HIGH COURT OF GUJARAT *(D.B.)*

DAKOR-UMRETH ELECTRICITY COMPANY LIMITED
V/S
STATE OF GUJARAT

Date of Decision: 19 October 1970

Citation: 1970 LawSuit(Guj) 73

Hon'ble Judges: P N Bhagwati, P D Desai

Eq. Citations: 1972 GLR 88

Case Type: Special Civil Application

Case No: 1551 of 1968

Subject: Constitution, Electricity

Head Note:

Electricity Act, 1910 - Sec 5, 6, 7, 7a - Constitution of India - Art 14, 31(2), 31(5)(a), 14, 19(1)(f) - statutory scheme of compulsory purchase - changes effected therein - held, amendments were clearly post-constitution law not entitled to immunity from challenge under Art 31(2) - Sec 6, 7, 7A are not violative of constitutional guarantee under Art 31(2) - market value' is sufficient specification of principle of compensation within meaning of Art 31(2) - word 'pay' suggests that compensation is to be paid in terms of money - entire undertaking has to be valued - implied agreement for payment of interest on basis of general rule - no addition shall be made in respect of goodwill or profitability - exclusion of service lines from valuation does not make principle of compensation irrelevant or inappropriate - exclusion of goodwill from valuation cannot be held to offend constitutional requirement of valid principle of compensation - inclusion of future profitability will give licensee benefit of unjust enrichment - exclusion of

profitability cannot be assailed as irrelevant - provisions of appointment of arbitrator are not unreasonable and violative of Sec 19(1)(f) - two groups of licensees are differently situated and hence classification or differentiation is justified - two different modes of determination of purchase price are not unreasonable and not violative of Art 14 - petitioner had not vested right to insist that its undertaking shall be acquired only in manner prescribed by original Sec 7(4) - Sec 6(1)(a) is retrospective in nature and therefore, notice of exercise of option is valid - petition dismissed

Acts Referred:

Constitution Of India Art 31(2), Art 19(1)(f), Art 14

Electricity Act, 1910 Sec 6, Sec 7(1), Sec 7(4), Sec 6(1), Sec 6(1)(a), Sec 6(7), Sec 7, Sec 5(1), Sec 6(6), Sec 7A(2), Sec 7A

Final Decision: Petition dismissed

Advocates: I M Nanavati,K S Nanavati, J M Thakore, J R Nanavati, M G Doshit

Reference Cases:

Cases Referred in (+): **13**

Judgement Text:-

Bhagwati, C J

[1] This petition raises a question as to the constitutional validity of certain provisions of the Indian Electricity Act, 1910, (hereinafter referred to as 'the Electricity Act'). On 1st March 1940 a licence was granted to one B. D. Desai by the Government of Bombay under sec. 3(1) of the Electricity Act to supply electrical energy within the area comprised in the municipal limits of Dakor and Umreth. Sec. 7(1) of the Electricity Act as it then stood, provided, omitting portions immaterial that-

> "(1) Where a license has been granted to any person not being a local authority and the whole of the area of supply is included in the area for which a single local authority is constituted, the local authority shall, on the expiration of such period, not exceeding 50 years, and of every such subsequent period not exceeding twenty years, as shall be specified in this

behalf in the license, have the option of purchasing the undertaking."

And in cases falling in the three clauses of sec. 7(2), such option shall belong to the Provincial Government. In conformity with this section and with a view to giving effect lo it, the license provided in Clause 17 that the option of purchase given by sec. 7(1) shall be exercisable first on the expiration of thirty years from the commencement of the license and thereafter on the expiration of every subsequent period often years. Within a short time, the license was assigned by B. D. Desai to the petitioner with the previous consent in writing of the Government of Bombay obtained under sec. 9(2) of the Electricity Act and the benefit of the license became vested in the petitioner with effect from 1st November 1940. The petitioner thereafter started supplying electrical energy within the area comprised in the municipal limits of Dakor and Umreth in accordance with the terms of the license. In the meantime the Electricity (Supply) Act, 1948, (hereinafter referred to as the Electricity Supply Act) came to be passed by the Central Legislature and under it the Bombay Electricity Board was constituted which was given the right to exercise the option of purchase contained in sec. 7(1) by sec. 71 of that Act. Sec. 71 was, however, deleted by the Indian Electricity (Amendment) Act, 1959, and by the Amending Act, certain important changes were effected in the statutory scheme of compulsory purchase contained in the Electricity Act. We shall presently refer to the amended scheme in some detail but for the time being it would be sufficient to point out that the option of purchase which was originally contained in sec. 7 now came to be enacted in sec. 6. Then followed the bifurcation of the State of Bombay and on the coming into existence of the State of Gujarat, the Gujarat Electricity Board was constituted under the Electricity Supply Act. The Gujarat Electricity Board served a notice dated 2/3rd August 1965 on the petitioner stating that in exercise of the power conferred under sec. 6(1), the Board had decided to purchase the undertaking of the petitioner on the expiry of the initial period of the license, namely, midnight of 28th February 1970 and requiring the petitioner to sell the undertaking to the Board on the expiry of the said period. The petitioner thereupon filed the present petition challenging the validity of the notice issued by the Gujarat Electricity Board.

[2] Before we set out the grounds on which the impugned notice is challenged on behalf

of the petitioner, it would be convenient at this stage to refer to some of the relevant provisions of law bearing on the points in controversy between the parties. Turning first to the Electricity Act, sec. 3 provides that the State Government may after consulting the State Electricity Board, grant a license to any person to supply energy in any specified area and also to lay down or place electric supply-lines for the conveyance and transmission of electrical energy. Clause (e) of sub-sec. (2) of this section says that the grant of a license for any purpose shall not in any way hinder or restrict the grant of a license to another person within the same area of supply for a like purpose. Sec. 4 deals with revocation of license and provides that the State Government may, if in its opinion the public interest so requires, revoke a license in any of the cases specified in the section. Sec. 5 lays down the effect of revocation of license and, omitting portions immaterial, it says :-

> "5. (1) Where the State Government revokes, under sec. 4, sub-sec. (1) the license of a licensee, the following provisions shall have effect, namely :-
>
> (a) the State Government shall serve a notice of revocation upon the licensee and shall fix a date on which the revocation shall take effect; and on and with effect from that date, or on and with effect from the date, if earlier, on which the undertaking of the licensee is sold to a purchaser in pursuance of any of the succeeding clauses or is delivered to a designated purchaser in pursuance of sub-sec. (3), all the powers and liabilities of the licensee under the Act shall absolutely cease and determine;
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> (2) Where an undertaking is sold under sub-sec. (1), the purchaser shall pay to the licensee the purchase price of the undertaking determined in accordance with the provisions of sub-Secs. (1) and (2) of sec, 7A, or as the case may be, sub-sec. (3) of that section,
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> (3) Where the State Government issues any notice under sub-sec. (1) requiring the licensee to sell the undertaking, it may by such notice require the licensee to deliver, and thereupon the licenses shall deliver on a date specified in the notice the undertaking to the designated purchaser pending the determination and payment of the purchase price of the undertaking :

Provided that in any such case, the purchaser shall pay to the licensee, interest at the Reserve Bank rate ruling at the time of delivery of the undertaking plus one per centum, on the purchase price of the undertaking for the period from the date of delivery of the undertaking to the date of payment of the purchase price.

Secs. 6, 7 and 7 A which are (he next following sections are rather important and they may be reproduced as follows : -

"6. (1) Where a license his 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, 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 licence have the option of purchasing the undertaking and such option shall be exercised by the State Electricity Board serving upon the licensee a notice in writing of not less than one year requiring the licensee to sell the undertaking to it at the expiry of the relevant period referred to in this sub-section.

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

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

(4)...

(5)..

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

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

7. Where an undertaking is sold under sec. 5 or sec. 6, then upon the completion of the sale or on the date on which the undertaking i; delivered to the intending purchaser under sub-sec. (3) of sec. 5 or under sub-sec. (6) of sec. 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.

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

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

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

(4) Where an undertaking of a licensee is purchased under sec. 6, the purchase price shall be the value thereof as determined in accordance with the provisions of sub-Secs. (1) and (2) :

Provided that there shall be added to such values such percentage, if any, not exceeding twenty per centum of that value as may be specified in the

license on account of compulsory purchase."

Sec. 9(2) prohibits a licensee from assigning his license or transferring his undertaking, or any part thereof, without the previous consent in writing of the State Government. Sec. 52 provides that where any matter is, by or under the Electricity Act, directed to be determined by arbitration and the Government or a State Electricity Board is a party to the dispute, the dispute shall be referred to two arbitrators, one to be appointed by each party to the dispute and the arbitration shall be subject to the provisions of the Arbitration Act, 1940.

[3] So far as the Electricity Supply Act is concerned, only a few of its provisions are material. Sec. 57 provides :

"57. The provisions of the Sixth Schedule and the Seventh Schedule shall be deemed to be incorporated in the license of every licenses, not being a local authority-

(a) in the cases of a license granted before the commencement of this Act, from the date of the commencement of the licensees next succeeding year of account; and

(b) in the case of a license granted after the commencement of this Act, from the date of the commencement of supply, and as from the said date, the licensee shall comply with the provisions of the said Schedules accordingly, and any provisions of the Indian Electricity Act, 1910, and the license granted to him there under and of any other law, agreement or instrument applicable to the licensee shall, in relation to the licensee, be void and of no effect in so far as they are inconsistent with the provisions of sec. 57A and the said Schedules."

Paragraph I of the Sixth Schedule requires a licensee to so adjust his rates for the sale of electricity that his clear profit in any year of account shall not, as far as possible, exceed the amount of reasonable return. But this is not an absolute inviolable rule for the second proviso permits a margin of excess to

the extent of 20 per cent of the amount of reasonable return. Then follow three paragraphs providing for the creation of the Tariffs and Dividends Control Reserve, Contingencies Reserve and Development Reserve. We shall have occasion to refer to these paragraphs in some detail when we deal with the arguments advanced on behalf of the parties.

[4] Having referred to the relevant provisions of law we will now set out the grounds on which the validity of the impugned notice issued by the Board is challenged on behalf of the petitioner. These grounds may be summarized as follows :-

(A) Secs. 6, 7 and 7 A which enact a scheme for compulsory acquisition of an under taking of a licensee other than a local authority are violative of the constitutional guarantee embodied in Article 31(2) of the Constitution, because :-

(i) Sec. 7A which provides that the purchase price of the undertaking shall be the market value of the undertaking does not specify any "principle" on which the compensation has to be determined within the meaning of Article 31(2): the Section in order to comply with the requirements of Article 31 (2) should have specified one or more of the several modes by which the market value of the undertaking can be ascertained.

(ii) Sec. 7A does not lay down the manner in which the compensation is to be given as required by Article 31(2).

(iii) On a combined reading of sub-Secs. (1) and (2) of sec. 7A, the principle of compensation which emerges is neither appropriate nor relevant for determining compensation for acquisition of an undertaking which is a going concern with an organized business since :-

(a) the undertaking is not required to be valued as a unit but the aggregate of the value of some of its components is sought to be substituted as the value of the undertaking : the valuation to be made is not of an organized business as a going concern but of some only of the components as if it were a dead-

undertaking.

(b) the following components of the undertaking are specifically excluded from valuation, namely, service lines or other capital work or any part thereof constructed at the expense of consumers, goodwill, profitability and any other similar consideration.

(iv) the compensation given is not the equivalent in money of the value of the undertaking with the benefit of advantages present as well as future since :-

(a) Sec. 6 sub-sec. (6) provides for delivery of the undertaking by the licensee to the purchaser pending the determination and payment of the purchase price without (i) laying down any time limit within which determination of the purchase price must be made and (ii) providing for payment of interest on the amount of the purchase price from the date of delivery up to the date of payment as in the proviso to sub-sec. (3) of Sec. 5.

(b) There is no provision for guarantee or security for payment of the purchase price in cases where the undertaking is compulsorily purchased by a local authority so that after the undertaking is delivered, the only remedy available to the licensee would be to execute the award against the local authority as if it were a decree.

(B) Secs. 6, 7 and 7 A suffer from the vice of procedural unreasonableness since the machinery provided for determination of the purchase price, namely, arbitra tion, is unreasonable and these sections are, therefore, violative of Article 19(1)(f)

(C) Two different modes of determination of purchase price are provided in sub-Secs. (3) and (4) of sec. 7 and there is thus differential treatment in the matter of determination of compensation as between licensees who are local authorities and whose undertaking is sold under sec. 5 sub-sec. (1) and licensees other than local authorities whose undertaking is purchased under sec. 6: This differential treatment is not based on any real and substantial

distinction bearing a just and reasonable relation to the object of the legislation : Secs. 6, 7 and 7A(4) are, therefore, violative of Article 14.

(D) When the license was granted, sec. 7 stood in its unamended form and under sub-sec. (4) of that section, notice required to be given for exercising the option to purchase was of at least two years' duration and the petitioner was, therefore, entitled to insist, despite the alteration of the minimum period of the notice from two years to one year by the substitution of original sec. 7 by new Secs. 6, 7 and 7A, that its undertaking shall not be compulsorily purchased by the Board except by giving at least two years' notice exercising the option. The impugned notice given by the Board was admittedly of less than two years' period and did not, therefore, constitute valid exercise of the option and the Board was not-entitled to purchase the undertaking of the petitioner.

We shall examine these grounds in the order in which we have set them out above.

[5] GROUND A : Before we examine the merits of this challenge, we must deal with a preliminary contention urged by the learned Advocate General on behalf of the respondents. He contended that the law embodied in Secs. 6, 7 and 7A in so far as it provided for compulsory purchase of undertakings of licensees other than local authorities in exercise of the option of purchase was not required to meet the challenge of Article 31(2) since it was existing law protected by Article 31(5)(a). This contention if valid would completely displace the challenge under Article 31(2) and render it wholly unnecessary to examine the various arguments advanced under this head of challenge and, therefore, logically and also from the point of view of convenience, we must first proceed to examine its validity. Now it was common ground between the parties that the Board is comprehended within the meaning of the word "State" as defined in Article 12 for the purpose of Part III of the Constitution. Vide Electricity Board, Rajasthan v. Mohanlal, A.I.R. 1967 S.C. 1857. It is in any event a Corporation controlled by the State. The law enacted in Secs. 6, 7 and 7A is, therefore, a law providing for transfer of undertakings of licensees other than local authorities to the State or to a Corporation controlled by the State within the meaning of Article 31(2A) and it must consequently in order to be valid satisfy the constitutional guarantee under Article 31(2) unless

exempted under Article 31(5). Article 31(5) provides constitutional immunity against challenge under Article 31(2) and clause (a) of that Article says that "Nothing in clause (2)" that is, Article 31(2), "shall affect the provision of any existing law other than a law to which the provisions of clause (6) apply". The argument of the respondents was that though Secs. 6, 7and 7A were substituted for the original sec. 7 by the Amending Act which was enacted after the Constitution, they were not post-constitution legislation since they were really amendatory in character : in effect and substance they amended the original sec. 7 and the amendments made were not of such a character as to convert the law into a new post-constitution law. The net effect of the substitution, according to the respondents, was that the existing law as embodied in the original sec. 7 continued with the amendments in Secs. 6, 7 and 7A and the amendments being unsubstantial, the nature of the existing law remained unchanged and it was, therefore, protected under Article 31(5)(a). The short question which arises for consideration on this argument of the respondents is whether Secs. 6, 7 and 7A are post-constitution law providing for compulsory acquisition or they merely conitnue the existing law as embodied in sec. 7 with minor amendments not affecting the basic identity of the law. This question has to be determined not merely by looking at the form of the enactment but by having regard to its substance. It is true that by the Amending Act, the original sec. 7 is repealed and its place is taken by Secs. 6, 7 and 7A and it might, therefore, prima faice look as if Secs. 6, 7 and 7A are new Sections enacted by the Legislature and are consequently post-constitution law but that would be a very superficial way of looking at the Sections. We must examine what is the effect of Secs. 6, 7 and 7A in relation to the original sec. 7. The original sec. 7 read with sec. 71 of the Electricity Supply Act conferred power on the Board to compulsorily purchase the undertaking of a licensee and provided for payment of compensation on a certain basis. Though the original sec. 7 was apparently replaced by Secs. 6, 7 and 7A, these latter Sections in effect and substance continued the law as embodied in the original sec. 7 with certain amendments. The Legislature could have amended the original sec. 7 in either of two ways : it could have made the necessary amendments in the text of the original section at appropriate places but the amendments being extensive, this mode of amending the Section would have been not only inelegant but also confusing. The Legislature, therefore, prefixed to redraf the Section by ambodying the necessary amendments and to enact it in substitution of the orgiinal Section. The effect was the same. It altered the existing law by making the amendments. The question is what was the nature of the amendments : were they minor or substantial ?

[6] A comparison of the original sec. 7 with Secs. 6, 7 and 7A shows that the changes

made by Secs. 6, 7 and 7A in the original sec. 7 were six in number. They were : (1) the maximum length of the initial period to be specified in the licence for exercise of the option to purchase was originally fifty years whereas after the amendment, it was reduced to thirty years and the maximum length of the subsequent periods was also reduced by the amendments from twenty years to ten years; (2) the notice of exercise of option was originally required to be of not less than two years but after the amendments, a notice of not less than one year would be sufficient for exercising the option; (3) the option to purchase under the old law vested in the Board but after the amendments it was also conferred on the State Government and the local authority in case the Board did not elect to purchase : (4) the licensee could not be obliged under the old law to sell the undertaking to the purchaser except against payment of the purchase price but after the amendments, the licensee was bound to deliver the undertaking to the purchaser on the expiration of the relevant period pending the determination and payment of the purchase price. (5) there was a right of waiver of the option to purchase under the old law but as a result of the amendments that right was taken away; and (6) the service lines constructed at the expense of the consumers were not required by the old law to be excluded in determining the purchase price but under the amended law they were required to be specifically excluded. These changes brought about by the amendments substantially affected the rights and obligations of the parties. They were not minor inconsequential amendments but they effected substantial changes in the texture of the law and were, therefore, clearly post-constitution law not entitled to immunity from the challenge under Article 31(2). Secs. 6, 7 and 7 A must, therefore, face the scrutiny of Article 31(2) and they can be sustained only if they satisfy the constitutional guarantee under that Article. We accordingly proceed to examine the various grounds of challenge urged on behalf of the petitioner under the main head of Article 31(2).

[7] RE: (1) : The argument of the petitioner under this head of challenge was that sec. 7A sub-sec. (1) in so far as it provides that the purchase price shall be the market value of the undertaking does not specify any "principle" for determining the; compensation, since the expression "market value" is not sufficient specification of a principle of compensation within the meaning of Article 31(2). The petitioner contended that the market value of a property can be determined by adopting several modes of valuation such as estimate by an engineer, value reflected by comparable sales, capitalisation of rent and similar other methods and, therefore, the expression "market value" is not sufficiently specific to from a principle of compensation but each different mode of valuation would be a principle of compensation and the section, in order to comply with the requirement of Article 31(2) should have, therefore, adopted one or the other mode

of valuation as a principle of compensation instead of leaving the determination of the compensation to be made on the basis of "market value" which would permit any one of several modes of valuation to be adopted. This contention is clearly unsustainable and stands negatived by the decision given by a Division Bench of this Court on 24th January 1968 in Special Civil Application No. 837 of 1960. (Shantilal Mangaldas v. State of Gujarat). There also the same contention was advanced for challenging the constitutional validity of sec. 53 read with sec. 67 of the Bombay Town Planning Act, 1954 under Article 31(2) and the Division Bench consisting of Bakshi J. and myself rejected the contention observing : "Market-value is a well-known legal concept which has by now acquired sufficient definiteness and particularity of meaning by reason of its continued presence in sec. 23 of the Land Acquisition Act. Its juridical content is well-defined and it furnishes a principle sufficiently clear and definite to guide the authority in determining the amount of compensation. We are, therefore, of the view that the term "market value" is sufficient specification of a principle of compensation within the meaning of Article 31(2)". This decision was carried in appeal to the Supreme Court and though it was overruled by the Supreme Court on the main point, the view expressed by this Court on the question whether "market value" is sufficient specification of a principle of compensation was affirmed by the Supreme Court. The Supreme Court pointed out in its judgment reported in State of Gujarat v. Shantilal, A.I.R. 1969 S. C. 634 @ 645 : "The High Court was, in our judgment, right in holding that enactment of a rule determining payment or adjustment of price of land of which the owner was deprived by the scheme estimated on the market value on the date of declaration of the intention to make a scheme amounted to specification of a principle of compensation within the meaning of Article 31(2). Under the Land Acquisition Act compensation is determined on the basis of 'market value' of the land on the date of the notification under sec. 4(1) of that Act. That is a specification of principle". This contention of the petitioner must, therefore, be rejected.

[8] RE. (ii) : This ground of challenge is wholly without substance. It proceeds on the hypothesis that sec. 7A does not specify the manner in which the compensation is to be given to the licensee : it does not indicate how the compensation is to be given, whether it is to be given in cash or in bonds or in any other form. This hypothesis is clearly erroneous. It is contrary to the plain language of sec. 6 sub-sec (7) which says that where an undertaking is compulsorily purchased, the purchaser shall pay to the licensee the purchase price determined in accordance with the provisions of sec. 7A sub-sec. (4). The words "purchase price" clearly suggests that the compensation is to be paid in terms of money and not in any other form. Besides, that is the normal mode of giving

recompense and in the absence of clear and specific provision to the contrary, it must be presumed that the law intends payment of compensation to be made in the currency of the realm. It cannot, therefore, ,be said that the manner of giving compensation is not specified in the impugned Sections.

[9] RE. (iii) : It is apparent and, if we may say so, indisputable on a plain reading of Secs. 6, 7 and 7A that the property which is to be acquired by the Board by way of compulsory purchase is the undertaking of the licensee as a whole and the compensation to be paid by the Board must, therefore, be compensation for the undertaking. Now it is well-settled as a result of the recent decision of the Supreme Court in R. C. Cooper v. Union of India, A.I.R. 1970 S. C. 564, that when an undertaking is acquired as a unit, the principle of determination of compensation must be relevant and appropriate to the acquisition of the entire undertaking. If the principle for determining compensation is not appropriate or relevant, the law authorizing compulsory acquisition would be violative of the Constitutional guarantee in Article 31(2). The Court of course cannot examine the adequacy of the compensation. As pointed out by Shah J. diverting the majority judgment of the Supreme Court : "If an appropriate method or principle for determination of compensation is applied, the fact that by the application of another principle which is also appropriate, a different value is reached, the Court will-not be justified in entertaining the contention that out of the two appropriate methods, one more generous to the owner should have been applied by the Legislature." If out of several principles which are appropriate and relevant, one is selected for determination of the valuation of the property to be acquired "selection of that principle to the exclusion of other principles is not open to challenge, for the selection must be left to the wisdom of the Parliament." But the principle for determining compensation which is laid down by the statute must be relevant and appropriate to determine the compensation for the class of property in question. If the property to be acquired is an undertaking which is a going concern with an organized business, the principle for determining compensation must be relevant and appropriate so that it would reasonably yield to the "expropriated owner the value of the property acquired" namely the undertaking. The statute challenged before the Supreme Court in this case was the Banking Companies (Acquisition and Transfer of Undertakings) Act, (22 of 1969) which nationalised certain specified Banks by transferring their undertakings to the Central Government. The question was whether this statute satisfied the constitutional guarantee of Article 31(2) and it was in context of this section that the Supreme Court pointed out that the principle for determining compensation must be relevant and appropriate to the acquisition of the undertaking as a unit. The Supreme Court on an analysis of the provisions of the

impugned statute relating to compensation held that the principle of compensation given in the impugned statute was neither relevant nor appropriate and the impugned statute, therefore, violated the Constitutional inhibition contained in Article 31(2). Shah J. speaking on behalf of the majority said :-

> "Compensation to be determined under the Act is for acquisition of the undertaking, but the Act instead of providing for valuing the entire undertaking as a unit provides for determining the value of some only of the components, which constitute the undertaking, and reduced by the liabilities. It also provides different methods of determining compensation in respect of each such component. This method for determination of compensation is prima facie not a method relevant to the determination of compensation for acquisition of the undertaking. Aggregate of the value of components is not necessarily the value of the entirety of a unit of property acquired, especially when the property is a going concern, with an organized business. Compensation payable to the named banks is accordingly the aggregate of some of the components of the undertaking, reduced by the aggregate of liabilities determined in the manner provided in the Schedule. It appears clear that in determining the compensation for undertaking-(i) certain important classes of assets are omitted from the heads (a) to (h)."

> It was on the basis of these observations of the majority judgment that the petitioner contended that the principle for determining compensation specified in sec. 7 A sub-sees (1) and (2) was not relevant or appropriate since it did not provide for valuing the entire undertaking of the licensee as a unit but adopted the value of only some of the components, namely, lands, buildings, works, materials and plant as the value of the undertaking and also, furthermore, excluded from the valuation certain specific components of the undertaking, namely, service lines constructed at the expense of the consumers, goodwill, profitability and other similar considerations. This argument requires serious consideration but having examined it in all its aspects in the light of the relevant provisions of the Electricity Act and the Electricity Supply Act, we do not think it can be sustained.

[10] Now the principle for determining compensation to be paid for compulsory acquisition of the undertaking of a licensee is to be found in sub-Secs. (1) and (2) of

sec. 7A. Vide sec. 7A sub-sec. (4). Sec. 7A sub-sec. (1) provides that the purchase price of the undertaking shall be the market-value of the undertaking at the time of purchase or at the time of delivery whichever is earlier. The principle of compensation which is laid down in sec. 7A sub-sec. (1), therefore, is the market-value of the undertaking. This would be clearly a relevant and appropriate principle and no exception can be taken in regard to it and indeed none was taken on behalf of the petitioner. But, contended the petitioner, sub-sec. (2) of sec. 7A introduced the vice by providing that the market value of the undertaking "shall be deemed to be the value of all lands, buildings, works, materials and plant of the licensee" to be determined having regard to the factors specified in that sub-section. This deeming provision, according to the petitioner, delimited the width and amplitude of the words "the market-value of the undertaking" and confined the determination of the market-value of the undertaking only to certain specific components, namely, "lands, buildings, works, materials and plant", ignoring the other components of the undertaking such as debts, claims and other intangible assets. Now there can be no doubt that if this construction contended for on behalf of the petitioner is correct, the present case would fall straight within the ratio of the Bank Nationalization Case and the impugned sections would have to be held to be violative of Article 31(2). But we do not think this is the correct construction to be placed on sub-sec. (2) of sec. 7A.

[11] The Legislature having declared the principle for determining compensation in sub-sec. (1) of sec. 7A, namely, that the compensation shall be the market-value of the undertaking, proceeded to deal in sub-sec. (2) with certain specific aspects of the problem of determining the market-value of the undertaking. Normally, the undertaking would consist of tangible assets such as lands, buildings, works, materials and plant and intangible assets such as claims, debts and demands. There would also be cash and bank balance forming part of the undertaking. Now in determining the market-value of the undertaking, there would be no difficulty so far as cash and bank balance are concerned. If they are taken over as part of the undertaking obviously they would go to augment the market-value of the undertaking. But by mutual agreement or tacit consent, they may not be taken over in which event they would not enter into the determination of the market-value of the undertaking. So also there would be no difficulty in regard to claims, debts and demands forming part of the undertaking. Their valuation would be a simple affair : if they are taken over, the market-value of the undertaking would be augmented to that extent but they may not be taken over by mutual agreement or tacit consent in which event the market-value of the undertaking would not reflect them. But the real question would be about the lands, buildings, works, materials and plant which

constitute the substance of the undertaking and without which the undertaking cannot be taken over as a going concern. How are they to be taken into account in determining the market-value of the undertaking ? Obviously, they cannot be taken into account as if they were assets of a closed or dead undertaking. They must be valued as forming part of a going concern with an organized business. The Legislature, wishing to emphasize this aspect provided in sec. 7 A sub-sec. (2) that to determine the market-value of the undertaking, the value of all lands, buildings, works, materials and plant shall be taken into account on the basis that they are suitable to and are used by the licensee for the purpose of the undertaking, "due regard being had to the nature and condition for the time being of such lands, buildings, works, materials and plant and the State of repairs thereof and to the circumstance that they are in such position as to be ready for immediate working and to the suitability of the same for the purpose of the undertaking." This provision in sec. 7 A sub-sec. (2) clearly shows that the lands, buildings, works, materials and plant are to be valued as if they are part of an undertaking which is a going concern. It postulates in clear and unmistakable language that what is being valued is the undertaking as a whole. The reference here is no doubt limited to lands, buildings, works, materials and plant but that is because these are the assets which constitute the essence of the undertaking and the Legislature was anxious to indicate for the guidance of the parties as to how those assets should be taken into account in determining the value of the undertaking. The Legislature, therefore, said that the market value of the undertaking shall be deemed to be the value of all lands, buildings, works, materials and plant and did not use the obverse expression, namely, that the value of all lands, buildings, works, materials and plant shall be deemed to be the market-value of the undertaking. The latter might have had a delimiting effect but the former certainly has none. It may also be noted and this circumstance strongly supports the construction which we are placing on sec. 7A sub-sec. (2), that the Legislature had before it the legislative formula adopted in the original sec. 7 where it was said that if the local authority with the previous sanction of the State Government, elects to purchase, the licensee shall sell the undertaking to the local authority, "on payment of the value of all lands, buildings, works, materials and plant of the licensee" but instead of repeating that legislative formula, the Legislature deliberately and advisedly jettisoned it and adopted a new scheme under which it declared in sub-sec. (1) of sec. 7 A as a paramount principle of compensation that the purchase price shall be the market-value of the undertaking and then proceeded in sub-sec. (2) of sec. 7 A to say how lands, buildings, works, materials and plant which form a vital and essential part of the undertaking should be taken into account in determining the market-value of the undertaking. The market-value of the undertaking is, therefore, not intended to be

confined to the aggregate value of some only of its components, namely, lands, buildings, works, materials and plant.

[12] The latter portion of sec. 7 A sub-sec. (2) also reinforces this conclusion. It excludes from valuation in clear and positive terms goodwill, profitability or any similar consideration. This provision unmistakably suggests that it is the entire undertaking which is to be valued. If that were not the legislative intent, it was unnecessary to exclude goodwill, profitability or any similar consideration from valuation. There would be no question of taking into account goodwill, profitability or any similar consideration in the valuation, if what was required to be valued consisted merely of lands, buildings, works, materials and plant of the licensee. It is because the undertaking as a whole is required to be valued that the Legislature provided in this exclusion clause that no addition shall be made in respect of goodwill, profitability or any similar consideration.

[13] We may also in this connection usefully refer to Paragraphs II, IV, V and VA of the Sixth Schedule to the Electricity Supply Act. Paragraph II clause (1) provides for the creation of a reserve called the Tariffs and Dividends Control Reserve out of the revenues of the undertaking and Clause (3) of that paragraph says that on the purchase of the undertaking under the terms of its license, any balance remaining in the Tariffs and Dividends Control Reserve shall be handed over to the purchaser and maintained by the purchaser as such Tariffs and Dividends Control Reserve. It would, therefore, appear that when the undertaking of a licensee is compulsorily purchased, the balance remaining in the Tariffs and Dividends Control Reserve is required to be handed over by the licensee to the purchaser and it has to be maintained by the purchaser as Tariffs and Dividends Control Reserve. The object of this provision seems to be to exclude any agreement between the licensee and the purchaser that the balance standing to the credit of the Tariffs and Dividends Control Reserve may be retained by the licensee so that the obligation of the purchaser to pay the market-value of the undertaking may be reduced to that extent. If such a course were permitted, the Tariffs and Dividends Control Reserve built up by the licensee over a number of years pursuant to the statutory requirement in Paragraph II would cease to exist and the purchaser would be without any Tariffs and Dividends Control Reserve which would not be desirable from the point of view of the expressed policy of the Legislature. Now manifestly this provision would be unnecessary where the undertaking is purchased by the Board or the State Government, for in their case there would be no necessity of having a reserve for distribution of dividend. The Legislature, therefore, added a proviso to Clause (3) of Paragraph II stating that where the undertaking is purchased by the Board or the State

Government, "the amount of the reserve may be deducted from the price payable to the licensee". Since the amount of Tariffs and Dividends Control Reserve would not be handed over by the licensee to the Board or the State Government, it must be deducted from the purchase price of the undertaking payable to the licensee. This provision shows conclusively beyond any doubt that it is the market-value of the undertaking as a whole which is to be paid by the purchaser to the licensee. It is only on this hypothesis that the proviso can have meaning or content. A similar provision is also to be found in paragraph VI which provides for the creation of the Development Reserve. There also we have a proviso similar to the one in Paragraph II which says that when the Development Reserve is not handed .over to the purchaser, it has to be deducted from the purchase price, since the purchase price being the market-value of the undertaking would include the amount of the Development Reserve as forming part of the undertaking. The position is however different when we come to the Contingencies Reserve dealt with in Paragraphs IV and V. This Reserve is required to be handed over by the licensee to the purchaser irrespective whether the purchaser is the Board or the State Government or anyone else and hence there is no proviso here as we have in paragraphs II and VA providing that the amount of Contingency Reserve shall be deducted from the purchase price payable to the licensee. These provisions leave no doubt that it is the undertaking as a whole which is required to be valued and the purchase price of the undertaking as unit is to be paid by the purchaser to the licensee and the compensation is not confined to the aggregate value of some only of the components.

[14] Then we go on to consider whether the exclusion of the service lines constructed at the expense of consumers from the valuation makes the principle of compensation irrelevant or inappropriate. When a requisition is made by an intending consumer for supply of electrical energy to him, the licensee would have to lay down service lines for the purpose of supply but, according to the Schedule to the Electricity Act, the entire cost of the service lines has not to be borne by the licensee. The licensee is entitled to require the intending consumer to pay that cost of so much of the service lines as may be laid down upon the property in which the electrical energy is to be supplied or as may be beyond 100 feet from the licensee's distributing main. Some portions of the service lines would thus clearly be constructed at the expense of the consumers and in the absence of any provision to the contrary, they would belong to the consumers who paid for them. But in the present case we find a contrary provision in the Note to Clause (4) of the Conditions of Supply incorporated in the license which says that the service lines, notwithstanding that a portion of the cost has been paid for by the consumer, shall,

remain the property of the licensee by whom they are to be maintained. This provision appears to have been made because the obligation to maintain these service lines is laid on the licensee in the interests of efficiency of supply and moreover, the licensee is given the right to use these service lines for the supply of electrical energy to any other person : Vide Paragraph VI clause (2) of the Schedule to the Electricity Act. The question is whether the exclusion of such service lines from the valuation can be said to have rendered the principle of compensation irrelevant or in appropriate. We do not think so. It is necessary to bear in mind that not a single pie has been spent by the petitioner on the construction of these service lines. They have been constructed entirely at the Cost of the consumers. It is true that by reason of the Note to Clause (4) of the Conditions of Supply these service lines are declared to be the property of the petitioner but that is done for a limited purpose to enable the petitioner to effectively carry out its obligation of maintaining the service lines and exercise its right of supplying electrical energy to any other person through the service lines. The petitioner is not constituted the owner of these service lines for all purposes. Moreover, even after the purchase, these service lines would continue to be utilised for supplying electrical energy to the consumers who paid for them. It would be most inequitable in these circumstances to provide for payment of compensation to the petitioner for these service lines. There is no reason in logic or principle why the petitioner should be allowed to make unjust and underserved profit from transfer of these service lines for which it has paid nothing and which are not the product of its own labour. The principle of compensation which denies to the petitioner the benefit of unjust enrichment cannot possibly be regarded as irrelevant or inappropriate and the exclusion of these service lines from the valuation must be held to be justified from the point of view of Article 31(2).

[15] The next question which arises for consideration is whether the exclusion of goodwill from the valuation in any way impairs the validity of the principle of compensation. Now there can be no doubt that goodwill of a business is an intangible asset and when an undertaking is taken over as a going concern, it would ordinarily include the goodwill. Goodwill of the business must therefore enter into the consideration and form an item in the determination of the purchase price. Here, admittedly goodwill is directed to be excluded from valuation. The question is: Does it render the principle of compensation irrelevant or inappropriate ? To answer this question, it is necessary to understand precisely what is meant by "goodwill". The decision of the Supreme Court in the Bank Nationalisation Case explains this term. "Goodwill", says Shah J., in the majority judgment, "is the whole advantage of the

reputation and connections formed with the customers together with the circumstances making the connection durable. It is that component of the total value of the undertaking which is attributable to the ability of the concern to earn profits over a course of years or in excess of normal amounts because of its reputation, location and other features : Trego v. Hunt, 1896 A.C. 7. Goodwill of an undertaking therefore is the value of the attraction to customers arising from the name and reputation for skill, integrity, efficient business management or efficient service". This connotation of the word "goodwill" clearly suggests that there can be no goodwill, where an undertaking has monopoly of business. To such an undertaking the consumers have to go for satisfaction of their needs, irrespective whether the undertaking has "skill, integrity, efficient business management or efficient service". There is no choice for the consumers : they must either take their supply from the undertaking or go without it. It is not by reason of the business connection or reputation of the undertaking that the consumers are attracted to it and such an undertaking has, therefore, no real goodwill. This view is supported by two decisions of the United States Supreme Court. One is the decision in Willcox v. Consolidated Gas Company, 212 U.S. 19: 53 Law. Ed. 382, where dealing with the question whether the value of the goodwill was liable to be taken into account in estimating the value of the property of a Gas Company for the purpose of testing the reasonableness of the rates fixed by the statute, Mr. Justice Peckham observed : "The complainant has a monopoly in fact and a consumer must take gas from it or go without. He will resort to the 'old stand' because he cannot get gas anywhere else. The Court below excluded that item and we concur in that action." This decision was cited with approval in Omaha v. Omaha Water Co., 218 U.S. 180: 54 Law. Ed. 991 and it was held that goodwill "is of little or no commercial value when the business is, as here, a natural monopoly with which the customer must deal whether he will or no." It is, therefore, clear that a monopoly undertaking like that of the petitioner does not have a goodwill which has any real commercial value. It is true, as pointed out by Mr. Nanavati on behalf of the petitioner, that it is open to the State Government under sec. 3(2)(e) of the Electricity Act to grant licence for supply of electrical energy to more than one person within the same area of supply and theoretically therefore, it may be possible for an undertaking which is a licensee to have a goodwill, but the validity of a statutory provision cannot be determined on the basis of mere theoretical possibilities. It is common knowledge that ordinarily the State Government does not, as a matter of policy, grant licence to more than one person in the same area of supply and there is, therefore, in fact a natural or virtual monopoly for an undertaking which is granted licence for a particular area of supply. To take the present case for example, the petitioner was the only licensee in the area comprised in the municipal limits of Dakor

and Umreth and the petitioner had, therefore, a natural or virtual monopoly so far as the business of supply of electrical energy within this area was concerned and consequently it had no goodwill which could be regarded as having any commercial value. The exclusion of goodwill from valuation cannot, therefore, be held to offend the constitutional requirement of a valid principle of compensation under Article 31(2).

[16] Then we proceed to consider whether the exclusion of profitability from the valuation affects the validity of the principle of compensation. Sec. 7A sub-sec. (2) provides that in computing the value of the undertaking no addition shall be made in respect of any profits which may be or might have been made from the undertaking. Does this provision render the principle of compensation irrelevant or inappropriate ? The answer must clearly be in the negative. Sec. 6 sub-sec. (1) clearly contemplates, as did the original sec. 7 sub-sec. (1) which it replaced by Indian Electricity (Amendment) Act, 1959, that the licence which constitutes the character of business of the licensee shall specify the initial period as well as subsequent periods at the expiration of which the Board shall have the option of purchasing the undertaking of the licensee. The licensee would, therefore, know that at the expiration of each period as is specified in the licence, his business of running the undertaking might come to an end and he might thereafter no longer be able to make any profits from the undertaking. If, in such circumstances, the law provides that in determining compensation no account shall be taken of any profits which may be or might have been made from the undertaking, it cannot be said that the principle of compensation is inappropriate or irrelevant. It is not as if the licensee was, under his license, entitled to carry on the business of running the undertaking for a certain and definite period of time and compulsory acquisition supervened to deprive him of the undertaking before the expiration of such time. Had such been the case it would have been difficult to resist the argument that profitability must be taken into account in determining the value of the undertaking. But here the licence itself specifies different periods at the expiration of which the Board shall have the option of purchasing the undertaking and thus clearly postulates that the undertaking may be compulsorily acquired by the Board at the expiration of each such period. The licence is the source of the power of the licensee to carry on the business of running the undertaking and make profits from the undertaking and if that source itself carries a term as an integral part of its conferment of power that the profit-making apparatus shall continue to remain with the licensee only until the option to purchase the undertaking is exercised by the Board at the expiration of the relevant period specified in the licence, there can be no question of taking into account future profitability of the undertaking in determine compensation when the option to purchase the undertaking is

actually exercised by the Board as contemplated under the licence. The exclusion of future profitability from the valuation in such circumstances can hardly be regarded as unjust or unreasonable. On the contrary its inclusion would give the licensee the benefit of unjust enrichment. The principle of compensation in so far as it excludes profitability from the valuation cannot, therefore, be assailed as irrelevant or inappropriate and must be held to be outside the inhibition of Article 31(2).

[17] RE: (iv)(a) : Now it is true that sec. 6 sub-sec. (6) provides for delivery of the undertaking by the licensee to the purchaser pending the determination arid payment of the purchase price without laying down any time limit within which determination of the purchase price must be made and without making any specific provision for payment of interest on the amount of the purchase price from the date of delivery up to the date of payment but that does not in any way impair the validity of the principle of compensation. It is now well-settled as a result of two decisions of the Supreme Court, namely, Satinder Singh v. Umrao Singh, A.I.R. 1961 S.C. 908 and Govindrajul v. I. T. Commissioner, Madras, A.I.R. 1968 S.C. 129 that when immovable property is compulsorily acquired and the claimant is awarded compensation, the claimant is entitled to interest on the amount of compensation for the period between the taking of possession of the immovable property by the State and the payment of compensation by it. The Supreme Court, relying on the decisions of the House of Lords in Birch v. Joy, (1852) 3 H.L.C. 565 and Swift and Co. v. Board of Trade, (1925) A.C. 520, pointed out in Satinder Singh 's case (supra) that the rule recognised in these decisions that the act of taking possession of land of another under a contract of sale carries with it an implied agreement to pay interest on the purchase price has been extended in England to cases of compulsory purchase under the Lands Clauses Consolidation Act, 1845. In Inglewood Pulp and Paper Co. Ltd. And New Brunswick Electric Power Commission, 1928 A.C. 492, it was held by the Privy Council that :

> "Upon the expropriation of land under statutory power, whether for the purpose of private gain or of goad to the public at large, the owner is entitled to interest upon the principal sum awarded from the date when possession was taken, unless the statute clearly shows a contrary intention."

> The Privy Council proceeded to add : "The right to receive the interest takes the place of the right to retain possession and is within the rule". The Supreme Court accepted this principle in its application to cases of compulsory purchase in India and held in Satinder Singh 's case that when

the owner of property is dispossessed pursuant to an order for compulsory acquisition, an agreement that the acquiring authority will pay interest on the amount of compensation is implied. The same view was reiterated by the Supreme Court in Govindraju 's Case (supra) and it was pointed out that when a claim for payment of interest is made by a person whose immovable property has been acquired compulsorily, he is not making a claim for damages properly or technically so called; he is basing his claim on the general rule that if he is deprived of his land he should be put in possession of compensation immediately; if not, in lieu of possession taken by compulsory acquisition, interest should be paid to him on the amount of compensation. It would thus be seen that though there is no specific provision for payment of interest on the amount of purchase price from the date of delivery up to the date of payment so far as compulsory purchase of the undertaking of a licensee is concerned, there is clearly an implied agreement for payment of such interest on the basis of the general rule recognised in these decisions of the Supreme Court and the licensee is entitled to claim interest on the amount of the purchase price from the date of taking of possession of the undertaking up to the date of payment. It is true that there is no time limit provided within which determination of the purchase price must be made and theoretically therefore, it is quite possible that determination and payment of the purchase price may be unduly delayed but this apprehension is more imaginary than real. There are at least two built-in safeguards against unreasonable delay in determination and payment of the purchase price. The purchase price is to be determined by the machinery of arbitration of two arbitrators, one to be appointed by each party and the arbitration is to be subject to the Arbitration Act, 1940. The licensee can, therefore, always appoint his own arbitrator without any delay and call upon |the Board to appoint its arbitrator. If the Board fails to appoint its arbitrator for fifteen clear days after the service by the licensee of the notice in writing to make the appointment, the licensee can appoint his arbitrator to act as sole arbitrator in the reference and that arbitrator can proceed with the reference and determine the value of the undertaking. Vide sec. 9(b) of the Arbitration Act, 1940. The licensee can thus always, if he is sufficiently vigilant, cut down unnecessary or unreasonable delay and secure speedy and early determination of the value of the undertaking. Then again, as already discussed, the Board would be under an obligation to pay interest

on the amount of compensation from the date of taking possession of the undertaking up to the date of payment and in the case of a public authority like the Board, this running liability to pay interest would always act as a great check against improper or unjustified delay. It is, therefore, not possible to say that merely because the undertaking is to be delivered by the licensee to the Board pending the determination and payment of the purchase price and no specified time limit is prescribed within which determination of the purchase price must be made, compensation given by law to the licensee is not the equivalent in money of the value of the undertaking.

[18] RE: (iv)(b) : The grievance made by the petitioner under this head of challenge is in our opinion without substance. It is true that there is no provision for guarantee or security for payment of purchase price in cases where the undertaking is compulsorily purchased by the Board but this is again an apprehension which is more theoretical than real. The Board is a public authority constituted under the Electricity Supply Act and there are various provisions imposing stringent control of the State Government over the finances and management of the Board. Having regard to the constitution of the Board and the strict Governmental control over it, it is wholly unlikely that the Board would exercise the option to purchase the undertaking of a licensee if it is unable to pay the value of the undertaking. It is also not possible to believe that as and when a binding award is made, the Board would refuse to carry it out. We must proceed on the assumption that the Board which is a responsible public authority constituted under a statute to discharge public functions and which is subject to the control of the Government would abide by its statutory obligations and make payment of the purchase price to the licensee as soon as it is finally determined in accordance with the machinery provided by law. The absence of any provision for guarantee or security for payment of the purchase price does not in our view impair the validity of the principle of compensation.

[19] RE: GROUND (B) : The validity of Secs. 6, 7 and 7A was also challenged on the ground that they are violative of Article 19(1)(f) Now the settled law prior to the decision of the Supreme Court in the Bank Nationalisation Case was that a law providing for compulsory acquisition of property was liable to be tested only by reference to Article 31(2); it was not required to meet the challenge of Article 19(1)(f) : Article 31(2) excluded the applicability of Article 19(1)(f). Vide State of Bombay v. Bhanji Manji,

(1955) 1 S. C. R. 777 and Smt. Sitabati Devi and another v. State of West Bengal, (1967) 2 S. C. R. 940. But this is no longer good law. It stands overruled by the majority decision of the Supreme Court in the Bank Nationalisation Case. It has now been held by the Supreme Court that Articles 19(1)(f) and 31(2) are not mutually exclusive : the validity of a law providing for compulsory acquisition of property is liable to be tested not only by reference to Article 31(2) but also by reference to the contitutional guarantees enshrined in the other Articles of Part III such as Article 19(1)(f). Discussing the inter-relation between Articles 19(1)(f) and 31(2), Shah, J. pointed out on behalf of the majority :-

> "We are, therefore, unable to hold that the challenge to the validity of the provision for acquisition is liable to be tested only on the ground of non-compliane with Art. 31(2). Art. 31(2) requires that property must be acquired for a public purpose and that it must be acquired under a law with characteristics set out in that Article. Formal compliance with the condition under Art. 31(2) is not sufficient to negative the protection of the guarance of the right to property. Acquisition must be under the authority of a law and the expression "law" means a law which is within the competence of the Legislature and does not impair the guarantee of the rights in Part III. We are unable, therefore, to agree that Arts. 19(1)(f) and 31(2) are mutually exclusive.
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> "If there is no public purpose to sustain compulsory acquisition, the law violates Art. 31(2) : If the acquisition is for a public purpose, substantive reasonableness of the restriction which includes deprivation may, unless otherwise established, be presumed, but enquiry into reasonableness of the procedural provisions will not be excluded. For instance if a tribunal is authorised by an Act to determine compen sation for property compulsorily acquired, without hearing the owner of the property, the Act would be liable to be struck down under Art. 19(1)(f)."
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> It is, therefore, necessary to examine whether the procedural provisions contained in the impugned section satisfy the test of resaonableness. Is the machinery for determination of compensation provided in the impugned sections reasonable ?

[20] To determine this question, we must turn to the provisions of sec. 7A. Sub-sec. (4) of that section provides that where an undertaking of a licensee is compulsorily purchased, the purchase price shall be the value thereof as determined in accordance with the provisions of sub-Secs. (1) and (2) and sub-sec. (1) says that if there is any difference or dispute regarding such purchase price, it shall be determined by arbitration. How arbitration is to take place is laid down in sec. 52. That section says : "Where any matter is by or under this Act directed to be determined by arbitration, the matter shall.....be determined by such person or persons as the State Government may nominate in that behalf on the application of either party but in all other respects the arbitration shall be subject to the provisions of the Arbitration Act 1940 : Provided that where Government or a State Electricity Board is a party to a dispute, the dispute, shall be referred to two arbitration, one to be appointed by each party to the dispute". Here we are concerned with that part of the law which provides for compulsory purchase by the Board and therefore, it is the proviso and not the main part of sec. 52 which is relevant in determining the reasonableness of the machinery. Reading sec. 7 A sub-Secs. (1) and (4) with the proviso to sec. 52, it is clear that the compensation is to be determined by arbitration of two arbitratiors, one to be named by each party and the arbitration is to be subject to the provisions of the Arbitration Act, 1940. The argument of the petitioner was that this machinery is unreasonable in three respects; (1) it excludes resort to a civil Court or judicial tribunal; (2) there is no provision for appeal against wrong determination nor is there any machinery for correcting it; and (3) no reasons arc required to be given in support of the determination. Now it is true that these characteristics do exist but we do not think any of them affects the machinery with the vice of reasonableness. They are necessary incidents of arbitration. When a difference or dispute is to be resolved by arbitration, resort to civil Court is necessarily excluded since arbitration takes the place of adjudication by a civil Court. The award made by arbitrators is invested with finality subject only to the limited grounds of challenge available under sec. 30 of the Arbitration Act, 1940 and the law does not require that it should be a speaking award. These characteristics are present in every arbitration and, therefore, if the argument of the petitioner was well-founded, every statutory provision for arbitration would be unreasonable. That obviously cannot be. Arbitration is a recognised mode of resolution of disputes and in fact there are certain types of disputes which are of such a nature that arbitration is preferred to litigation as a machinery for adjudication. There are a large number of statutes, Central as well as State, where having regard to the nature of the disputes, arbitration is provided as a machinery of adjudication in substitution of litigation. Disputes may arise which involve technical

questions requiring special knowledge and it may not be possible for the civil Courts to adjudicate upon them as satisfactorily and efficiently as persons having skill and experience in that branch of knowledge would be able to do. Then there may be disputes which require speedy determination which is usually difficult to obtain in civil Courts. The law may provide in such and similar other cases that the disputes may be resolved by arbitration rather than by litigation. So far as the present statute is concerned, the disputes which may arise under it would obviously involve difficult questions of valuation of plant, machinery etc. which the civil Courts would be least fitted to resolve and it would be desirable that they are settled by arbitration of two arbitrators, one appointed by each party, who would be competent and skilled to decide such questions of valuation. Moreover, the undertaking is to be delivered by the licensee to the Board pending determination and payment of the purchase price and, therefore, it is of the essence that the determination of the purchase price must be made speedily without any delay. Litigation in a civil Court with the whole gamut of appeals from one Court to another would take an inordinately long time and the licensee would have to go without compensation until the long drawn out litigation for determination of compensation reaches its end in the highest Court of the land. The Legislature, therefore, provided the machinery of arbitration in preference to litigation for determination of the purchase price. If we look at similar statutes providing for compulsory acquisition of undertakings of licensees in England, we find that there also the machinery for determining compensation provided by the Legislature is arbitration. Arbitration is a well-known method of determination of compensation, recognised in England for almost a century. Can it then be said that the machinery of arbitration provided by the Legislature in the present statute is unreasonable ? It may again be noticed that the choice of the arbitrators is left to the parties. The licensee can choose his own arbitrator and that arbitrator will determine the purchase price along with the arbitrator appointed by the Board. It is, therefore, not possible to accept the contention of the petitioner that the machinery for determination of compensation provided in the impugned sections is unreasonable and the impugned sections are violative of Article 19(1)(f)

[21] Re : GROUND (C) : The complaint under this ground of challenge is based on infraction of Article 14. Now what is the scope and ambit of Article 14 is well-settled and does not need any discussion or elaboration. The guarantee of equality before law and equal protection under Article 14 means that there should be no discrimination between one person and another if as regards the subject matter of the legislation their position is the same. What the constitutional guarantee of Article 14 requires is that there shall

be no unjust discrimination and all persons shall be treated alike under like circumstances and conditions. The Legislature may of course classify persons and things for the purpose of legislation in order to achieve particular ends but such classification must be based on some real distinction bearing a just and rational relation to the object sought to be achieved by the legislation. The two tests laid down by the Supreme Court in a series of decisions for a valid classification are that it must be founded on an intelligible differentia which distinguishes those who are grouped together from others and that differentia must have a rational relation to the object to be achieved by the statute. When therefore, an enactment is challenged on the ground of discrimination, the Courts must see whether the classification made by the Legislature is based on substantial differences having reasonable relation to the object of the legislation, or it is arbitrary and irrational in that differential treatment is metal out to persons though they are similarly situate as regards the subject matter of the legislation.

[22] The discrimination alleged under this ground of challenge is between licensees who are local authorities and whose undertaking is sold under sec. 5 sub-sec. (1) and licensees other than local authorities whose undertaking is purchased under sec. 6. Now there is no doubt that differential treatment is meted out as between these two groups of licensees : one principle of compensation is laid down for the former group in sec. 7A sub-sec. (3) while another principle of compensation is laid down for the latter group in sec. 7A sub-sec. (4). But, as pointed out above, mere' differential treatment does not necessarily attract the vice of unjust discrimination. To determine whether this differentiation is discriminatory so as to be violative of the equality clause, it is necessary to ascertain whether the two groups of licensees between whom differentiation is made by the Legislature are similarly situate as regards the subject matter of the legislation. If they are similarly situate, the classification would obviously be impermissible since it would not be based on differentia having rational relation to the object of the legislation. There would be no reason then to treat one group differently from the other. But if they are not similarly situate, the Legislature would be justified in treating them differently and the classification would not be violative of the equality clause.

[23] Now it is apparent on a plain reading of Secs. 5 and 6 that there is a fundamental difference between the two groups of licensees dealt with in those sections. Sec. 5 provides for revocation of licence of a licensee and lays down the consequences of such revocation. When a licence is revoked, the licensee would obviously cease to be entitled to run the undertaking. Two consequences would follow. One is that the

undertaking would become useless to the licensee and he would have no choice but to sell it in order to realise his investment. The other is that the consuming public would be seriously inconvenienced as they would have to go without electricity which is today an essential commodity. The Legislature, therefore, provided in sec. 5 sub-sec. (1) for purchase of the undertaking by the Board, the State Government, the local authority or any other person in this order of preference so that the licensee may not be put to unnecessary loss so far as his investment in the undertaking is concerned and the consuming public may continue to get their supply of electricity from the purchaser. Two different modes were laid down by the Legislature for determining the purchase price. One was the mode laid down in sec. 7 A sub-sec. (3) where the licensee was a local authority and the other mode was that laid down in sec. 7 A sub-sec. (1) where the licensee was not a local authority. Sec. 6, however, dealt with a totally different kind of situation. It provided for compulsory purchase of the undertaking of a licensee and payment of compensation for it. The compensation was to be determined on the basis set out in sec. 7 A sub-sec. (1) read with the proviso to sec. 7A sub-sec. (4). The Legislature thus made differentiation between (1) licensees who are local authorities and whose undertaking is sold under sec. 5 sub-sec. (1), (2) licensees other than local authorities whose undertaking is sold under sec. 5 sub-sec, (1) and (3) licensees other then local authorities whose undertaking is compulsorily purchased under sec. 6. Now the grievance of the petitioner was not that there is differentiation between licensees other than local authorities whose undertaking is sold under sec. 5 sub-sec. (1) and licensees other than local authorities whose undertaking is compulsorily purchased under sec. 6 and indeed that could not be the grievance, since licensees other than local authorities whose undertaking is compulsorily purchased under sec. 6, being the class to which the petitioner belongs, are under the proviso to sec. 7A sub-sec. (4), entitled to twenty per cent solatium which is not given to licensees other than local authorities whose undertaking is sold under sec. 5 sub-sec. (1). The complaint of the petitioner was that there is differentiation between licensees who are local authorities and whose undertaking is, sold under sec. 5 sub-sec. (1) and licensees other than local authorities whose undertaking is compulsorily purchased under sec. 6 but it is difficult to see how these two groups of licensees can be said to be similarly situate. In one case the undertaking is required to be sold because the licence is revoked and the licensee ceases to be entitled to carry on business of running the undertaking with resultant inconvenience to the consuming public in the matter of supply of electricity while in the other, the undertaking is compulsorily acquired as a matter of State policy with a view to improving and rationalising the distribution and supply of electricity within the State. One is the consequence of revocation of licence while the other is a matter of compulsory

acquisition. That is why we find that in the latter case, the proviso to sec. 7 A sub-sec. (4) provides for twenty per cent solatium "on account of compulsory purchase" while no such solatium is required to be added in determining the purchase price in the former case under sec. 5A sub-sec. (3). The circumstances in which the purchase of the undertaking takes place are different in the two cases and so are the jural relations giving rise to the claims of purchase price. It is difficult to see how these two groups of licensees could be said to be similarly situate as regards the subject matter of the legislation so as to require similar treatment being meted out to them in the matter of determination of the purchase price.

[24] The question can also be looked at from a slightly different angle. The principle of compensation provided in sec. 7 A sub-sec. (3) is that the purchase price shall be such as the State Government, having regard to the market-value of the undertaking at the date of delivery of the undertaking, may determine. The purchase price would, therefore, presumably be the market-value of the undertaking which would include the value of the goodwill and profitability but not any solatium. So far as the principle of compensation laid down in sec. 7A sub-sec. (4) is concerned, the value of goodwill and profitability would be excluded in determining the market-value of the undertaking but solatium not exceeding twenty per cent of such value would be included. In one case the value of the goodwill and profitability would be included but there would be no solatium, while in the other the value of the goodwill and profitability would be excluded but solatium would be included. Now how can it be said which out of these two different kinds of treatment is more prejudicial so that it can be struck down as violative of the equal protection clause ? This line of thinking may not by itself afford a complete answer to the challenge under Article 14 but it serves to emphasize that the two groups of licensees who are treated differently are not similarly situate; each group falls within a different class distinct from the other and the differentia between them is not arbitrary or irrational but has a rational nexus with the object of the legislation and the differential treatment meted out to them is, therefore, justified. The present contention based on violation of Article 14 must accordingly be rejected.

[25] RE: GROUND (D) : The original sec. 7 which conferred on the Board the power of compulsory purchase provided in sub-sec. (4) that not less than two years' notice in writing of the exercise of the power shall be given to the licensee by the Board. Since that was the section in force at the date when the license was granted, the petitioner contended that it acquired a vested right to insist that its undertaking shall not be acquired except by giving not less than two years' notice in writing. This vested right

said the petitioner, was not affected by the repeal of the original sec 7 and the re-enactment of Secs. 6, 7 and 7A in its place and therefore, even though the present sec. 6 provides only for giving of not less than one year's notice in order to exercise power of compulsory purchase, the petitioner was entitled to insist that it shall be given not less than two years' notice if its undertaking is to be compulsorily acquired. This argument, if accepted, would be clearly destructive of the validity of the notice given' by the Board to the petitioner since it was common ground between the parties that the notice was of less than two years though more than one year But we do not think this argument is valid. It suffers from two infirmities. In the first place it proceeds on the wrong hypothesis that the original sec. 7 sub-sec. (4) being in force at the date when the licence was granted, a vested right accrued to the petitioner to insist on two years' notice of compulsory purchase. The original sec. 7 sub-sec. (4) did not create any vested right in the licensee. What it provided was merely a condition of exercise of the power of compulsory purchase so that as and when the power of compulsory purchase is exercised by the Board it has to be done by giving not less than two years' notice to the licensee That was the mode provided by law for exercise of the power of compulsory purchase. Now it is elementary that no one has a vested right against alteration of the law. The licensee has no right to insist that the conditions governing the exercise of the power of compulsory purchase shall not be changed. The power of compulsory purchase is a statutory power and it must be exercised in accordance with the requirements of the law applicable at the time of exercise. It cannot be exercised in accordance with the requirements of a repealed law. Here there is no question of vested right or liability until some act is done by the Board towards exercising the power in the manner provided by law. The petitioner had therefore no vested right, at the date when the Amending Act came into force, to insist that its undertaking shall be acquired only in the manner prescribed by the original sec. 7 sub-sec. (4), that is, by giving not less than two years' notice. But even if the petitioner had such vested right it was clearly destroyed by the plain effect of the words used in c 6 sub-sec. (1) clause (a). That sub-section provides in clear and explicit terms that in the case of a licence granted before the commencement of the Amending Act, the option of purchasing the undertaking shall be exercisable by the Board by serving upon the licensee a notice of not less than one year. This provision is clearly retrospective in operation and applies in so many terms to licenSecs, who have licence granted to them before the commencement of the Amending Act. The notice to exercise the option given to the petitioner must, therefore, be held to be valid.

[26] These were the only contentions urged before us and since there is no substance

in them, the petition fails and the rule is discharged with costs. The learned counsel on behalf of the petitioner applies for leave to appeal to the Supreme Court under Articles 132(1) and 133(1)(c) of the Constitution. Leave as applied for is granted. There will be an interim injunction restraining the respondents from taking possession of the undertaking of the petitioner for a period of fifteen days from the date when the certified copy of the judgment is ready for delivery.

Petition dismissed : Leave to appeal granted.