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VIJAYAWADA MUNICIPAL COUNCIL

v.

ANDHRA PRADESH STATE ELECTRICITY BOARD & ANR.

October 20, 1976

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[A. N. RAY, C.J., M. H. BEG AND P. N. SHINGHAL, JJ.]

Andhra Pradesh (Andhra Area) Electricity Supply Undertaking (Acquisition) Act (Andhra 15 of 1954), ss. 5(3) (vi), 6(2)(a)(iii) and 10(2)(b)(iii)—Amounts due to undertaking from consumers prior to vesting in State—If can be recovered by State from the licensee.

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Section 4 of the Andhra Pradesh (Andhra Area Electricity Supply) Undertaking (Acquisition) Act, 1954, empowered the Government to declare that an electricity undertaking of the licensee Municipal Council shall vest in Government on a specified date. Section 5 provides for compensation to be paid on one of three alternative bases, A, B or C set out in the Act. Where compensation is on the basis 'C', it includes under s. 5(3)(vi) the book value of all *intangible assets* to the extent such value has not been written off in the books of the licensee; and s. 6(2)(a) mentions the items that would vest in the State Government. Section 6(2)(a)(iii) relates to all the rights, liabilities and obligations of the licensee under any other contract entered into *bona fide*, not being a contract relating to the borrowing or lending for money. Section 10(2)(b)(iii) lays down that the Government may deduct from the compensation all sums paid by consumers by way of security deposit and arrears of interest due thereon on the vesting date, in so far as they have not been paid over by the licensee to the Government, less the amounts which according to the books of the licensee are due from the consumers to the licensee for energy supplied to such consumers before that date.

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In the present case, the State Government made a declaration regarding the vesting of the Electricity Undertaking of the appellant in the State Government, and transferred its rights to the respondent Electricity Board. Certain amounts were shown in the books of the appellant as due to it from consumers. The respondent claimed those amounts and filed a suit against the appellant for their recovery.

The trial court dismissed the suit, but the High Court allowed the appeal.

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In appeal to this Court, it was contended that past dues from the consumers would not vest in the respondent as they were not specifically mentioned in s. 6(2)(a); and that under s. 10(2)(b)(iii) the appellant was entitled to deduct and appropriate the amounts due from consumers for supply of electricity from their security deposits.

Dismissing the appeal to this Court,

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HELD: (1) The explicitly wide language used in s. 6(2)(a)(iii) dispenses with the need to specify all items which are covered by it; and, arrears of dues from consumers are covered by the wide language of the clause. [850 A]

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(2)(a) Section 10(2)(b)(iii) is meant for security deposits and arrears of interest due on them which are generally held in trust by the licensee so as to be ultimately returned to the consumers, if the dues of the consumers have been met without resorting to the amounts deposited. They are used for a deduction of dues from deposits where these have not been paid. If these deposits have not been made over by the licensee to the Government, they will be claimable by the depositors, and, therefore, they are deducted from the compensation. If, however, there are any amounts due shown in the books of the licensee as due from the consumers of energy they would become realisable by the Government under s. 6(2)(a)(iii). It is for this reason that the deduction of security

deposit from compensation is reduced by the amounts which are due from consumers to the Undertaking for energy supplied by the Undertaking before the date of vesting as they become the claims realisable by the successor-in-interest of the Undertaking. An exclusion from an item of deduction from compensation could only indicate that this was being done because this was an item which is covered by the compensation provided for and to be paid. [850 A]

(b) In the present case, the only contention of the appellant was that the right to appropriate the amount of dues did not vest in the respondent but that the amount had vested in the appellant. It was not argued on behalf of the appellant that what was vested in the Government was only the right to realise the dues from the consumers and not to recover from the appellant the amount which the appellant had actually realised or could have realised.

(3) The High Court's interpretation of s. 10(2)(b)(iii) must be accepted as a correct interpretation because it is in harmony with the meaning of the terms of s. 5(3)(vi) read with s. 6(2)(a) of the Act. [851 C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 155 of 1971.

(Appeal by Special Leave from the Judgment and Order dated 24-3-1975 of the Andhra Pradesh High Court in Appeal No. 19/72).

B. V. Subrahmanyam and *A. Subba Rao*, for the Appellant.

A. K. Sen, *K. R. Chaudhary*, *Miss Nihar Saha* and *Mrs. Veena Devi Khanna*, for the Respondent.

The Judgment of the Court was delivered by

BEG, J.—This is a defendant's appeal by special leave against the judgment of the High Court of Andhra Pradesh decreeing, with costs, the claim of the plaintiffs respondents, the Andhra Pradesh State Electricity Board and the Andhra Pradesh State Government for Rs. 3,34,443.77 as arrears of electricity charges said to be due from the Vijayawada Municipal Council in respect of amounts which were shown in its books as payable to it by consumers of electricity.

The plaintiff's claim flowed from the terms of the Andhra Pradesh (Andhra Area) Electricity Supply Undertaking (Acquisition) Act 15 of 1954 (hereinafter referred to as 'the Act'), the provisions of which were applied to the electricity undertaking of the appellant Municipal Council with effect from 22nd December, 1961, by the Government of Andhra Pradesh. The rights of the State were transferred to the Andhra Pradesh Electricity Board the co-plaintiff respondent. The amounts claimed were shewn in the books of the Council's electricity undertaking on the date of its acquisition as due to it from direct consumers of electricity to whom it used to sell electricity supplied to it in bulk.

The "Electricity undertaking" was taken over by the Government by an order under Section 4(1) of the Act. This section provided :

"4. Power of Government to take over any undertaking :—

(1) The Government may, in respect of any undertaking not taken over by them before the commencement of this Act, by order in writing, declare that it shall vest in them on the

A date specified therein, such date not being earlier than four months from the date of the declaration :”

The Municipal Council was the licensee from whom the “undertaking”, as a commercial concern, was taken over. A licensee is defined by section 2(j) to mean :

B “. . . . a person licensed under part II of the Electricity Act to supply electricity energy, or a person who has obtained sanction under section 28 of that Act to engage in the business of supplying electricity and in relation to an undertaking taken over or an undertaking which has vested in the Government under section 4 the person, who was the licensee at the time the undertaking was taken over or vested in the Government, as the case may be, and includes the successor-in-interest of any such person;”

C The State Electricity Board stepped into the shoes of the licensee on behalf of the State, to discharge all the existing obligations of the licensee, arising out of past transactions, and, for this reason, became entitled to the benefits of all contracts, whether they had accrued in the past or were to arise in future, which existed at the time of the taking over of the undertaking.

D The effect of the “taking over” of an undertaking and the vesting of the rights and liabilities of the former licensee in the State, by operation of law, was indicated by sections 5 and 6 of the Act.

E Section 5 provided for compensation to be paid on one of three alternative bases specified in this provision. The licensee could opt for one of the three bases.

The provisions of section 6(2) of the Act give the consequences of vesting. Section 6(2) of the Act enacts :

F “6(2)(a) If compensation is payable in respect of an undertaking under Basic C, only the property, rights liabilities and obligations specified herein shall vest or be deemed to have vested in the Government on the vesting date :—

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- (i) all the fixed assets of the licensee and all the documents relating to the undertaking;
 - (ii) all the rights, liabilities and obligations of the licensee under hire-purchase agreements, if any, for the supply of materials or equipment made bonafide before the vesting date;
 - (iii) all the rights, liabilities and obligations of the licensee under any other contract entered into *bona fide* before the vesting date, not being a contract relating to the borrowing or lending for money.

H (b) All the assets specified in clause (a) (i) shall vest or shall be deemed to have vested in the Government free from any debts, mortgages or similar obligations of the licensee or attaching to the undertaking.

Provided that such debts, mortgages or obligations shall attach or shall be deemed to have attached to the compensation payable under this Act for the assets".

A glance at clause (2) (a) (iii) of section 6 indicates that it clearly provides for the vesting of "all the rights liabilities and obligations of the licensee" under contracts entered into "before the date of vesting". Therefore, we find no merit in the objection, on behalf of the Municipal Council, that past dues of consumers of electricity, shown in the books of Vijayawada Municipal Council, could not vest in the State Government, in a case in which basis C is applicable for compensation.

The compensation provided by Section 5(3) (vi) applicable to basis 'C' takes in "the book value of all intangible assets to the extent such value has not been written off in the books of the licensee". The result is that "the aggregate value" of all items specified in section 5(3), including items falling under sub-clause (vi), became payable as compensation to the licensee on principles specified in the Act.

The learned Counsel for the appellant has placed a great deal of reliance on the provisions of Section 10(2) (b) (iii), which are applicable to cases of compensation payable on basis 'C'. Section 10 gives a list of deductions from compensation. One of the items of this deduction is found in section 10(2) (b) (iii) which lays down :

"all sums paid by consumers by way of security deposit and arrears of interest due thereon on the vesting date, in so far as they have not been paid over by the licensee to the Government, less the amounts which according to the books of the licensee are due from the consumers to the licensee for energy supplied by him before that date;"

The provision set out above is sought to be made the corner stone of the arguments of the learned Counsel for the Appellant Municipal Council, although this very provision was held by the High Court to be decisive against the appellant's case that the amounts shown as due from the consumers of the licensee for energy supplied before the vesting date were claims for amounts which the Vijayawada Municipal Council was entitled to appropriate as they must be deemed to be exempted from the effects of vesting of rights and obligations of the undertaking in the State.

It is true, as the learned Counsel for the Municipal Council points out, that only those rights and liabilities and obligations which are specified in section 6(2) (a) are to vest in the State Government. But, the contention based on alleged non-specification of the claims of the licensee against direct consumers to whom it used to supply electricity over-looks the sweep of section 6(2) (a) (iii), already indicated above, which will cover all rights and liabilities under contracts entered into bona fide before the date of vesting. It is not possible to assert that the rights of the Municipal Council to realise arrears of dues from the consumers will not be transferred to the State Government when they are covered by the specific language of section 6(2) (a) (iii). The

A explicitly wide language used dispenses with the need to specify by enumerating all items which are covered by it. That is the very object of such language.

B We have also indicated how section 5(3)(vi), meant for application to basis 'C', mentions all intangible rights shown in the books of the licensee. This also supports the interpretation we place on section 6(2)(a)(iii) and on the wide ambit of the specification here which must, obviously, not conflict with section 5(3)(vi). We are, therefore, completely unimpressed by arguments based on supposed non-specification of the claims of the former licensee undertaking against consumers to whom it had supplied electricity in the past and against which it had claims which vested, from the specified date, in the State Government.

C Learned Counsel's argument, on the meaning of Section 10(b)(iii), is really meant to reinforce the argument indicated above, based on alleged non-specification of the claims of the Municipal Council as a licensee for supplying electricity to consumers. If the meaning of relevant provisions of section 5 and 6 is clear, we do not think that any assistance could be derived by the appellant Municipal Council from the provisions of section 10(2)(b)(iii) unless these clearly conflicted with the other provisions. If, however, two interpretations were possible of these provisions, we should, we think, prefer the one which is in harmony with the clear meanings of the terms of section 5(3), read with section 6(2)(a) of the Act as indicated above. This is the salutary rule of construction resting upon the doctrine that a statute, like any other document, must be read as a whole to extract its meaning and intentment correctly.

D Learned Counsel for the appellant submits that the exclusion by section 10(2)(b)(iii) of the amounts which, according to the books of the licensee, "are due from the consumers to the licensee for energy supplied by him before that date" (i.e. the date of vesting), from the ambit of deductions from compensation, necessarily implies that these amounts can be appropriated by the appellant Municipality. We are quite unable to see how this inference follows from an exclusion from items of deduction from compensation. A deduction from an item of compensation may, if there was nothing else to furnish a clue as to its meaning, imply that it was not being compensated for because the party whose rights were acquired was retaining the item. But, an exclusion from an item of deduction from compensation itself could, according to its natural meaning, only indicate that this was being done because this was an item which is covered by the compensation provided for and to be paid.

E A close examination of section 10(2)(b)(iii) will show that it is meant for security deposits and arrears of interest due on them which are generally held in trust by the licensee so as to be ultimately returned to the consumers, if the dues of the consumers have been met without resorting to the amounts deposited. They are used for a deduction of dues where these have not been paid. We know that these deposits are required so as to cover claims from defaulting consu-

mers in order to avoid the trouble of litigating to enforce them. If these deposits have not been made over by the licensee to the Government, they will be claimable by the depositors from the licensee. Hence, it seems fair to deduct them from any item of compensation as these deposits are not meant to be kept by the licensee. They do not constitute profits of the business or price for anything supplied or payment for services rendered or an asset out of which liabilities of the licensee may be met. If, however, there are any amounts shown in the books of the licensee as due from the consumers of energy supplied before the date of vesting, they would become realisable by the Govt. Hence, the amounts for which deductions from items of compensation will have to be made is reduced by the amounts which are due from consumers to the licensee for energy supplied by the licensee before the date of vesting as they become the claims realisable by the successor-in-interest of the licensee. Therefore, the High Court's interpretation was, obviously, correct. This provision supports the case of the respondents rather than that of the former licensee Municipal body. It is very difficult to see how it supports the appellant's case.

It appears that no question was raised before the High Court as to the nature of the obligation incurred by the Municipal Council to pay the amount claimed apart from its right to appropriate the amount itself as part of the assets which had, it was asserted, not vested in the State Government. An attempt was, however, made before us to confuse it with the payment made by the Municipal Council itself to the Government for the bulk supply of electricity used, *inter alia*, for street lighting and other purposes by the Council itself. But, no question was raised in the pleadings to indicate that the plaintiff's claim included these past dues. We do find that the licensee had set up certain reasons for its inability to realise certain amounts from the consumers. We do not know what all these reasons precisely were or whether the licensee was really unable to realise them for any of these reasons. But, ground No. 1 of the special leave petition shows that the Municipal Council had Rs. 9 lakhs with it in deposit for the recovery of the claims not realised from which it proposed to deduct the amounts claimable towards dues and to appropriate them itself. The ground runs as follows:

"In the instant case the learned trial judge found that there was a deposit of 3 lakhs of rupees with the Vijayawada Municipality and the Vijayawada Municipality by virtue of section 10(2) (b) (iii) is certainly entitled to adjust and by virtue of section 10(2) (b) (iii) of the Act 15 of 1964, the Government can deduct that security from out of compensation less the amount due to the licensee from its consumers upto the vesting date."

We may also mention that it was not argued on behalf of the Municipal Council that what was vested in the Government was only the right to realise the claims itself and not an amount of money which the Municipal Council had actually realised or could have realised if

A it took steps to make realisations. On the other hand, ground No. 1 of the grounds of appeal quoted above, shows that the case of the Municipal Council was simply that it is entitled to deduct amounts claimed from whatever may be the amounts in deposit because the claims against the consumers had vested in the Municipal Council and not in the Government. We think that legal questions of interpretation of the Act, to which the learned Counsel for the parties rightly confined their arguments, apart from some attempts to raise questions outside the pleadings which could not succeed, were rightly answered by the High Court when it held that the relevant provisions, if correctly interpreted, meant that the claims for dues on electricity supplied at enhanced rates, the validity of which had been unsuccessfully challenged by some consumers in certain other proceedings initiated before filing of the suit now before us, had vested in the State Government.

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Consequently, we affirm the judgment and decree of the High Court and dismiss this appeal with costs. •

V.P.S.

Appeal dismissed.