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## GUJARAT ELECTRICITY BOARD

v.

## GIRDHARLAL MOTILAL AND ANR.

August 6, 1968

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

*Indian Electricity Act, 1910, s. 6(1)—as amended by Act 32 of 1959—notice to exercise option to purchase undertaking—requirement as to calling upon licensee to sell undertaking—if mandatory for exercising power to purchase.*

C

D

The respondent held a licence granted by the Government of Baroda under the Baroda Electricity Act 1 of 1964 to supply electric energy within certain defined territories. On June 23, 1961 the appellant, which was constituted under s. 5 of the Indian Electricity (Supply) Act, 1948, served a notice on the respondent to the effect that in exercise of the powers conferred on it by virtue of s. 71 of the Electricity (Supply) Act, 1948 read together with section 6 of the Indian Electricity Act, 1910, as amended by the Indian Electricity (Amendment) Act 32 of 1959, the appellant had decided to and would exercise the option to purchase the respondent's undertaking on 3-1-1963 *i.e.* the date on which the licence was due to expire. The respondent challenged the validity of this notice and the High Court held the notice was invalid.

On appeal to this Court,

HELD : The High Court was right in holding that the impugned notice was invalid and by virtue of that notice the appellant could not compel the respondent to sell the undertaking. [594 A]

E

Before the option to purchase the undertaking can be exercised, the State Electricity Board must call upon the licensee by means of a notice in writing within the period mentioned in s. 6(1) to sell the undertaking to it on the expiration of the period for which the licence was given. The impugned notice did not require the licensee to sell the undertaking. It merely notified the respondent that the appellant Board has decided to exercise and would exercise the option of purchasing the respondent's undertaking on the date of expiry of the licence. [592 D-E]

F

*Nazir Ahmad v. King Emperor*, L.R. 63 I.A. 372; and *Ballavdas Agarwala v. Shri S. C. Chakravarty*, [1960] 2 S.C.R. 739; referred to.

G

There was no force in the contention that the notice complied substantially with the requirements of the law and should therefore be given effect to. The issuing of a notice strictly in accordance with the provisions of s. 6(1), which prescribes that the notice must specifically call upon the licensee to sell the undertaking, is a condition precedent to the exercise of the power conferred on the State Electricity Board to purchase the undertaking. Furthermore, on reading the impugned notice, the licensee could not have been definite whether the appellant Board purported to exercise the power under the law as it was on the date of the notice *i.e.* the Indian Electricity Act, 1910 as amended by Act 32 of 1959, or as it was under the unamended act. The rights and liabilities of the Electricity Board and the licensee before Act 32 of 1959 came into force were substantially different from those after the amendment. [593 C-G]

H

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2526 of 1966.

Appeal from the judgment and order dated October 30, 31, 1963 of the Gujarat High Court in Special Civil Application No. 1098 of 1962.

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

*M. C. Chagla, R. M. Vin and R. Gopalakrishnan*, for respondent No. 1.

*R. H. Dhebar and S. K. Dholakia*, for respondent No. 2.

The Judgment of the Court was delivered by

**Hegde, J.** The only question for decision in this appeal is whether the notice issued by the appellant on June 23, 1961 under s. 6 of the Indian Electricity Act, 1910 as amended by Act 32 of 1959 (to be hereinafter referred to as the Act) is valid. The High Court has come to the conclusion that it is not a valid notice.

On 4th January 1923, the father of respondent No. 1 was granted a licence to supply electric energy within the area consisting of municipal limits of Dabhoi and the territories comprised within half mile radius from the municipal boundary lines by the Government of Baroda under the Baroda Electricity Act Samvat 1964 (Act 1 of 1964). The said Company was known as Dabhoi Electricity Company. Respondent No. 1 was at all material times the holder of this licence.

The said licence conferred an option on the Government to purchase the undertaking in accordance with the terms of the licence. Clause 26(a) of that licence is material for our present purpose. That clause reads :

“The option of purchase given by s. 8 of the Act shall be exercisable on the expiration of 40 years computed from the commencement of this licence and thereafter on the expiration of every subsequent period of 8 years during the subsistence of this licence.....”

On the merger of Baroda State with the then Province of Bombay, the Indian Electricity Act, 1910 and the Indian Electricity (Supply) Act, 1948 were made applicable to the territories of the former State of Baroda and the corresponding Baroda Act was repealed with the saving clause that the licences issued under the repealed Act shall continue to remain in force until the expiration of the period of licence as if they were issued under the Act of 1910.

In exercise of the powers conferred by s. 5 of the Indian Electricity (Supply) Act, 1948, the State Government constituted the appellant Corporation. The appellant served upon respon-

A dent No. 1 a notice on June 23, 1961. That notice is important for our present purpose. Hence we shall quote the same in full. It is as follows :—

“THE GUJARAT ELECTRICITY BOARD

B Kothi Building,  
Raopura Road, Baroda  
Dated 23 June, 1961.

Regd. A.D.  
Ref. No. PLE.BRD.7(A)19648.

To

C The Dabhoi Electric Power Supply Co.  
C/o Shri Girdharlal Motilal Contractor  
(Sheth), Ajit Bungalow, Pratapnagar Society, Baroda.

D SUB: (i) Notice under section 6 of the Indian Electricity Act, 1910 and exercise of option vested in the Gujarat Electricity Board to purchase your undertaking.

(ii) The Dabhoi Electric Licence 1923 granted by the Government of Baroda under the State Electricity Act, Samvat 1964.

Dear Sir,

E In exercise of the powers conferred on the Gujarat Electricity Board by virtue of s. 71 of the Electricity (Supply) Act, 1948, read together with section 6 of the Indian Electricity Act, 1910, as amended by the Indian Electricity (Amendment) Act, 1959 (32 of 1959) this is to give you notice that the Gujarat Electricity Board has decided to exercise and shall exercise the option of purchasing your undertaking on 3-1-1963, the date on which the  
F license granted to you by the Government of Baroda expires. The receipt of this notice may please be acknowledged.

Yours faithfully,

Sd/- Secretary,  
The Gujarat Electricity Board.”

G As this notice was issued after the Indian Electricity Act, 1910 was amended by Act 32 of 1959, we have to see whether that notice complies with the requirements of s. 6(1)(a) of the Act which says :

H “Where a license has been granted to any person not being a local authority, the State Electricity Board shall.—

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

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

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

These provisions confer a power on the State Electricity Board to purchase the property of the licensee but that right can be exercised only in the manner provided in the Act and not in any other way. It must be remembered that the provisions in question empower the State Electricity Board to interfere with the property rights of the licensee. Therefore such a power will have to be strictly construed. The legislature has prescribed a mode for the exercising of that power and hence that power can be exercised only in that manner and in no other manner. See *Nazir Ahmad v. King Emperor*<sup>(1)</sup> and *Ballavdas Agarwala v. Shri S. C. Chakravarty*<sup>(2)</sup>. Before the option to purchase the undertaking can be exercised, the State Electricity Board must call upon the licensee by means of a notice in writing within the period mentioned in s. 6(1) to sell the undertaking to it on the expiration of the period for which licence was given. The impugned notice does not require the licensee to sell the undertaking. It merely notifies the respondent that the appellant Board has decided to exercise and shall exercise the option of purchasing the respondent's undertaking on 3-1-1963, the date on which the licence granted to him by the Government of Baroda expired.

It was contended by the learned Attorney-General on behalf of the appellant that in matters like these rigid compliance with the provisions of law should not be insisted upon. According to him if the legal requirements are substantially satisfied the validity of the notice given, should be upheld. Proceeding further he urged that so long as the notice given by the Electricity Board is sufficient to intimate the licensee the intention of the Board, the mandate of the law is complied with; in a notice under s. 6(1) what is of the essence is the substance of the matter mentioned therein and not the manner in which the notice is worded. He urged that the licensee must have imported some commonsense into the notice received by him and he could not be allowed to riggle out of his obligation by having recourse to technicalities. In advancing these arguments, the learned Attorney-General overlooked the fact that notice required by s. 6(1) is not a notice of an action to be taken or merely a procedural step. It is a mode

(1) L.R. 63 I.A. 372.

(2) [1960] 2 S.C.R. 739.

- A of exercising the power conferred on the State Electricity Board by the exercise of which the property rights of the licensees can be affected. Section 6(1) confers power on the State Electricity Board to take away the property of the licensee. Such a power must be exercised strictly in accordance with law. The legislature has prescribed the manner of its exercise. It must
- B exercise in that manner and in no other way. It must also be seen that the Parliament deliberately changed the form of the notice to be given from what it was before Act 32 of 1959 was enacted. *It prescribed that the notice must specifically call upon the licensee to sell the undertaking.* The mandate of the law is clear and it must be obeyed. We agree with Mr. M. C. Chagla
- C learned Counsel for the licensee that the issuing of a notice strictly in accordance with the provisions of s. 6(1) is a condition precedent to the exercise of the power conferred on the State Electricity Board to purchase the undertaking. That being so, we must hold that s. 6(1) is mandatory and it must be strictly complied with.
- D In this case we are not satisfied that the requirements of law have at least been substantially complied with. Obviously the person who issued the notice was not familiar with the legal position. He appears to be under the misapprehension that s. 71 of the Electricity (Supply) Act, 1948 was still in operation when he gave the notice. He appears to have been in two minds. He
- E was not sure whether he should issue the notice under the provisions of the Act as they stood on the date of the notice or in accordance with the provisions as they were prior to the coming into force of Act 32 of 1959. At the top of the notice it is mentioned that it is given under s. 6 of the Act but in the body of the notice it is purported to be given in exercise of the power available under s. 71 of the Indian Electricity (Supply) Act.
- F Again the contents of notice indicate that it is a notice under s. 7(1) read with s. 7(4) of the Indian Electricity Act, 1910 as they stood prior to 1959. Quite clearly the notice speaks in two voices. It is the product of a confused mind. We fail to see how any commonsense can be read into it. On reading that notice the licensee could not have been definite whether the State Electricity
- G Board purported to exercise the power under the law as it was on the date of the notice or as it was under the unamended Act. Rights and liabilities of the Electricity Board and the licensee before Act 32 of 1959 came into force are substantially different from their rights and liabilities under the Act. On reading the impugned notice it could not have been clear to the
- H licensee that he had been called upon to sell the undertaking in accordance with the law as it then stood. We are unable to accede to the request of the Attorney-General to read into the notice words which are not there.

For the reasons mentioned hereinbefore we agree with the High Court that the impugned notice is invalid and by virtue of that notice the appellant cannot compel the respondents to sell the undertaking in question.

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Accordingly this appeal fails and the same is dismissed with costs.

R.K.P.S.

*Appeal dismissed.*

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