

CASE NO.:
Appeal (civil) 499-500 of 1983

PETITIONER:
U.P.STATE ELECTRICITY BOARD

Vs.

RESPONDENT:
BANARAS ELECTRIC LIGHT & POWER CO.LTD.

DATE OF JUDGMENT: 17/08/2001

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

JUDGMENT:

D.P.MOHAPATRA, J.

In these appeals filed by special leave, the U.P.State Electricity Board (for short the Board), a statutory body constituted under the Electricity (Supply) Act, 1948 assails the judgment of the Division Bench of the Calcutta High Court vide its Judgment dated 26.8.1982 in the Appeal from Original Order No.229 of 1980 dismissing the appeal filed by the Board and confirming the judgment passed by the single Judge.

The core question that arises for determination in these cases is whether the Board is liable to pay to the liquidators of the company (in liquidation)respondent herein the sum of Rs.68,29,636.87 together with interest being the amount collected by the Board between the 4th/5th February, 1975 till 30th April, 1979 towards arrears of electricity charges for the electricity supplied to consumers during periods prior to the take over of the Undertaking by the Board, and all collections made by the Board subsequently on that account.

The factual matrix of the case, which is not in dispute, may be stated thus:

Banaras Electric Light & Power Co. Ltd. (hereinafter described as the Company) was the holder of the license dated 6th February, 1925 for generation, supply and distribution of electric energy in the city of Banaras under the Indian Electricity Act, 1910 (for short the Act). On 1st February, 1974 a notice under Section 6(1) of the Act was served upon the company notifying the intention of the Board to purchase the undertaking of the company. The possession of the Undertaking was taken over at midnight between 5th and 6th February, 1975. The undertaking of the company thereupon vested in the Board. On the date of the take over of the Undertaking there were certain uncollected dues for the electricity supplied by the company to its consumers up to the date of

vesting which were thereafter collected by the Board. Up to 30th April, 1979 a total sum of Rs.68,29,636.87 had been collected. In the meantime the company had gone into voluntary liquidation and joint liquidators had been appointed. On the application filed by the liquidators on 30th January, 1980 under Sections 468 and 518 (1) (b) and (4) of the Companies Act, 1956 seeking an order against the Board to pay to the liquidators of the company the aforementioned sum together with interest thereon and all further collections made by the Board from 1st May, 1979 till date. The gist of the case of the company was that the aforementioned amount was the dues of the company from its consumers for the electricity supplied before the date of vesting, which the Board collected from the consumers after vesting of the undertaking. The company contended that the amount was collected by the Board as agent of the company and the Board held the amount as a trustee. Therefore, the Board was required in fact and in law to make over the amount collected by it and any further sum which it may collect from the consumers towards such arrear dues of the company to the liquidators. Contesting the claim of the company the Board took the stand that it was entitled to retain and appropriate any amount collected by it after vesting of the undertaking since the book-debts of the company which were part of the undertaking vested in the Board. The further case pleaded by the Board was that under the provisions of the Act it was entitled to adjust the said amount towards dues of the company towards the cost of the electricity supplied and the security deposits of the consumers which the company had failed to make over to the Board at the time of vesting.

The learned single Judge of the High Court on consideration of the case of the parties and on interpretation of the relevant provisions of the Indian Electricity Act and also the Indian Electricity (Uttar Pradesh Amendment and Validation) Act, 1975 (U.P. Act No.16 of 1975) particularly Sections 6 and 7 (A) thereof held that the book-debts of the company were not a part of the undertaking which vested in the Board and, therefore, the Board having admittedly realised the arrears of charges which were due from the consumers to the company (in liquidation) prior to the date of taking over had no right to retain the same and the court in exercise of the jurisdiction vested under Section 468 read with Section 518 (1)(b) and (4) of the Companies Act could adjudicate the matter and direct that the amount collected by the Board as trustee or agent of the Company (in liquidation) should be paid to the liquidators. The learned single Judge rejected the plea of the Board for adjustment/set off of the amount against dues of the company (in liquidation) to the Board. The operative portion of the order/judgment reads as hereunder:

Therefore, I am making an order in terms of prayer (a) directing the respondent Board to pay the said amount of Rs.68,29,636.87 together with interest at the rate of 6% per annum from the date of realisation of the said bills until payment being the arrears of electricity charges supplied to the consumer of the said company in liquidation up to the midnight of 4/5th February 1975 as the said sums

were collected by the respondent Board as trustee or agent on behalf of the company in liquidation. Such payment of be made to the Joint Liquidators within a fortnight from date. The Joint Liquidators will keep the said amount in separate account invested in a nationalised bank on a short term deposit for a period not less than 181 days and keep the same renewed until further order of this court. The said respondent Board will also pay the outstanding arrears of charges which are to be collected by them as trustee or agent from the consumers due up to the said date of taking over to the Joint Liquidators in terms of this order as and when realise and the Joint Liquidators will also keep the said amount in a separate account in a nationalised Bank invested in the same manner as hereinafter stated.

The Board assailed the said order/judgment in appeal which, as noted earlier, was dismissed by the Division Bench of the High Court by the judgment which is under challenge in the present appeals. From the discussions in the judgment it is clear that the Division Bench took note of the contentions raised by the counsel appearing for the parties, particularly, the question whether the book-debts of the company were included in the expression undertaking and as such vested in the Board. Interpreting the provisions of Section 7 and 7(A) of the Act as substituted by the Indian Electricity (U.P.Amendment and Validation) Act, 1975 the Division Bench held that there was no specific provision for book-debts of the company as a part of the undertaking and the licensee did not have to account for the book-debts or unpaid bills on the date of service of notice or at any point of time thereafter. Taking note of the provisions of Section 7 which provides that the rights, powers, authorities, dues and obligations of the licensee under its licence shall stand transferred to the purchaser and such purchaser shall be deemed to be the licensee and the provisions in sub-sections 4 and 5 of Section 7(A) which empower the purchaser to deduct certain sums from the purchased money to be paid to the company, the Division Bench observed that Section 7(A) (5) lays down the method of adjustment of liabilities of the licensee against the compensation money and it does not contain any rule for calculation of compensation of the purchase money to be paid to the licensee. The Division Bench recorded its finding: why should the licensee get credit for the unpaid bills of the consumers and his liability on account of security deposits be reduced unless the outstanding amount of the unpaid bills are regarded as property of the licensee?. The Division Bench was of the view that no other construction will make any sense. The Division Bench took the view that if the appellants argument is to be accepted, the statute must be taken to have given the licensee the credit for money which do not belong to the licensee; this construction will lead to absurdity and should be avoided. The Division Bench was of the opinion that the unpaid bills of the consumers are not covered by the expression undertaking and under the Act the outstanding amounts payable on the bills belong to the

licensee. On these observations and findings the Division Bench came to the conclusion that in the facts of the case the decision of the learned trial Judge directing the Board to make the payment collected so far together with interest to the liquidators is correct. The Division Bench dismissed the appeal and confirmed the judgment passed by the learned trial Judge and directed the Board to carry out the direction given by the learned trial Judge within a period of eight weeks from the date.

Before considering the case on merit it will be convenient to notice some relevant statutory provisions.

Section 6 of the Act which deals with purchase of undertakings enumerates the procedure to be followed when the State Electricity Board or the State Government or any local authority constituted for an area intends to purchase an Undertaking. The provisions of the said section so far as material for the purpose of the present case are quoted hereunder:

Section 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) Act, 1959 (32 of 1959) on the expiration of each such period as is specified in the license, and

(b) In the case of a license granted on or after the commencement of the said Act, on the expiration of such period not exceeding twenty years and of every such subsequent period, not exceeding ten years, as shall be specified in this behalf 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.

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(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.

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(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, or to such officer as the Board, the Government or the local authority may appoint in that behalf on the expiration of the relevant period referred to in sub-section (1) pending the determination and payment of the amount referred to in sub-section (7);

Provided that the licensee shall, in addition to the said amount, be entitled to interest thereon at the Reserve Bank rate ruling at the time of delivery of the undertaking plus one per centum for the period from the date of delivery of the undertaking to the date of payment of said amounts.

(6-A) After the service upon the licensee under this Section of a notice by the State Electricity Board exercising the option of purchasing the undertaking

(a) the licensee shall prepare and furnish to the Board within a period of three months from the date of service of such notice an inventory of all lands, buildings, works, materials and plant belonging to the undertaking at the time of the service of such notice and shall be bound to allow the Board or its agents or the Electrical Inspector to the State Government or any officer subordinate to him authorised by him in that behalf, at all reasonable times during the pendency of the said notice and until delivery of the undertaking to the Board under sub-section (6), to enter upon such lands, buildings and works, and inspect such lands, buildings, works, materials and plant and prepare an inventory thereof or to check the correctness of the inventory furnished by the licensee;

(b) the licensee shall be bound to keep all his lands, buildings, works, materials and plant belonging to the undertaking in as good condition as they were at the time of the service of such notice, subject only to changes

caused by reasonable wear and tear or by irresistible force, and to allow the said Board and its agents, or the Electrical Inspector to the State Government or any officer subordinate to him authorised by him in that behalf, at all reasonable times during the pendency of the said notice and until delivery of the undertaking to the Board under sub-section (6), to enter upon such lands, buildings, and works and inspect the condition thereof and the condition of the said material and plant;

(c) the licensee may use the said lands, buildings, works, materials and plant as a person of ordinary prudence would use them if no such notice as aforesaid were served, but he shall not pull down or damage any such buildings, works, material or plant or commit any other act which is destructive thereof or permanently injurious thereto or remove any such materials or plant from the undertaking;

(d) the licensee shall be liable to account to the Board for all such lands, buildings, works, materials and plant, as existed at the time of the service of such notice.

(7) Where an undertaking is purchased under this section, the purchaser shall pay to the licensee an amount determined in accordance with the provisions of Section 7 and Section 7-A as substituted by the Indian Electricity (U.P. Amendment and Validation) Act, 1975.

Section 7 of the Act which makes the provisions regarding vesting of the undertaking in the purchaser 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 the 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 license 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 license shall cease to have further operation.

By the U.P. Act No. 16 of 1975 the following changes were made in Section 7 of the principal Act :

4. Amendment of Section 7 In Section 7 of the principal Act, -

(i) In sub-section (1), for the proviso to clause (i), the following proviso shall be substituted, namely :

Provided that any such debt, mortgage or similar obligation shall attach to the amount payable for the undertaking;

(ii) in sub-sections (2), (3) and (5), for the words purchase money, wherever occurring, the word amount shall be substituted.

Section 7A contains the provisions regarding determination of the purchase price. The said section as substituted by the U.P. Act 16 of 1975, so far as material for the purpose of the case, is quoted hereunder:

Section 7A Determination of amount
(1) where an undertaking of a licensee is sold under sub-section (1) of section 5 or is purchased under section 6 the amount payable therefor shall be determined as hereinafter provided.

(2) The gross amount payable to such licensee shall be the aggregate value of the amounts specified below :

(i) the book value of all completed works in beneficial use pertaining to the undertaking and taken over by the State Electricity Board, the State Government or local authority, as the case may be (excluding works paid for by consumers) less depreciation calculated in accordance with the Sixth Schedule read with the

Seventh Schedule to the Electricity (Supply) Act, 1948.

(ii) The book value of all works in progress taken over, excluding works paid for by the consumers or prospective consumers;

(iii) The book value of all stores, including spare parts taken over, and in the case of used stores and spare parts, if taken over, such sum as may be decided upon by the Special Officer referred to in sub-section (6) hereinafter referred to as the special officer);

(iv) The book value of all other fixed assets in use on the date of vesting under Section 7, hereinafter referred to as the vesting date, and taken over, less depreciation calculated in accordance with the said schedules;

(v) The book value of all plants and equipments existing on the vesting date, if taken over but no longer in use owing to wear and tear or to obsolescence, to the extent such value has not been written off in the books of the licensee, less depreciation calculated in accordance with the said schedules;

Explanation:- The book value of any fixed asset means its original cost, and shall comprise

(i) the purchase price paid by the licensee for the asset, including the cost of delivery and all charges properly incurred in erecting and bringing the asset into beneficial use as shown in the books of the Undertaking;

(ii) the cost of supervision actually incurred, but not exceeding fifteen percent of the amount referred to in paragraph (1);

Provided that before deciding the amount under this sub-section the licensee shall be given an opportunity by the Special Officer of being heard, after giving him a notice of at least 15 days therefor.

(3) A sum equal to 10 percent of the amounts assessed under clauses (i) to (iv) of sub-section (2) shall be paid to the licensee in respect of compulsory purchase under section 6,

(4) When any asset is acquired by the

licensee after the expiry of the period to which the latest annual accounts relate, the book value of the asset shall be such as may be decided upon by the Special Officer;

Provided that before deciding the book value of any such asset, the licensee shall be given an opportunity by the special officer of being heard, after giving him a notice of at least 15 days therefor.

(5) The purchaser shall be entitled to deduct the following sums from the gross amount payable under the foregoing sub-section to a licensee

(a) the amount, if any, already paid in advance;

(b) where the purchaser is the State Electricity Board the amount due, if any, including interest thereon, from the licensee to the Board, for energy supplied by the Board before the vesting date.

(c) All amounts and arrears of interest, if any, thereon, due from the licensee to the State Government or the State Electricity Board;

(d) The amount, if any, equivalent to the loss sustained by the purchaser by reason of property or rights belonging to the undertaking not having been handed over to the purchaser, the amount of such loss being deemed to be the amount by which the market value of such property or rights exceeds the amount payable therefor under this section, together with any income which might have been realised by the purchaser, if the property or rights had been handed over on the vesting date;

(e) The amount of all loans due from the licensee to any corporation as defined in the U.P. Public Moneys (Recovery of dues) Act, 1972, and arrears of interest, if any, thereon;

(f) All sums paid by the consumers by way of security deposit and arrears of interest due thereon on the vesting date, insofar as they have not been paid over by the licensee to the purchaser, less the amounts which according to the books of the licensee are due from the respective consumers to the licensee for energy supplied by

him before that date.

(g) All advances from consumers and prospective consumers, and sums which have been or ought to be set aside to the credit of the consumers, insofar as such advances or sums have not been paid over by the licensee to the purchaser;

(h) The amounts remaining in Tariffs and Dividends Control Reserve, contingencies Reserve and the Development Reserve, in so far as such amounts have not been paid over by the licensee to the purchaser.

(6) The State Government shall appoint, by order in writing, a person having adequate knowledge and experience in matter relating to accounts, to be Special Officer to assess the net amount payable under this section to the licensee, after making the deductions mentioned in this Section.

(7)(a) The Special Officer may call for the assistance of such officers and staff of the State Government or the State Electricity Board or the licensee as he may deem fit in assessing the net amount payable.

(b) the Special Officer shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (Act V of 1908), when trying a suit, in respect of the following matters-

i) enforcing the attendance of any person and examining him on oath;

ii) compelling the production of documents; and

iii) issuing commissions for the examination of witnesses.

The Special Officer shall also have such further powers as may be specified by the State Government by notification in the Gazette.

(8) Where the gross amount payable to the licensee is equal to or less than the total amount to be deducted under this section no payment shall be made to the licensee by the purchaser.

On a close reading of the provisions noted above it is

clear that no provision is made in the Act requiring the licensee to deliver the book debts of the company to the Board on vesting of the Undertaking in the latter, nor is there any provision in the statute empowering the Board to deduct the amount of unrealised dues of the company from its consumers towards the electricity supplied to them prior to the date of vesting from the purchase money to be paid by the Board to the company. Further, there is no provision in the Act which enables the Board to adjust the said amount towards security deposits or any other dues. The plea of adjustment/set off is untenable. The field being covered by statute the exercise has to be done strictly in accordance with the statutory provisions. It is not open for the Board to make any deduction by way of adjustment or set off from the amount to be paid to the company without a statutory mandate in that regard. It follows therefore that the company is entitled to receive from the Board the amounts realised by the latter from consumers towards charges of the electricity supplied by the company to them prior to the date of vesting. The Division Bench has also referred to the correspondence between the Board and Company indicating that the Board was conscious of its liability to hand over a sum of Rs.68,29,636.87 to the company.

The High Court was right in allowing the petition filed by the liquidators of the company (in liquidation) and directing the Board to pay the amount realised by it with interest to the liquidators.

In the result, the appeals being devoid of merit, are dismissed. The hearing fee is assessed at Rs.10,000/-.

..J.
(A.P.Misra)

.J.
(D.P. Mohapatra)

Dated: 17 August, 2001