, and shall be deemed never to have vested, in the Government under the 1954 Act, notwithstanding the expiration of a period of one year from the date originally fixed under sub-section (1) of section 4 of the 1954 Act and in respect of such undertaking it shall be lawful for the Government to make an order under sub-section (1) of section 4 of this -Act, and the provisions of this Act shall accordingly apply to such undertaking."

The provisions of Section 23 acquire particular significance in the case of the Kumbakonam Electric Supply Corporation Ltd. and Nagapatam Electric Supply Co. Ltd., petitioners in W.P. 14 & 15 of 1974, as, indeed, proceedings for the acquisition of the undertakings of these two companies had been initiated under the 1954 Act but full effectuation thereof had been interrupted by the interlocutory orders made by courts in proceedings in which these two companies had challenged the validity of the 1954 Act. Section 23 of the present 'Act' seeks legislatively to set at naught such legal consequences as might come to be considered as ensuing from the action taken under the earlier 1954 Act. Some contentions urged in these cases centre round what the petitioners refer to as some irreversible, vested rights according to them under the earlier proceedings under the 1954 Act.

3. The Vellore Electric Corporation Ltd., petitioner in WP No. 5(N) of 1974, was granted on 14.5.1929 by the Government of the then--Presidency of Madras under the provisions of the Indian Electricity Act, 1910, (1910 Act' for short), for the supply of. electrical-energy within the municipal limits of Vellore town which was later extended to cover the

adjacent area of Ranipet. Clause 12 of the licence envisages the option to the Government to purchase the licensee's undertaking on the expiry of 30 years from the commencement of the licence or if licence is renewed thereafter on expiration of every subsequent period of 20 years, during the continuance of the licence. At the relevant time when the order under Section 4(1) was made, the remaining period of the licence was upto 14.5. 1979. The State Government in exercise of powers under Section 4(1) of the Act made an order dated 30.10.1973, served on the petitioner on 5.11. 1973 fixing 1.12.1973 (which was later postponed to 7.1.1974) as the date of vesting.

4. The facts in W.P. 14 of 1974 are the following:

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The petitioner, the Kumbakonam Electric Supply Corporation Ltd., a public limited company, then engaged in the business of distribution and supply of electrical energy in the Taluks of Kumbakonam and Papanasam and a portion of Thanjavur Taluk, in the District of Thanjavur in the State of Tamil Nadu, was granted a licence dated 15.4.1930 under the Indian Electricity Act, 1910, by the Government of the then-Presidency of Madras. The initial period of the licence was 20 years with a provision for renewal for further periods of 7 years each. At the time the impugned order under Section 4(1) of the "Act" was made, in relation to the Electricity Supply Undertaking of this company, the unexpired period of the licence was up to 15.4.1978.

On 12.1.1968, the State Government in exercise of its power under Section 4(1) of the Madras Electricity Supply Undertakings (Acquisition) Act, 1954, made an order for the taking-over of the undertaking. The petitioner-company filed a writ-petition No. 704 of 1968 in the High Court of Madras, challenging the constitutional validity of the 1954 Act under which the order was made. That writ petition was dismissed on 31.7.1968. The Writ Appeal No. 338 of 1968, filed by the petitioner was also dismissed by the Division Bench. The petitioner preferred, by special leave, an appeal to this Court in CA 119 of 197 1. During the pendency of the proceedings before the High Court and before this Court, petitioner had had the benefit of interlocutory orders, "staying delivery of possession of the undertaking". However, the petitioner withdrew the appeal, according to it, on the suggestion of the Government With a view to facilitating negotiations for a settlement.

However, on 30.9.1973, the 'Act' in the present proceedings came into force. As noticed earlier, sub-section (2) and (3) of Section 23 of the 'Act' statutorily abrogates the effect, incidents and consequences of all earlier proceedings taken under the 1954 Act, except in cases where the vesting and the taking over of possession of the undertaking had already occurred before 30.9.1973. The order under Section 4(1) of the 1973 Act in the case of the petitioner in WP 14 of 1974 was made on 30.10.1973 declaring 1.12.1973 as the date of the vesting.

5. In WP No. 15 of 1974, the first petitioner, the Nagapatnam Electric Supply Co. Ltd., a public limited company, was the grantee of a licence, dated 22.8.1933, under the Indian Electricity Act, 1910, by the then-Government, Presidency of Madras, for the supply of electricity in the areas specified in the grant. The initial period of the . licence was 20 years with a provision for renewal for further periods of

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7 years each. At the time the order under Section 4(1) impugned in the writ-petition was made, the unexpired period

of the licence was upto 22.8.1974. As in the case of Kumbakonam Electric Supply Corporation Ltd., so in the present case, Government in purported exercise of powers under Section 4(1) of the earlier Act, viz., the Tamil Nadu Electricity Supply Undertaking (Acquisition) Act, 1954, had made an order on 12.1.1968 declaring that the undertaking of the petitioner shall vest in the Government with effect from 15.7.1968. The petitioner also challenged the constitutional validity of the 1954 Act in WP No. 703 of 1968 in the High Court of Madras. The writ-petition was dismissed in Madras High Court on 3.7.1968. The Writ Appeal 337 of 1968 preferred by the company before a Division Bench of the High Court, also came .to be dismissed. The Company preferred, by special leave, CA No. 120 of 1971 before this Court. During the pendency of the proceedings in the High Court and in the appeal before this Court, there were interlocutory orders, staying delivery of possession of the undertaking. The appeal before this Court was however, withdrawn by the company on 5.10. 1972.

Thereafter, 1973 Act came into force. As stated earlier, SectiOn 23 of the 'Act' sought to nullify the effect. of the action taken under the 1954 Act and a fresh order dated 30.10.1973 under Section 4(1) of 1973

Act came to be promulgated declaring that the undertaking of the . petitioners would vest in Government with effect from 1.12.1973.

6. The three petitioner-companies assail the constitutional validity of the 'Act' as also the orders made under Section 4(1) in the individual cases.

We have heard Sri Hansh Salve, learned counsel for the petitioners in the three petitions and Shri Shanti Bhushan, learned Senior Advocate for the State of Tamil Nadu and its authorities. The challenge in the main, is to the constitutionality of the "Act", on the basis of discrimination as between the procedures for take-over contained in Section 6 and 7 of the Electricity Act, 1910, on the one hand and the less advantageous, so far as licencee is concerned, contained in the present 'Act'. However, some specific provisions are also challenged as arbitrary and unreasonable.

The contentions in support of the petitions urged at the hearing of these petitions--of which (b) & (c) are particular to WP Nos. 14 and 15 of 1974--may be noticed and formulated thus:

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> "(a) that the legislative declaration in Section 2 of the 'Act' that the legislation is for giving effect to the Directive Principles of State Policy, specified in clauses (b) & (c) of Article 39 of the Constitution is invalid, it being merely a pretext to undo and take away the petitioners' legitimate entitlement to the payment of market-value as provided in the terms of the licence read with Section 6 and 7 of Electricity Act, 19 10, and, accordingly, the legislation does not attract the constitutional validity from challenge under Article 31-C of the Constitution;
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> (b) that, pursuant to the order made under Section 4(1) of the 1954 Act petitioners' undertakings stood vested in Government in the year 1968 and the concomitant right to receive compensation as determinable under and in terms of the 1954 Act was came to be vested in the petitioners and got crystalized into a

'chose-in-action' and that in the circumstances the impugned 'Act' which in effect and substance acquires only these "choses-in-action", and not the undertakings as such which had already vested under the 1954 Act;

(c) that Section 23(2) of the Impugned Act in so far it seeks to undo the legal incidents and consequences of the order made which provided a less disadvantageous standards for the determination of the amount and the impugned orders which seeks to declare that the said undertakings vest again in Government--this time pursuant to order promulgating under Section 4(1) of the impugned Act is violative of Article 14, 19(1)(g) and 31 (as the latter Articles then stood) being a fraud on the power to acquire;

(d) that the 'Act' is violative of Article 14 of the Constitution in as much as it seeks to confer upon the Government an alternative and discriminatory power of attaining the same end, namely, the acquisition of petitioners' undertakings on terms more advantageous to the Government and more disadvantageous to the petitioners than those contained in the Electricity Act 1910;

that the direct effect of the impugned Act is to extinguish the rights conferred upon the petitioners to carry on a lawful business in terms of the subsisting licences in their favour and is violative of Article 19(1)(f) (as it then stood) and 19(1)(g):

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(e) that, at all events, Section 4(5) of the Act which renders a licencee, who after the vesting date was in possession of, or deriving any benefit from, the undertaking liable to pay to Government compensation for the use occupation enjoyment of the undertaking is arbitrary and violative of Articles 14 and 31;

(f) that clause 5(2)(i) of the Act which excludes from the compensation of the 'Amount' works paid-for by the consumers is violative of Article 19(1)(g) and Article 31;

(g) that Section 10(d) providing for deduction from the 'Amount' sums due to the Government or the Electricity Board by the licencee account of electricity supplied by Government is arbitrary, as the provision empowers deductions of even sums bona fide disputed by the licencee of debts.

(h) that, while proviso to Section 6(e) enables debts, mortgages and obligations of the licencee to attach to the "amount" to be given under the Act. Section 10 again envisages the same 'amount' to be deducted from the 'amount', leading to a possible double recovery of the same debt;

(i) that Section 10(f) providing for deduction of loss sustained by Government by reason of any property belonging to the undertaking not having been handed over at the marketvalue of the property is unreasonable in as much as under Basis B. Such Market-value is not but

only the book-value is the basis of determination of the amount;

(j) that provisions of Section 8 which prescribes a period of one month during which the accredited representative has to exercise a right of auction is unreasonably short, rendering the procedure prescribed for the choice of the Basis of determination of the 'Amount unfair and arbitrary.'

7. Re: Contentions (a), (b), & (c):

These contentions could be dealt with together. The principal argument is that that there is no rational and direct nexus between the objects of the Act and the Directive Principles of (1) State Policy adumorated in clauses (b) & (c) of Article 39 in as much as the
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impugned Act was brought forth only to avoid the consequences of the terms of the licences and the beneficent provisions of Section 6, 7 and 7-A of the Electricity Act 1910. If there is, thus, no protection to the law of Article 31-C, then its provisions would clearly violate Articles 14, 19 and 31.

These contentions have to be examined with reference to the provisions of the Constitution as they stood in 1973. Article 31-C was introduced by Section 3 of the Constitution (25th Amendment) Act 1971 with effect from 20.4.1972. Article 31-C, before the expansion of its scope by the 42nd Amendment, protected a law giving effect to the Policy of the State towards implementing the principles specified in Clauses (b) & (c) of Article 39. Article 31 itself had not then been deleted but its scope had been considerably cut down and a law providing for acquisition of property, even if it did not have the protection of Article 31-C, could not be tested with reference to the adequacy of the 'amount' payable for the acquisition. The 'just-equivalent' or full-lindemnification principle had been done away with and the question of the adequacy of the amount was rendered non-justiciable.

It was strenuously urged on Sri Salve that the impugned Act had no rational and direct nexus with the objects of clauses (b) & (c) of Article 39 as the covert but easily discernible purpose of the Act was to deny to the petitioners' their rights under terms of the licence and the benefit of Sections 6, 7 & 7(A) of the 1910 Act. A somewhat similar' contention was urged in WP Nos. 457 & 458 of 1972 where a similar legislation of the State of Assam was challenged. The contention is noticed in our judgment in those appeals thus:

" .... the acquisition of the two undertakings are challenged by the petitioner on several grounds, the principal attack, however, being that the legislations, brought forth, as they were, in the wake of the private-negotiations and the exercise of the option to purchase, are not bona fide, but constitute a mere colourable exercise of the legislative power and that, at all events the real objects of the two legislations have no direct and reasonable nexus to the objects envisage in clause (b) of Article 39 of the Constitution and that a careful and critical discernment of the context in which the legislation was brought forth would lay bare before the judicial eye that what was sought to be acquired was not "undertakings" of the two

companies but really the difference between the "market-value" of the
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undertakings which the State had agreed, under the private treaties, to pay and what, in any event, the State was obliged to pay under the provisions of Section 7A, as it then stood on the one hand and the "Book-Value" of the undertaking, which the law seeks to substitute on the other. If the protective umbrella of Article 31-C is, thus, out of the way, the 'amount' payable under the impugned law, it is urged, would be illusory even on the judicially accepted tests applied to Article 31(2) as it then stood
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" ..... Learned Counsel submitted that in order to decide whether a Statute is within Article 31-C or not, the Court has to examine the nature and character of the legislation and if upon such scrutiny it appears that there is no nexus between the legislation and the principles in Article 39(b) the legislation must be held to fall outside the protection of Article 31-C .... "

The contention was not accepted. Repelling it, we observed in the course of the judgment in WP Nos. 457 & 458 of 1972:

"The proposition of Sri Sorabjee, in principle, is, therefore, unexceptionable; but the question remains whether, upon the application of the appropriate tests, the impugned statute fails to measure-up to the requirements of the Constitution to earn the protection under Article 31-C .... "

"It is not disputed that the electricity generated and distributed by the undertakings of the petitioner-companies constitute "material resources of the community" for the purpose and within the meaning of Article 39(b)."

" .... The idea of distribution of the material resources of the community in Article 39(b) is not necessarily limited to the idea of what is taken over for distribution amongst the intended beneficiaries. That is one of the modes of "distribution". Nationalisation is another mode .... "

"On an examination of the scheme of the impugned
law the conclusion becomes inescapable that the legislative measure is one of nationalisation of the undertakings and the law is eligible for and entitled to the protection of Article 31-C."

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Referring to the contention in that case that not every provision of a law can and need to eligible for the protection of Article 31-C and that; accordingly, the provisions as to the quantification of the amount which were meant to achieve an oblique motive and interdicting and extinguishing rights to receive market value under the 1910 Act would not attract the protection of Article 31-C, It was

held:

" .... We are afraid this contention proceeds on an impermissible dichotomy of the components integral to the idea of nationalisation. The economic cost of social and economic reform is, perhaps, amongst the most vexed problems of social and economic change and constitute the core element in Nationalisation. The need for constitutional immunities for such legislative efforts at social and economic change recognise the otherwise unaffordable economic burden of reforms ..... "

"It is, therefore, not possible to divorce the economic considerations or components from the scheme of the nationalisation with which the former are inextricably integrated. The financial cost of a scheme of nationisation lies at its very heart and cannot be isolated. Both the provisions relating to the vestitute of the undertakings in the State and those pertaining to the quantification of the "Amount" are integral and inseparable parts of the integral scheme of nationalisation and do not admit of being considered as distinct provisions independent of each other."

8. These observations fully answer the contention of Sri Salve in regard to the question whether impugned Act attracts protection of Article 31-C or not. If Article 31-C comes in, Articles 14, 19 and 31 go out.

The second limb of the Contention (a) is that the impugned Act seeks to take-over petitioners' undertakings which had already vested in Government under the 1954 Act. It is, no doubt, true that appropriate orders had been made under Section 4(1) of 1954 Act. Sri Salve contends that by the operation of law, the undertakings of the two petitioners, namely, Kumbakonam Electric Supply Corporation Ltd. and Nagapatnam Electric Supply Co. Ltd. became vested in Government and that Section 23 of the present Act virtually creates an artificial divestitive event and seeks to reinvest it again in Govern-

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ment by the device under the impugned Act with the sole object of cutting down the quantum of the "amount". Sri Salve pointed out that Section 5 of the 1954 Act envisaged three alternative Bases--Basis A, Basis B, and Basis C--and that under Basis A the amount equal to 20 times of the average net annual profit of the undertaking during a period of five consecutive accounting years immediately preceding the vesting date was payable. The number of years' purchase value is, Sri Salve says, now reduced to 12 by the impugned Act. Shri Salve submits that the amount payable under the 1973 Act is wholly illusory.

9. Shri Shanti Bhushan, learned Senior counsel for the State, submitted that if it is held that the legislation has the protection of Article 31-C, barring the question of legislative competence all other attacks based on Articles 14 and 19 and 31 cannot be countenanced. Sri Shanti Bhushan submitted that all the contentions that the petitioners advance in support of their challenge to the validity of the Act rest, in the ultimate analysis, on Articles 14, 19 and 31 which is precisely what Article 31-C forbids.

So far as legislative competence is concerned, Shri Shanti Bhushan submitted that it is referable to Entry 42 of List III and with Presidential assent, the legislation

prevails over any other law and, therefore, no question of lack of legislative competence can be urged.Learned counsel submitted that the contentions urged by the petitioners, in the last analysis, would amount to this: that a legislation which offends Articles 14. 19 and 31. would not be a valid law at all and would, therefore, not be eligible to protection Article of 31-C. If a law satisfies the demand of Article 14, 19 and 31 then such a law, says learned counsel, would not need the protection of Article 31-C at all and that such an approach would render Article 31-C itself meaningless.

In regard to the Contention (d), Sri Shanti Bhushan would say that it proceeds on a factual fallacy. There cannot, it is urged a vesting of the undertaking in the Government under the 1954 Act unless the concept of vesting has and is accompanied by, the plenitude of the legal incidents and consequences of such vesting for purposes of the implementation of the 1954 Act. When the delivery of possession of the undertaking pursuant to the alleged vesting under the 1954 Act had been interdicted by the High Court and the Supreme Court by orders of stay, at the instance of the petitioners, the exercise under the 1954 Act became infructuous and the present stance of the petitioners is merely an attempt to exploit to their own advantage a situation emerg-

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ing from the consequences of their own actions. That apart, the contention (d), says counsel, is really one based on Articles 14, 19 and 31 and the protection of Article 31-C to the Act would, in any event, disallow any such attack.

10. On a consideration of the matter, we think that all the Contentions--(a), (b), (c) and (d)--are covered in one form or the other our pronouncement in WP Nos. 457 and 458 of 1972. We are also of the opinion that Sri Salve's contention that what was sought to be acquired was mere "choses-in-action" is not sound. In any event, the decision of this Court in State of Madhya Pradesh v. Ranojirao Shinde & Anr., [1968] 3 SCR 489 relied upon by Shri Salve to contend that choses-in-action could not be acquired would require to be read with later pronouncement in Madan Mohan Pathak v. Union of India & Ors., [1978] 3 SCR 334. It is not necessary, however, to pronounce on this point as in our view what was acquired were not merely choses-inaction but the undertakings themselves.

Contentions (a), (b) and (c) accordingly fail and are held and answered and against the petitioners.

11. Re: Contention (d):

The submission of learned counsel on the point is that the impugned Act confers upon the State Government an alternative procedure, concurrently with the one envisaged in Sec. 6 of the Electricity Act, 19 10, for attaining the same end viz., the acquisition of an Electricity Undertaking. It is urged that Sec. 6 of the 1910 Act has been held to amount to conferment of power upon the authorities to take away the property of the licensee. The option under Sec. 6 is really statutory and in its essential nature the power is not distinguishable from the State's power to acquire an individual's property which really is and forms the basis of the impugned Act.

It appears to us that there are certain fallacies basic to the argument. The special nature of the subject matter of the grant in relation to distribution in the community of such material resources--be it electricity, water, gas or other essential amenities of life--was recognised by this Court. The following observations of the United States

Supreme Court in New Orleans Gaslight Co. v. Louisiane Light & Heat Producing & Mfg. Co., 115 U.S. 650 were referred to:

> "the manufacture and distribution of gas by means of
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> pipes, mains and conduits placed under legislative authority in the public ways of a municipality, is not an ordinary business in which everyone may engage as of common right upon terms of equality; but is a franchise relating to matters of which the public may assume control ..... "
> and said:
> " ..... It thus appears that American Lawyers describe the business of supplying energy as well as the business of supplying water and gas as a franchise, and it also appears that, in granting licence or sanction to a person to engage in such business, a condition is usually imposed for the compulsory acquisition of the business when the licence or sanction comes to an end". [See The Okara.Electric Supply Co. Ltd. v. The State of Punjab, AIR [1960 SC 284]

If the impugned law is within the legislative competence of the State Legislature--as indeed it must be held to be--the State law, with the Presidential assent, prevails and is not over-borne by the Central law. The impugned State law, by its 22nd Section, expressly excludes the operation of any provision of the Electricity Act, 1910, in so far as such provision is inconsistent with the provisions of the State-Law.

The constitutional immunity afforded to the State law prevents any challenge to it on grounds based on Article 14 or 19. We have held that the State law has such protection. The contention (d) has thus, no foundation. It has to fail.

Re: Contention (e):

12. This pertains to the liability of the licensee to account to Government in respect of possession of and any benefit derived from the undertaking after the date of the vesting. This provision is assailed as arbitrary and unconstitutional. There is nothing unreasonable about this provision which merely recognises the obligation of a licensee to account for its acts in relation to a property which has already vested in Government. There is no substance in this contention either.

13. Re: Contention (f):

This contention arises in the context of Sec. 5(2)(i) of the Act. In
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computing the amount payable under "Basis B" the aggregate value of the sums specified in several clauses of 1 Sec. 5(2) has to be taken. Sec. 5(2)(i) while requiting the book value of all "completed-works in beneficial use pertaining to the undertaking and handed over to the Government" to be taken, however, excludes therefrom works paid for by the consumers. The contention of the petitioners is that the "works paid for by the consumer" is also the property of the licensee and cannot legitimately be excluded. A substantially similar contention was urged and has been considered and negatived at para 29 of our judgment in WP Nos. 457 and 458 of 1972. The reasons stated by us in negativing the contention in that case fully answer the present point. Contention (f) is also insubstantial.

14. Re: Contention (g):

Section 10(d) envisages,deduction from the amount payable towards and on account of arrears of electricity charges payable by the licensee to the Government or the Electricity Board. as the case may be, for the supply of Electricity made by them to the licensee. This is a legitimate item of deduction. But, the point Shri Salve sought to put across is that ,even a disputed and untenable. claim in that behalf becomes entitled to deduction. There is no justification for this apprehension. Section 13(1)(e) makes such a dispute as one of the arbitrable disputes and no deduction of a disputed claim can be justified by Government if the arbitrator--who is or has been a District Judge or a retired High Court Judge-holds that the deduction is unjustified. Contention (g) has no substance either.

15. Re: Contention (h):

The grievance sought to be made out on the matter is that while Section 6(2) of the Act has the effect of vesting all the assets specified in Sec. 6(2)(i)(b) in Government free from encumbrances and the proviso to Sec. 6(2) renders the amount payable to the licensee as substituted security for the debts, mortgages and obligations in substitution of the assets vesting in Government, however, Sec. 10(e) renders one species of such debt viz,. sums due to the Government or the Electricity Board, liable to be deducted from the amount. Shri Salve contends that this would make for a double recovery of the same debt. This, we are afraid, is a wrong way of looking at the two provisions. If a debt is deducted from the "amount", .the debt is satisfied and is extinguished and no further debt remains outstanding to get itself attached to and became an encumbrance upon the substituted

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security viz., the 'amount'. Sec. 6(2) and Sec. 10(e) must be construed harmoniously and in a reasonable manner. There is no scope for any apprehension of a possible double recovery of the same debt. There is no substance in contention (h).

16. Re: Contention (i):

The point of the matter is that sec. 10(f) entitles the deduction of the market value of any "property" or "right" which vests in Government and which is not delivered by the licensees to Government. The grievance of the petitioner is that while recovery of "market value" is sought to be made for non-delivery of the item, however, in computing the "amount" only the "book value" of such "property" or "right" is taken into account. This, it is contended, is an instance of application of double standards and is, therefore, arbitrary. We see no substance in this contention. The measure of the reimbursement for an asset withheld by the licensee is the corresponding expenditure to be incurred by Government for replacement which, in eminently conceivable cases, could be the market value of the asset which is so withheld by the licensee and which has to be replaced to keep the undertaking functioning. There is no substance in this contention either.

17. Re: Contention (j):

Shri Salve submitted that the accredited representative is, under sec. 8(1), given only a month's time from the date of his appointment to signify the choice under section 5 as to of the basis of determination of the amount. The time granted, it is said, is unreasonably short. The argument clearly overlooks the clause 'or such further time as may be granted by the Government' occurring in Section 8(1). If the exercise of this power is arbitrary or capricious the licensee has remedies in Administrative Law. But the provision

itself cannot be held to be bad. There is no substance in this contention either.

18. Certain other subsidiary contentions were urged at the hearing. All these matters have been elaborately considered in our judgment in Writ Petn. Nos. 457 and 458 of 1972 arising out of the Assam legislation. We have not found any merit in them.

19. However, there is one aspect which merits consideration. Shri Salve submitted that the petitioners in Writ Petn. No. 5(N) of 1974, who initially, on 16.1.1974, had opted for basis A had sought a change to basis B by their application dated 4.10.1977. On 2.2.1978,
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Government refused to permit the change. Shri Salve submits that a serious and indeed, irreparable hardship has been occasioned to the petitioners by this arbitrary refusal. In these writ petitions we have dealt with questions of constitutionality leaving the questions of construction of the provisions to the appropriate authorities. However, having regard to the checkered history of the proceedings, it appears to us that Shri Salve's submission deserves to be accepted. Accordingly, the order of the Government dated 2.2.1978 refusing a change in the basis for determination of the amount is set aside and the Government is directed to consider and dispose of the application dated 4.10.1977 afresh within two months from today. We make it clear that the Government shall not unreasonably withhold the permission for the change.

20. In the result, subject to the direction in para 19 supra relating to W.P. No. 5(N) of 1974, we find no substance in these writ petitions which are dismissed. There will be no order as to costs.

T.N.A. Petitions dismissed.

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