

GUJARAT ELECTRICITY BOARD

v.

SHANTILAL R. DESAI

August 6, 1968

[R. S. BACHAWAT AND K. S. HEDGE, JJ.]

The Electricity Act 9 of 1910, s. 7—The Electricity (Supply) Act 54 of 1948, s. 71—Compulsory purchase of electricity from licensee under s. 7—Steps to be taken by purchaser—Option to purchase whether has to be separately exercised apart from notice under section—Electricity Board whether empowered under s. 71 of 1948 Act to make compulsory purchase under s. 7.

On January 8, 1959 the Bombay State Electricity Board purporting to exercise its powers under s. 7 of the Indian Electricity Act, 1910 read with s. 71 of the Electricity (Supply) Act, 1948 gave notice to the respondent that it would exercise its option of purchasing the electric supply undertaking which the respondent ran under a licence, on the expiry of the said licence on February 10, 1962. On the creation of the State of Gujarat the appellant corporation was formed and succeeded to the rights and liabilities of the Bombay State Electricity Board. The respondent filed a writ petition in the High Court in which he challenged the right of the appellant to purchase his undertaking. The High Court came to the conclusion that though the notice issued on January 8, 1959 was a valid notice under s. 7(4) of the Act that by itself was not sufficient to compel the respondent to sell his undertaking to the appellant; before the respondent could be compelled to sell his undertaking it was necessary for the appellant to exercise its option to purchase the undertaking on the expiration of the period of licence, which it had not done. The respondent's writ petition was therefore allowed. The appellant came to this Court. The questions that fell for consideration were: (i) whether the High Court's interpretation of s. 7 was correct; (ii) whether the appellant was empowered under s. 71 of the Electricity (Supply) Act, 1948 to exercise the powers of the local authority under s. 7.

HELD: (i) The provisions of the sub-section of s. 7 must be read together. So read the section only means that before a licensee can be compelled to sell his undertaking the authority entitled to purchase must elect to purchase the same by exercise of the option given to it under the licence read with s. 7 of the Act followed by a notice as required by s. 7(4) of the Act. In s. 7 the expression 'option of purchasing an undertaking' merely means the right of purchasing the undertaking. The word 'option' is used because two courses are open to the concerned authority namely either to purchase the undertaking or renew the licence. Once the authority elects to purchase then the notice prescribed in sub-s. 4 should be given before the period mentioned therein. The object of the provision is that the licensee must know in good time what course the authority is going to adopt. Otherwise there is bound to be considerable inconvenience to the licensee as well as to the public. [584 F-H, 585 C-D]

There is no good reason for reading into s. 7 a requirement that after a notice under s. 7(4) is issued the authority must again exercise its option to purchase on the expiration of the period of licence. The exercise of option to purchase as well as electing to purchase is one integral process and not two independent steps. By the very act of electing to purchase the authority exercises its option to purchase. [585 E-F]

A In the present case therefore the requirements of s. 7 were fully complied with by the notice issued on January 8, 1954. [585 F-G]

(ii) It is true that before s. 71 can be held to be attracted to a case it must be shown that the right or option to purchase the undertaking of the licensee vested in the State Government or a local authority under the provisions of the Act. In the present case the right to purchase vested in the concerned authority by virtue of s. 7, and it could not be said that the right accrued only by virtue of the agreement under which the licence was granted. The right to purchase may accrue either because it is directly conferred by s. 7 or because it is obtained as a result of a contract compelled by that section. In either case it is a right obtained by the authority by virtue of s. 7. The appellant Board was therefore empowered by s. 71 to issue the notice under s. 7. [586 F-587 A]

C *Fazilka Electric Supply Co. Ltd. v. The Commr. of Income-tax, Delhi*, [1962] 3 Supp. S.C.R. 496, distinguished.

Okara Electric Supply Ltd. & Anr. v. State of Punjab, [1962] S.C.R. 239, applied.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2525 of 1966.

D Appeal from the judgment and order dated October 30, 31, 1963 of the Gujarat High Court in Special Civil Application No. 94 of 1962.

C. K. Daphtary, Attorney-General and *I. N. Shroff*, for the appellant.

E *H. R. Gokhale, S. B. Vakil, Janendralal* and *B. R. Agarwala*, for the respondent.

The Judgment of the Court was delivered by

F **Hegde J.** The only question that falls for decision in this appeal is whether on the basis of the notice issued by the Bombay State Electricity Board on January 8, 1959 under s. 7 of the Indian Electricity Act, 1910 (to be hereinafter referred to as the Act) prior to its amendment in 1959, the appellant can compulsorily purchase from the respondent his concern 'The Bilimora Electric Power Supply Co.'. In his application before the High Court under Art. 226 of the Constitution the respondent challenged the *vires* of s. 7 of the Act. But that contention remains to be examined. The High Court has chosen to allow the petition solely on the ground that as the requirements of s. 7 have not been complied with, the appellant cannot compel the respondent to sell the undertaking. If we come to the conclusion that that conclusion is unsustainable then the matter will have to go back to the High Court for deciding the constitutionality of s. 7.

H The respondent was given a licence on February 11, 1932, under the provisions of the Baroda Electricity Act Samvat 1983 for supplying electricity within the area mentioned in the licence. Clause 27 of that licence provided that the option of purchase

given by s. 9 of the Baroda Electricity Act shall be exercisable first on the expiration of thirty years computed from the commencement of the licence and thereafter on the expiration of every subsequent period of ten years during the subsistence of the licence. The manner in which the undertaking should be valued is laid down in that Act. On the merger of the former Baroda State with the Province of Bombay, the Act as well as the Electricity (Supply) Act, 1948 (Act 54 of 1948) were made applicable to the territories of the former State of Baroda, and the corresponding Baroda Acts were repealed with the saving clause that the licences issued under the repealed Act shall continue to remain in force as if issued under the Act, until the expiration of the period of those licences. In exercise of the powers conferred by s. 5 of the Electricity Supply Act, 1948 the Government of Bombay constituted the Bombay State Electricity Board on January 31, 1945. On January 8, 1959 that Board issued to the respondent a notice under s. 7 of the Act. That notice is important for our present purpose. Hence we shall quote the relevant portion thereof. It runs thus :

"In exercise of the powers conferred on the Bombay State Electricity Board by virtue of s. 71 of the Electricity (Supply) Act, 1948 read with s. 7 of the Indian Electricity Act, 1910, you are hereby notified that the Bombay State Electricity Board has decided to exercise and shall exercise the option of purchasing your undertaking on the expiry on 10-2-1962 of the licence granted to you. The receipt of this notice may please be acknowledged."

As a result of the Bombay Re-organization Act, 1960, the present Gujarat State came into existence. In exercise of the powers conferred by s. 5 of the Electricity (Supply) Act, 1948 read with sub-s. 4 of s. 68 of the Bombay Reorganization Act, 1960 the appellant Corporation was constituted by the Government of Gujarat by means of a notification dated May 1, 1960. The Central Government by the notification No. EL-II-1(22)/60 dated the 17th June, 1960 made in exercise of the powers conferred by cl. (a) of sub-s. (4) of s. 68 of the Bombay Reorganization Act, 1960 directed that the appellant Corporation shall "with effect from 1st May 1960" take over from the Bombay State Electricity Board all its undertakings, assets, rights and liabilities in the area comprised in the State of Gujarat. The said notification was amended in some respect by notification of the Government of India dated October 3, 1960 providing therein that the amendment thereby made in the notification dated June 17, 1960 shall be deemed always to have been made. On the basis of the aforementioned notifications, the appellant is claiming the right to compulsorily purchase the undertaking.

A The respondent is contesting the right of the appellant to compulsorily purchase his undertaking. With a view to forestall the appellant from taking action against him, the respondent filed an application under Art. 226 of the Constitution in the High Court of Gujarat seeking directions to the appellant to forbear from compelling him to sell or deliver his undertaking, refrain
B the appellant from ceasing to supply electricity to him for the purpose of his said undertaking and also refrain the appellant from preventing him from supplying electric energy in the area mentioned in his licence. Some other incidental reliefs were also sought.

C The High Court came to the conclusion that though the notice issued by the appellant on January 8, 1959 is a valid notice under s. 7(4) of the Act but that by itself is not sufficient to compel the respondent to sell his undertaking to the appellant; before the respondent can be compelled to sell his undertaking to the appellant it was necessary for the appellant to exercise its option to purchase the undertaking on the expiration of the period
D of licence. As the appellant had failed to exercise that option on the expiration of the period of licence it cannot compel the respondent to sell his undertaking. On the basis of these findings the High Court has substantially granted the relief prayed for by the respondent. The appellant challenged the correctness of this conclusion. On the other hand the respondent is supporting the
E judgment of the High Court not only on the ground accepted by the High Court but also on some of the other grounds advanced on his behalf before the High Court but rejected by that Court.

We shall first take up the question whether the High Court was right in holding that the appellant had to take two independent steps *viz.* (1) an election to purchase the undertaking followed up by a notice to the respondent in pursuance of that election
F within the period mentioned in s. 7(4) of the Act and (2) exercise its option to purchase on the expiration of the period of licence and communicate the same to the respondent.

Before addressing ourselves to that question it is necessary to mention that the High Court's finding that the rights of the Shriman Sarkar, (Baroda Government) to purchase the undertaking under s. 9 of the Baroda Electricity Act had devolved on the State Government was not challenged before us. Therefore it is not necessary for us to trace how the rights of the Baroda Government came to devolve on the then State of Bombay. But the respondent did contest the appellant's claim to exercise that
G right. That question we shall separately consider. For the present we shall proceed on the basis that the appellant is entitled to exercise the right of purchase conferred on the Baroda Government under the licence read with s. 9 of the Baroda Electricity
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Act. We may also state at this stage that the conclusion of the High Court that the licence issued under s. 9 of the Baroda Electricity Act should be considered as a licence issued under s. 7 of the Act was also not challenged before us.

Now we shall proceed to consider the true scope of s. 7 of the Act. For our present purpose only sub-ss. 1, 2 and 4 of s. 7 of the Act are relevant. They read as follows :

“Section 7(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 fifty 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, 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 suitable to, and used by him for, the purposes of the undertaking, other than a generating station declared by the license not to form part of the undertaking for the purpose of purchase, such value to be, in case of difference or dispute, determined by arbitration :

(4) Not less than two years' notice in writing of any election to purchase under this section shall be served upon the licensee by the local authority or the State Government as the case may be.

In our opinion sub-s. (4) of s. 7 is complementary to sub-ss. (1) and (2) of that Section and therefore they must be read together. On an analysis of these provisions it is seen that before a licensee can be compelled to sell his undertaking, the authority entitled to purchase must elect to purchase the same by exercise of the option given to it under the licence read with s. 7 of the Act followed by a notice as required by s. 7(4) of the Act. In s. 7 the expression “option of purchasing an undertaking” merely means the right of purchasing the undertaking. The word ‘option’ is used because two courses are open to the concerned authority namely, either to purchase the undertaking or renew the licence. Once the authority elects to purchase then the notice prescribed in sub-s. 4 should be given before the period mentioned therein. We are not able to agree with the High Court that the Section contemplates two stages namely (1) to elect to purchase the

- A** undertaking at least two years before the expiration of the licence and (2) exercise the option to purchase at the end of the licence period. The exercise of option to purchase as well as electing to purchase is one integral process and not two independent steps. By the very act of electing to purchase the authority exercises its option to purchase. In our opinion sub-ss. 1, 2 and
- B** 4 of s. 7 are plain and unambiguous. They do not lend themselves to any subtleties.

In construing a provision, all its relevant parts should be considered together and their true effect ascertained. One can easily find out the reasons behind the procedure prescribed in s. 7. In view of the term of the licence read with s. 7(1) and

C (2) the concerned authority has two courses open before it. It can either decide to purchase the undertaking or renew the licence on the expiration of the period for which the licence is granted. The licensee must know in good time what course the authority is going to adopt so that he may so arrange his affairs as to cause least inconvenience to himself. Hence though the

D power to exercise the option to purchase arises on the expiration of the period of licence as per the terms of the licence, s. 7 lays down that if the authority wants to purchase the undertaking it must elect to do so at least two years before the expiration of the licence and communicate the same to the licensee. Once the concerned authority exercises its option and communicates the same to the licensee, the same is binding on the authority as well

E as the licensee. Otherwise there is bound to be considerable inconvenience both to the licensee and to the public. We are not able to find any good reason for reading into s. 7 a requirement that after a notice under s. 7(4) is issued the authority must again exercise its option to purchase on the expiration of the period of licence. It is no doubt true that the right to purchase

F the undertaking accrues only at the expiration of the period of licence but for exercising that right, the authority must make its election within the period prescribed in s. 7(4) and issue a notice as required by that sub-section. The requirements of s. 7 were fully complied with by the notice issued by the Bombay State Electricity Board on January 8, 1959.

- G** We shall now take up the other contention advanced by Mr. H. R. Gokhale, learned Counsel for the respondent in support of the decision under appeal.

One of his contentions was that whether the State Government was competent to purchase the undertaking or not, neither the Bombay State Electricity Board nor the appellant was competent

H to exercise that right. His argument on this question proceeds thus : Section 7(1) prior to its amendment in 1959 empowered the local authority or the State Government to make the purchase

contemplated under that Section; the Electricity Board is not within the contemplation of that Section; the finding of the High Court that the provisions contained in sub-ss. 1, 2 and 4 of s. 7 of the Act read with s. 71 of the Electricity (Supply) Act, 1948, confers on the appellant such a power is not correct because the right or option to purchase the undertaking was conferred on the State Government or the appropriate local authority under the licence and not under the provisions of the Act; in other words the said right is merely a contractual right and not a right flowing from the provisions contained in s. 7 of the Act as held by this Court in *Fazilka Electric Supply Co., Ltd. v. The Commr. of Income Tax, Delhi*⁽¹⁾ and therefore the appellant cannot take any assistance from s. 71 of the Electricity (Supply) Act, 1948. This contention did not commend itself to the High Court. We shall now proceed to examine how far the same is correct.

Section 71 of the Electricity (Supply) Act, 1948 provides :

“Rights and options to purchase under Act 9 of 1910 to vest in Board. Where under the provisions of the Indian Electricity Act, 1910 (9 of 1910), any right or option to purchase the undertaking of a licensee vests in the State Government or a local authority such right or option shall be deemed to be transferred to the Board, and shall be exercisable by the Board in accordance with the provisions of the said Act applicable to the exercise of such right or option by the State Government or a local authority, as the case may be.”

Board is defined in s. 2(2) of that Act as meaning, State Electricity Board constituted under s. 5 thereof. It is true that before s. 71 can be held to be attracted to a case it must be shown that the right or option to purchase the undertaking of the licensee vested in the State Government or a local authority under the provisions of the Act. It is also true that this Court had held in *Fazilka Electric Supply Company's*⁽¹⁾ case that from the provisions of the Act read with the rules made thereunder it is manifest that the condition as to the option of purchase either by the local authority or by the Government is the result of an agreement between the applicant who had applied for licence and the Government who granted the licence. In that case this Court was considering whether the sale concerned in that case fell within the scope of s. 10(2)(7) of the Indian Income Tax Act or whether it can be held to be compulsory acquisition as contended by the assessee. A sale compelled by law may also be a ‘sale’ under the Sale of Goods Act. But that does not mean that the right to purchase the undertaking does not vest in the concerned authority

(1) [1962] 3 Supp. S.C.R. 496.

A by virtue of s. 7. That right may accrue either because it is directly conferred by s. 7 or because it is obtained as a result of a contract compelled by that Section. In either case it is a right obtained by the authority by virtue of s. 7. There is no dispute that the licence granted must conform to the requirements of s. 7.

B In *Okara Electric Supply Ltd. and Anr. v. State of Punjab*⁽¹⁾ this Court observed that ss. 5, 6 and 7 show that in the case of a licensee, specific provisions have been made for the acquisition of the undertaking in cases of revocation or cancellation of licenses. For the aforementioned reasons we hold that appellant had acquired the right to purchase the undertaking by the combined operation of s. 7 of the Act and s. 71 of the Electricity (Supply) Act, 1948.

C It was next contended on behalf of the respondent that by the time the licence period expired, s. 7 of the Act had been amended and s. 71 of the Electric (Supply) Act, 1948 repealed, no provision was made to preserve the rights already acquired under those provisions, hence the appellant is not entitled to purchase the undertaking. It is not the case of the respondent that either expressly or by necessary implication, the new law had taken away the right acquired earlier. That being so s. 6 of the General Clauses Act comes to the aid of the appellant. That Section provides that where that Act or any Central Act or Regulation made after the commencement of that Act repeals an enactment hitherto made or hereafter to be made then unless a different intention appears, the repeal shall not affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed. It also saves the previous operation of any enactment so repealed or anything duly done or suffered thereunder.

D E F The right to purchase the respondent's undertaking came to vest firstly in the Bombay State Electricity Board subsequently in the appellant in view of the various notifications referred to earlier. That right has to be worked on the basis of law as it stood on the date the notice under s. 7(4) of the Act was given.

G H In this Court a new contention was taken on behalf of the respondent namely that in any case, the appellant's right to purchase is conditional on the payment of the price as provided in s. 7 and hence the appellant cannot demand possession of the undertaking without paying the price after the same is determined according to law. This contention had not been taken before the High Court. The High Court may go into this question while deciding the writ petition.

(1). [1962] S.C.R., 239.

For the reasons mentioned earlier we allow this appeal, set aside the order of the High Court and remit the case back to High Court for deciding the issues that were left open. Costs of this appeal shall be costs in the cause. A

G.C.

Appeal allowed. B