

(1961) 09 AHC CK 0020
In the Allahabad High Court
Case No : Special Appeal No. 476 of 1960

Mainpur Electric Supply and General Mills Co. Ltd.	APPELLANT
Vs	
State of Uttar Pradesh	RESPONDENT

Date of Decision : 29-09-1961

Acts Referred:

Electricity Act, 1910 — Section 10, 7, 7(4)

Citation : AIR 1962 All 433

Hon'ble Judges : M.C. Manchanda, J;B. Mukerji, J

Bench : Division Bench

Advocate : J. Swarup and Hari Swarup, for the Appellant; N.D. Pant, for the Respondent

Final Decision : Dismissed

Judgement

Mukerji, J.—This is a special appeal against the decision of a learned Single Judge of this Court.

2. The appellant carried on the business of producing and distributing electrical energy. The appellant was a public limited company incorporated under the Indian Companies Act having its registered office at Mainpuri.

3. It appears that a licence for generating and distributing electrical energy had been granted by the State Government under the Indian Electricity Act, 1910, on the 3rd of December, 1948 in favour of Nem Kumar Rup Chand. In 1949 the aforementioned licence was assigned in favour of the appellant with the consent of the State Government.

4. The licence which was granted contained the terms and conditions on which the licensee was permitted to generate and distribute electricity. Clause 12 of the licence with its sub-clauses provided for the purchase of the undertaking by the State or a local authority. Under the conditions of the licence namely Clause 12 (1) it was provided; that

""the Government, or if authorised by the Government any local authority of the area of supply or any person or persons approved by Government shall on the expiry of 10 years from the date of notification of this licence or from the date of availability of bulk supply of electric energy from the Hydro-electric Grid, whichever is earlier, have the option of purchasing the undertaking, or terminating this licence and if the Government or the local authority or any other, person or persons approved by the Government, with the previous sanction of the Government elects to purchase, the licensees shall sell the undertaking to the Government or the local authority or such person or persons, as the case may be, on payment of the market value prevailing at the time of purchase less depreciation as provided in the Indian Electricity Act, 1910, and the. Rules made thereunder of all lands, etc. provided they were in a satisfactory condition."

There was a proviso to the above and the proviso was in these words :

"Provided, however, that in the case of receipt of bulk supply of energy from Hydel before the expiry of 10 years from the date of notification of this licence, the licensees shall not be asked to sell the undertaking to a party other than the Government or the local authority unless the terms offered by the intending distributor for distributing energy are more favourable to Government than those provided in this licence."

We may point out here that on the Case as stated before us by the parties the proviso did not come in for consideration at all.

5. In 1956 the Government started supplying bulk energy from a diesel oil generating plant at Mainpuri to the appellant. On the 1st of December, 1957 the Government began supplying the energy to the appellant for distribution from the Hydro-electric grid, namely the Ganga Hydro Electric Grid and from the 1st of January 1958 the new rates which obtained for the Ganga Hydel were made applicable with the result that the appellant started paying less for the bulk supply of energy which they were receiving for distribution.

6. On the 8th of January 1958 a draft agreement was prepared in respect of supplying energy for ten years. This draft was whetted by the Government but it appears that this agreement was not in fact signed and completed by the parties.

7. On the 3rd of September 1958 the Government gave notice to the appellant terminating their licence with effect from the 3rd of December 1958. Again on the 8th of October, 1958 the Government sent a notice to the appellant to make available to the Government the assets of the company which the Government were prepared to purchase at the rates payable on the 3rd of December, 1958. It appears that the appellant did not reply to this notice, but they came up to this Court by a petition, out of which this appeal has arisen. The petition was filed on the 19th of November, 1958. In the petition, among other questions, two vital questions were raised. The first was whether the Government had the power to terminate the licence in the manner and in the circumstances in which they did it and secondly whether the Government could ask the appellant-company to sell

to them the undertaking which was owned by the appellant immediately on the service of the notice or on a date fixed by the Government in the notice, which date was less than two years from the date on which the Government exercised its option, to purchase and made it known by a notice to the appellant. In order to understand the significance of the latter contention it is necessary to know that by Section 7(4) of the Indian Electricity Act a period of two years is fixed for taking over an undertaking after the exercise of the option to purchase has been made.

8. Section 7(1) of the Act provides a period on the expiry of which the option to purchase an undertaking could arise. Sub-section (2) of that section gave the State Government the option of purchase in the same way as there was the option to purchase in a local authority. Sub-section (4) of Section 7 is in these words :

"7 (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."

By Section 10 it was provided that the State Government could by the provisions made in the licence itself vary the terms and conditions upon which, and the period on the expiry of which the licensee shall be bound to sell his undertaking, or direct that, subject to such conditions and restrictions, if any, as the Government thought fit to impose, the provisions of Sections 5, 7 and 8, or any of them, were not apply (sic). Therefore, under the provisions of Section 10 the Government had authority to modify what was provided for by Sections 5, 7 and 8. We, in the instant case, are concerned with Section 7 for it was u/s 7 that there was the right to purchase an undertaking and the State Government purported to Act u/s 7 read with Section 10 of the Act to acquire the undertaking of the appellant.

9. We have already quoted Clause 12 (1) of the licence. By that clause in the licence it was clear that substantial change or variation had been made in Sub-section (1) of Section 7 and the variation affected the period after the expiry of which and on the happening of a certain contingency the Government could have an option to take over the undertaking. It must, in our opinion, be clearly seen that Sub-section (1) specifies the period after the expiry of which the option to purchase is exercised and not the making of the purchase itself. By Clause 12 (iv) of the licence it was provided that -

"The provisions of Section 7 of the Act shall wherever necessary be read as expressly added to or varied to the extent set out in Sub-clauses (i), (ii) and (iii) of this clause."

The third sub-clause of the licence said that if the licensees failed or neglected to comply with the provisions of Sub-clause (i), the Government was to have full power to take actual possession of the undertaking; and where the purchaser was a local authority the Government could deliver, actual possession to the

purchaser after taking the purchase money as determined, if necessary, by an arbitrator in order to pay that money to the licensees. There could be no doubt that it was open to the State Government by virtue of Section 10 to radically vary the provisions contained in Section 7. The variation could affect any part of that section or any provision contained in that section. But so long as there was no variation, express or without doubt impliedly, then by mere subsequent action on the part of the Government a variation could not be presumed; what we mean to say is that the variation has to be express and undoubted and, the question, whether there was variation which could cover the circumstances of a dispute or not had to be adjudicated when such question arose and the adjudication was to be on the well recognised principles on which such adjudications are made by courts.

10. As we pointed out earlier the Government gave notice to the appellant to hand over the undertaking to the Government on the 3rd of December, 1958 because they purported, in, another part of their notice or by another notice, to terminate the licence which had been granted to the appellant. Two questions immediately arise on the aforementioned statement. First, whether there was power in the Government to terminate the licence in the manner in which they did, and secondly, whether there was power in the Government to take over the undertaking immediately. The power to terminate a licence is vested in the State Government u/s 4. That section is headed ""Revocation or amendment of licences" and it lays down specific grounds on which there was power of revocation. It was conceded on behalf of the State that the Government had not exercised its power of revocation u/s 4, and if that was so, in our opinion, it followed that there was no valid revocation of the licence.

The termination of licence referred to in Clause 12 (1) of the licence was, in our opinion, intended to refer to the consequences which followed a purchase. We say this because under the proviso to Section 7(3)(b) when the State Government elects to purchase an undertaking under the provisions of Sub-section (2) of Section 7 then the licence after the purchase, in so far as the State Government was concerned, was to cease to have any further operation, but strictly speaking we are not called upon to determine this question as to why the mention of terminating a licence was made in Clause (1). We have noticed that the power to revoke a licence which apparently included the power to terminate the licence had not been exercised by the State Government. The solo question which fell for determination, therefore, was whether the State had the power to get into possession of the property as they wanted to on the date mentioned by them in their notice, namely, the 3rd of December, 1958, Or whether Sub-section (4) of Section 7 stood in their way.

We have already quoted the provisions of this sub-section and all we need say now is that on the terms of that section it was perfectly clear that a period of two years had to elapse after the notice in writing of an election to purchase had been served on the appellant as we said before, this provision of Sub-section (4)

of Section 7 could have been modified under the powers conferred by Section 10 by the State Government but there was, in our opinion, no such modification. The fact that the State Government wanted to take over the undertaking on the 3rd of December, 1958 or the fact that the State Government in the licence in Clause 12 (1) said that they could terminate the licence did not in our opinion, vary the terms of Sub-section (4) of Section 7 so as to enable the Government to take over an undertaking before the expiry of two years from the date of notice expressing their intention to purchase. The learned Single Judge was of the opinion that the notice which the State Government gave and to which we have already referred did not entitle them to take over the undertaking.

In our opinion the learned Single Judge was right in his view for, as we have shown, the State could only take over the undertaking after a period of two years had elapsed from the date, on which they had given the notice in writing, expressing their intention to purchase the undertaking. If this was all that need have been considered by us in determining this appeal or in determining the relief to which the appellant was to be entitled then obviously we had to say that the appellant was entitled to the relief he claimed but then that was not all, for while exercising its powers under Article 226, which was an exercise of extraordinary powers vested in this Court, this Court always took pains to see whether the petitioner who sought the relief from the Court was worthy of it or not whether he had a clean conduct in respect of the subject-matter of the relief and further whether there were any circumstances on which the relief should be refused, being a discretionary relief. The learned Single Judge refused to give the relief to this petitioner on the ground that the period of two years had already elapsed from the moment when the Government served the notice on the appellant exercising their option to purchase.

11. On a scrutiny of the materials on the record we find that the appellant had not been ready to deliver the goods, so to speak, which it was bound to under the terms of its licence. There was on the brief of this case an affidavit which showed that the appellant-company was in embarrassed circumstances and was unable to meet all the demand for electricity which had been made from it from time to time by the consumers and prospective consumers. These were circumstances in our opinion, which could justly enter into the picture on which the Court could determine whether or not relief asked for was to be granted. After giving our very anxious consideration to all the circumstances we were of the opinion that it would not be just and proper to grant any relief to the appellant to whom relief had been refused by the learned Single Judge.

12. Mr. Jagdish Swarup attempted to argue certain questions which were not argued before the learned Single Judge and which, in our view, could not materially affect the decision inasmuch as the appellant was refused relief by the learned Single Judge in his discretion and we were in agreement with the learned Single Judge for the reasons given by him, and also for the additional reasons appearing on the record that that relief should have been refused.

13. We accordingly dismiss this appeal but in the circumstances of the case direct the parties to bear their own costs.