

CASE NO.:
Appeal (civil) 3652-53 of 1993

PETITIONER:
U.P.STATE ELECTRICITY BOARD

Vs.

RESPONDENT:
BANARAS ELECTRIC LIGHT & POWER CO.LTD.

DATE OF JUDGMENT: 28/08/2001

BENCH:
A.P. Misra & D.P. Mohapatra

JUDGMENT:

D.P.MOHAPATRA, J.

The controversy raised in these appeals relates to the validity of appointment of arbitrator by the Banaras Electric Light and Power Company Ltd.(for short the company) , respondent herein. The High Court of Calcutta having upheld the appointment made by the company and extended the time for submission of award, repelling the objections raised by the U.P.State Electricity Board (for short the Board), the Board filed these appeals assailing the judgment of the High Court.

The short resume of the facts of the case relevant for the purpose of determination of the controversy may be stated thus : The appellant Board, in exercise of its power under Section 6(1) of the Indian Electricity Act, 1910 (for short 1910 Act) purchased the undertaking of the respondent company. Certain disputes having arisen regarding the mode of assessment of the purchase money to be paid by the Board to the company, the company appointed an arbitrator purportedly under Section 52 of the 1910 Act. The objection raised by the Board against such appointment was based on the amendments introduced in the 1910 Act by the Indian Electricity (U.P.Amendment and Validation) Act, 1976 (for short the Amendment and Validation Act). It was the contention of the Board that in view of the specific provisions made in Section 7-A(6) of the 1910 Act the Special Officer appointed by the Govt. of Uttar Pradesh alone has the jurisdiction to assess the net amount payable to the Company as purchase money. The Special Officer was to make the assessment in accordance with the provisions in Section 7-AA of the Amendment & Validation Act. It was the further contention of the Board that in view of such specific statutory provisions in the Amendment and Validation Act, it was not open to the company to appoint the arbitrator under Section 52 of the 1910 Act. It may be

relevant to state here that the core controversy between the parties was whether the purchase price payable to the company was to be assessed on the basis of market value of the undertaking on the date of take-over as contended by the company or the assessment was to be made on the basis of book-value of the undertaking as it was contended by the Board.

A Division Bench of the Calcutta High Court in the case of U.P.State Electricity Board vs. Upper Jamuna Valley Electricity Company Ltd. & Ors., AIR 1988 Calcutta 336, had declared the Amendment and Validating Acts as unconstitutional being discriminatory and violative of Articles 19(1)(f), 31 and 14. The High Court had held that the price had to be paid as per market value prevailing on the date of taking over of the undertaking.

When the writ petitions giving rise to the present appeals came up before the Court, learned Single Judge following the aforementioned decision of the Division Bench held, inter alia that since it was held by the Division Bench that the provisions of the Amendment and Validation Act were unconstitutional; the contention raised on behalf of the Board that the Special Officer appointed by the State Government has the exclusive jurisdiction to determine the purchase money could not be accepted. Consequentially, the learned single Judge held that Section 52 of the 1910 Act was applicable in the case and no exception could be taken to the appointment of arbitrator by the company. Accordingly, the learned single Judge disposed of the writ petitions giving option to the Board to exercise its right to appoint its arbitrator failing which the arbitrator appointed by the company will proceed with the reference as the sole arbitrator and publish his award. The judgment of the learned single Judge is under challenge in these appeals.

The question regarding validity of the provisions of the Amendment and Validation Act has been set at rest by a bench of three learned Judges of this Court in the case of State of Uttar Pradesh vs. Agra Electric Supply Co. Ltd. & Ors., (2000) 6 SCC 481, and State of Uttar Pradesh Vs. Banaras Electric Light and Power Co. Ltd. & Ors., (2000) 6 SCC 488, in which this Court, placing reliance on the judgment of the Constitution Bench in Tinsukhia Electric Supply Co. Ltd. vs. State of Assam, (1989) 3 SCC 709, upheld the validity of the Act/Ordinance and the judgment of the Calcutta High Court was set aside. Similar view was taken by this Court in Maharashtra SEB vs. Thana Electric Supply Co., (1989) 3 SCC 616 and Vellore Electric Corporation Ltd. vs. State of Tamil Nadu, (1989) 4 SCC 138.

In view of the decisions rendered by this Court in the afore-mentioned cases, the judgment of the Division Bench of the Calcutta High Court in the case of U.P.State Electricity Board vs. Upper Jamuna Valley Electricity Company Ltd. & Ors.(supra) has to be held to be no longer good law and consequentially the judgment under challenge in which the learned single Judge followed the said decision cannot be sustained. The resultant position is that the Special Officer

appointed by the State Government is the only competent authority to assess the amount of purchase money to be paid by the Board to the Company and such assessment is to be made on the book-value of the undertaking. The Arbitrator appointed by the Company has no authority to undertake such exercise. The Award, if any, passed by such Arbitrator is non-est. It was stated by learned counsel for both the parties in course of hearing of the case before us that in the meantime the Special Officer appointed by the State Government has already made the assessment of the purchase money to be paid by the Board to the company and has passed his order; therefore, the controversy raised in these appeals has lost its relevance.

For the reasons stated in the foregoing paragraphs, the appeals are allowed and the judgment under challenge is set aside. The writ petitions are disposed of in terms of this judgment. There will be no order for costs.

..J.

(A.P.Misra)

.J.

(D.P. Mohapatra)

28th August, 2001