

PETITIONER:
MAHARASHTRA STATE ELECTRICITY BOARD AND THE STATE OF MAHARASH

Vs.

RESPONDENT:
NAGPUR ELECTRIC LIGHT AND POWER COMPANY LTD. & ANR.

DATE OF JUDGMENT 07/01/1972

BENCH:
SIKRI, S.M. (CJ)
BENCH:
SIKRI, S.M. (CJ)
SHELAT, J.M.
DUA, I.D.
KHANNA, HANS RAJ
MITTER, G.K.

CITATION:
1972 AIR 706 1971 SCR (3) 19

ACT:
Indian Electricity Act 1910, S. 4(3)-Amendment of terms & conditions of Nagpur Electricity Licence-Validity of amendment made in 1966-Legality of notice under s. 6 of Act for purchase of undertaking by Electricity Board.

HEADNOTE:
On May 4, 1905 a licence was granted under s. 4(1) of the Indian Electricity Act, 1903 to Crompton & Co. Ltd. for the supply of electricity in the municipal area of Nagpur. A notification granting the above license was published in the Central Provinces Gazette on May 6, 1905. The license provided that the right of the government to purchase the undertaking shall arise after 42 years from the commencement of the license and after every subsequent period of 10 years. Para 4 of the license provided that it would come into force and have effect on the day when the notification confirming it was published in the Central Provinces Gazette and that day would for the purpose of Act, be deemed to be the commencement of the license. On January 1, 1911 the Indian Electricity Act, 1910 came into force. On June 28, 1913 a notification permitting the assignment of the licence in favour of the Nagpur Electric Light and Power Company Ltd. (respondent herein) was published in the gazette. On May 2, 1947 amendments in the terms and conditions of the licence were made under s. 4(3) of the Act of 1910 and were published in the gazette. In the preamble it was stated that these amendments were "in the terms and conditions of the Nagpur Electricity licence grantees under the Public Works Deptt. Notification No. 45 dated 4th May 1905..... In the various amendments made throughout the reference was made to May 4, 1947 as being the date when various changes were deemed to start or operate. In clause 3 paragraph (o) (i) was provided that "Option of purchase given by sub-section 1 of section 7 of the Act shall be exercisable on the expiration of ten years or 4th May 1957 and the expiration of every subsequent period of ten years during continuance of this licence." On September 4, 1948 the Electricity Supply Act, 1948 came into force. Section 71 of this Act provided that the right and options

to purchase under the Indian Electricity Act, 1910 were deemed to have been transferred to the Provincial (now State) Electricity Board. The Indian Electricity Amendment Act, 1959 (32 of 1959) amended Indian Electricity Act, 1910. In the newly inserted section 4A(1) the proviso thereto said that no alterations or amendments in the license shall be made except with the consent of the licensee unless such consent was in the opinion of the State government unreasonably withheld. In the amended Act section 6 provided for the purchase of the licensee's undertaking by the State Electricity Board. but the old section 7 was allowed to continue. On September 15, 1965 notice was given to the respondent under sub-section (1) and' sub-section (6) of section 6 of the Indian Electricity Act, 1910 whereby the respondent was required

20

to sell its undertaking to the Board on the midnight of 3rd/4th May, 1967 being the date of the expiry of the licence granted to it. Doubts arose as to the interpretation of clause 3 paragraph (o) (i) of the licence because of the use of the word 'or' between words 10 years and "the 4th May, 1957" in the said clause. The State Government on April 19, 1966 published a notification whereby in the said clause between the words "10 years" and "the 4th May, 1957" the word "on" was substituted, the effect of which was that the option to purchase became exercisable on the expiration of period of 10 years on the 4th May, 1957. After this amendment another notice was given under sub-section and (6) of s. 6 of the Indian Electricity Act, 1910 on April 26, 1966. The words of this notice were the same as that of the earlier notice but it was expressly given in supersession of the earlier notice. The respondent filed a writ petition under article 226 of the Constitution challenging the aforesaid notice dated April 26, 1966. The High Court held that since the operation of license commenced on May, 6, 1905 it could not terminate on May 4, 1957 and therefore the amendment of 1966 was invalid. In appeal to this Court it was common ground that the licensee had never replied to the letter of the State Electricity Board asking for its consent for the amendment of the licence in 1966 in terms of section 4A(1) of the Electricity Act.

HELD : (i) In the circumstances of the case there could be no doubt that the State Government was entitled to hold the opinion that the consent of the licensee for the purchase of undertaking had been unreasonably withheld. [27 E]

(ii) Two interpretations were possible of clause 3 paragraph (o) (i) of the license, as it existed before the amendment dated April 19, 1966. One was that the word 'or' had been wrongly used by some printing mistake and the true word was "on". The other interpretation was that two dates had been provided for the exercise of the option; one, the expiration of ten years from May 6, 1947 the other being May 4, 1957. Thus there was genuine doubts about the real date and if the State Government sought to clarify the point it cannot be said that it made an unreasonable demand from the licensee. It was not a case where government was providing for the option to purchase which was not originally intended to be given. [26 F-H]

(iii) The High Court was wrong in holding that May 6 was the relevant date because the notification relating to the original license was published on May 6, 1905. When the license was amended in 1947 with the consent of the licensee it proceeded on the basis that the 42 years period expired on May 3, 1947 because throughout the crucial effective date

in the amendments is May 4, 1947. Para 4 of the original license thus ceased to have effect for the purpose of construing the license as amended in 1947 and subsequently. (iv) If clause (3) paragraph (o)(i) is interpreted in the light of the rest of the amendments made in the license in 1947, it is quite clear that the previous period was deemed to have expired on May 3, 1947 and the fresh period started on May 4, 1947 and the subsequent periods of 10 years ended on May 3, 1957 and May 3, 1967. It is impossible to read the license as amended in 1947 in any other way than that it was agreed that the period of 10 years in the license would start from May 4, 1947. The details of distribution system, the valuation of assets as on May 4, 1947 and other clauses all point to this conclusion. The license rightly talked of Sec. 7 of the Electricity Act because the license still provided for the start of period of 10 years from May 1947 and

21

this could only be provided for while the old sec. 7 stood. The notice dated April 26, 1966 was thus in accordance with terms of the license and the law. The impugned notice did not suffer from any infirmity. The appeal must accordingly be allowed. [28D-H]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1429 & 1764 of 1968.

Appeal from the judgment and order dated the 26th April, 1967 of the Bombay High Court, Nagpur Bench in Special Civil Application No. 125 of 1967.

Niren De, Attorney-General for India, A. G. Ratnaparkhi, C. K. Ratnaparkhi and Rajiv Shah, for the appellant (in C.A. No. 1429 of 1968) and Respondent No. 3 (in C.A. No. 1764 of 1968).

M. C. Setalvad and I. N. Shroff, for respondents Nos. 1 and 2 (in C.A. No. 1429 of 1968).

B. D. Sharma, for respondent No. 3 (in C.A. No. 1429 of 1968).

V. S. Desai, P. K. Chatterjee and B. D. Sharma, for the appellant (in C.A. No. 1764 of 1968).

S. J. Sorabjee and I. N. Shroff, for respondents Nos. 1 and 2 (in C.A. No. 1764 of 1968).

S. J. Sorabjee, Ashok H. Desai and R. P. Kapur, for intervenor No. 1 (in both the Appeals).

R. N. Banerjee and R. P. Kapur, for Intervener No. 2 (in both the Appeals).

The Judgment of the Court was delivered by Sikri, C. J. These two appeals by certificate are directed against the judgment of the High Court of Bombay (Abhyankar and Paranjpe, JJ). By this judgment the High Court came to the conclusion that the notice dated April 26, 1966, issued by the Maharashtra State Electricity Board under the provisions of S. 6 of the Indian Electricity Act, 1910, was invalid in law and was unenforceable having failed to satisfy the essential conditions of the notice. The High Court accordingly allowed the petition under art. 226 of the Constitution and quashed the said notice.

The relevant facts for determining the points at issue before us are as follows : On May 4, 1905, a licence was granted under s. 4(1) of the Indian Electricity Act, 1903, to Crompton & Co. Ltd., London, for the supply of electricity in the municipal area of Nagpur. A notification granting the above licence was

22

published in the Central Provinces Gazette on May 6, 1905. On January 1, 1911, the Indian Electricity Act, 1910, came into force. On June 28, 1913 a notification permitting the assignment of the licence in favour of the Nagpur Electric Light and Power Company Ltd., respondent before us, was published in the gazette. On May 2, 1947, amendments in the terms and conditions of the licence made in exercise of the powers conferred by sub-s. (3) of s. 4 of the Indian Electricity Act, 1910, were published. In the preamble it was stated that these amendments were "in the terms and conditions of the Nagpur Electricity Licence, granted under the Public Works Department Notification No. 46, dated the 4th May, 1905.. . ." In the various amendments made throughout, reference was made to May 4, 1947, as being the date when various changes were deemed to start or operate. For instance, in clause 2 paragraph (v) the expression "deposited map" was defined as follows :

"2(v) the expression "deposited map" shall mean the plans and statements showing

- (a) the area of supply;
- (b) details of distribution system laid and in use as on 4th May 1947;
- (c) additions or alterations or both to existing distribution system as on 4th May 1947. . . . "

Again clause 2 paragraph (ix) defined the expression "Nett Book Value" to mean the written down value of the assets as on May 4, 1947. In clause 3 paragraph (b) (ii) it is provided that "nothing in this licence shall be construed to prevent the Great Indian Peninsula Railway, the Bengal Nagpur Railway or the Provincial Government or the Central Government from taking from the Government a supply of electrical energy for its exclusive use within the area of supply for new installations set up by them after 4th May, 1947". In clause 3 paragraph (d) it was provided that "the licensee shall, within six months from the 4th May 1947, reduce its retail rates for the supply of energy for various purposes to its consumers. . . ." In clause 3 paragraph (e) (i) (b) it was provided that the "continuous current system shall be in use for a limited period of 5 years up to 4th May 1952, or such longer period as the Government may direct..... It was provided further in clause 3 paragraph (f) (vii) as follows

"It is desirable that the existing distribution system viz. as on 4th May, 1947 should also conform with the foregoing in all respects. . .

23

(Sikri, C.J.)

In clause 3 paragraph (o) (i), which is the clause which we have to interpret, it was provided as follows :

"The option of purchase given by sub-section (1) of section 7 of the Act shall be exercisable on the expiration of ten years or 4th May 1957 and the expiration of every subsequent period of ten years during the continuance of this license."

We may mention that there was some debate before us whether the word "or" in this para was a misprint for "on". We checked up the original and it is common ground that the word in the original license is "or" and not "on".

In the first annexe headed "Compulsory Works" (see Clause 3 of the License) it is provided that the "existing distribution system together with transformers and control

gear as laid in use on 4th May 1947 in streets and roads delineated in the deposited map shall be the Compulsory Works for purposes of the section."

On September 10, 1948, the Electricity (Supply) Act, 1948, came into force. We need only notice s. 71 of this Act under which the rights and options to purchase under the Indian Electricity Act, 1910 were deemed to have been transferred to the Provincial (now State) Electricity Board. The Indian Electricity (Amendment) Act, 1959 (32 of 1959) amended the Indian Electricity Act, 1910. We need only notice the insertion of new section 4A(1) at present. This reads :

"4A. Amendment of licensees.-(I) Where in its opinion the public interest so permits, the State Government, on the application of the licensee or otherwise and, after consulting the State Electricity Board, and if the licensee is not a local authority, also the local authority, if any, concerned, may make such alterations and amendments in terms and conditions of a license, including the provisions specified in section 3, sub-section (2), clause (f), as it thinks fit :

Provided that no such alterations or amendments shall be made except with the consent of the licensee unless such consent has, in the opinion of the State Government, been unreasonably withheld."

The purchase of undertakings is to be regulated by s. 6 which reads :

" 6. Purchase of undertakings. (1) Where a license has been granted to any person, not being a local authority, the State Electricity Board shall,-

(a) in the case of a license granted before the commencement of the Indian Electricity (Amendment)

24

Act, 1959, on the expiration of each such period as is specified in the license;..... 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."

Sub-section (4) of s. 6 provides that "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. Sub-section (6) of section 6 provides that "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". Under sub-s. (7), s. 6, "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 7A".

On September 15, 1965 notice was given to the respondent under sub-s. (1) and sub-s. (6) of s. 6 of the Indian Electricity Act, 1910, as follows :

"I am directed to give you notice that the Maharashtra State Electricity Board has decided to purchase your Electricity Undertaking at Nagpur (District Nagpur) in exercise of the option to purchase vested in the Board by sub-section (1) of section 6 of the Indian Electricity Act, 1910, and to require you to sell your said undertaking to the Board on the midnight of 3rd/ 4th May 1967 being the date of expiry of the license granted to you by the Government under the said Act and also to call upon you under sub-section (6) of Section 6 of the said Act to deliver the said undertaking to the Board on the said date of expiry of the said license pending determination and payment of purchase price."

Doubts arose as to the interpretation of clause 3 paragraph (o) (i) of the license, which we have set out above. The State

25

Government, therefore, decided to amend the para so as to remove any doubts that there might be on the matter, and on April 19, 1966 published a notification which reads as follows :

"Whereas as required by sub-section (3) of Section 4-A of the Indian Electricity Act, 1910 (11 of 1910) a draft of the further amendment proposed to be made by the Government of Maharashtra in the terms and conditions of the Nagpur Electricity License, granted by the Government of the Central Provinces, Public Works Department, Notification No. 46, dated the 4th May, 1905, as subsequently amended, was published in Government Notification, Industries and Labour Department No. LNA-(M)-1265/8126-Elec. 1, dated the 4th January, 1966, for inviting objections and suggestions

And whereas no objections or suggestions have been received by the Government of Maharashtra :

And whereas the Government of Maharashtra has consulted the Maharashtra State Electricity Board and the local authorities concerned and obtained the consent of the Central Government.

And whereas the, Government of Maharashtra also requested the Licensee, the Nagpur Electricity Light & Power Company Limited, to give its consent to the proposed amendment, as required by the proviso to subsection (1) of the said section 4-A but, in the opinion of the Government of Maharashtra. such consent has been unreasonably withheld

And whereas in the opinion of the Government of Maharashtra, the Public interest so permits to make the proposed amendment :

Now, therefore, in exercise of the powers conferred by the said section 4-A and of all other powers enabling it in this behalf, the Government of Maharashtra hereby amends the terms and conditions of the said licence, as follows :

In clause 3 of the license, in paragraph (o) in subparagraph (i) for the portion beginning with the words "shall be exercisable" and ending with the word and figures "May 1957" the following shall be substituted. namely "Shall be exercisable on the expiration of the period of ten year on the 4th May 1957"

L864SupCI/72

26

After this amendment, another notice was given under sub-ss. (1) and (6) of s. 6 of the Indian Electricity Act, 1910, on April 26, 1966. The wording of this notice is similar to the notice dated September 15, 1965, which we have set out above. This notice was expressly given in supersession of the earlier notice.

While approaching the Central Government for its consent, the Government of Maharashtra in its letter dated January 17, 1966, stated that "the draft amendment seeks to remove the ambiguity, if any, in respect of the date on which the option of purchase is exercisable under the Indian Electricity Act, 1910".

On November 10, 1966, the licensee, the Nagpur Electric Light and Power Company Ltd., filed the petition under art. 226 challenging the aforesaid notice dated April 26, 1966.

The High Court held that the amendments in the license made in 1947 were in order. No serious challenge to these amendments has been made before us. The High Court, however, seems to have held that the amendment of 1966 was invalid. The first question which we may deal with is whether the High Court is right in holding that the amendment of April 19, 1966 was valid or not. It is common ground that the licensee did not send any reply to the demand of consent made by the State Government. The question arises whether the licensee unreasonably withheld the consent. It seems to us that in the circumstances of this case there is no doubt that the State Government was entitled to hold the opinion that the consent had been unreasonably withheld.

Two interpretations were possible of clause 3 paragraph (o) (i) of the license, as it existed before the amendment dated April 19, 1966. One was that the word 'or' had been wrongly used by some printing mistake and the true word was 'on'. The other interpretation was that two dates had been provided for the exercise of the option; one, the expiration of ten years from May 6, 1947, the other being May 4, 1957. Thus there were genuine doubts about the real date and if the State Government sought to clarify the point it cannot be said that it made an unreasonable demand on the licensee. Every licensee, under the Electricity Act, 1910 or the earlier Act, knew that the statute gave an option to the State Government or a local authority or some board to purchase, and that option had to be exercised after the expiration of certain periods mentioned in the licence. So it was not a case where Government was providing for the option to purchase which was not originally intended to be given. We are unable to appreciate the opinion of the High Court that the "amendment effected in 1966 stating that the option to purchase under the Act shall be exercisable on the expiration of the period of ten years on

27

4-5-1957, is saying something which is meaningless and unenforceable." The High Court seems to think that the period of 10 years starting with the commencement of that period on May 6, 1947 could never end on May 4, 1957. But this was exactly the reason why the amendment was sought to be made in the license. May 6, 1947 was a date which had no relevance once the amendments of 1947 are taken into consideration. The amendments of 1947 all the time speak of May 4, 1947 and not May 6, 1947. The date May 6, 1947 was derived by the following process of reasoning. The original license provided that "the right to purchase (para (g)) the undertaking, in respect of which the license is granted, shall for the purposes of the provisions in this behalf contained in the said Act enure after the following periods, that is to say

(i) after 42 years from the commencement of this Licence.

(ii) after every subsequent period of 10 years. The terms of such purchase as aforesaid shall be those set forth in Section 7 of the Act."

Para 4 of the original license provided that "this License shall come into force and have effect upon the day when a notification confirming it is published in the Central Provinces Gazette, and that day shall for the purposes of the said Act be deemed to be the commencement of this License". It is this para 4 that created the difficulty because although the notification is dated May 4, 1905 it was published on May 6, 1905. But when the license was amended in 1947 with the consent of the licensee it proceeded on the basis that the 42 years period expired on May 3, 1947, because throughout the crucial effective date in the amendments is May 4, 1947.

It seems to us that after the amendments para 4 of the original license ceased to have effect for the purposes of construing the license as amended in 1947 and subsequently. This takes us to the question whether the notice dated April 26, 1966 is in accordance with law. For the sake of convenience we may set out clause 3 paragraph (o) (i) as amended

"43 (o) (i) The option of purchase given by subSection (1) of section 7 of the Act shall be exercisable on the expiration of the period of ten years on the 4th May 1957, and the expiration of every subsequent period of ten years during the continuance of this license."

It is the case of the licensee that the date in the notice viz. May, 1967, is not in compliance with law the midnight of 3/4th and the terms of the licensee.

28

Mr. Sorabjee further submitted the following propositions

(i) A day is regarded as indivisible period and the law does not regard fraction of a day;

(ii) Person for whose benefit period is prescribed is entitled to the benefit of the entire period.

(iii) Day of the happening of an event or the doing of an Act ought to be excluded rather than included.

(iv) Notice under S. 6 is a condition precedent and must be strictly construed.

He also referred to us some authorities in support of these propositions. We need not quarrel with these propositions but the first three must be regarded as ordinary principles

of construction and yield to the wording and the context of the instrument.

It seems to us that if clause 3 paragraph (o) (i) is interpreted in the light of the rest of the amendments made in the license in 1947, it is quite clear that the previous period was deemed to have expired on May 3, 1947 and the fresh period started on May 4, 1947 and the subsequent periods of 10 years ended on May 3 1957 and May 3, 1967. It is impossible to read the license as amended in 1947 in any way other than that it was agreed that the period of 10 years mentioned in the license would start from May 4, 1947. The details of distribution system (para 2 extracted above), the valuation of assets as on May 4, 1947 and other clauses extracted above all point to this conclusion.

It was pointed out that the license still talked of sec. 7 of the Electricity Act. Why was this not amended when it was under sec. 6, as inserted in 1959, that the option to purchase became exercisable? It seems to us that it was rightly not amended because the license still provided for the starting of the period of 10 years from May 4, 1947. This could only be provided for while the old sec. 7 stood. It seems to us that the notice dated April 26, 1966 was in accordance with the terms of the licence and the law.

We accordingly hold that the impugned notice does not suffer from any infirmity. The appeals are allowed, the judgment of the High Court reversed and the writ petition dismissed. The parties will bear their own costs throughout. Parties may mention on the 17th January, 1972 for passing any consequential and/or essential order which may be necessary in the circumstance

G. C.

Appeals allowed.

29