

(1979) 06 CAL CK 0015
In the Calcutta High Court
Case No : Civil Rule No. 8131 (w) of 1975

Patna Electric Supply Co. Ltd. and Another	APPELLANT
Vs	
Bihar State Electricity Board and Others	RESPONDENT

Date of Decision : 11-06-1979

Acts Referred:

Constitution of India, 1950 — Article 19, 31
Electricity Act, 1910 — Section 6(6), 7A, 7A(2)

Citation : AIR 1980 Cal 222 : 84 CWN 35

Hon'ble Judges : Sabyasachi Mukharji, J

Bench : Single Bench

Advocate : A.C. Bhabra, R.N. Bajoria and S.K. Bagaria, D.N. Das and P.K. Ghosh, D.N. Das, B.S. Bagchi and Archana Sen Gupta, for the Appellant; A.G., Bhaskar Gupta and A.K. Banerji, for the Respondent

Judgement

Sabyasachi Mukharji, J.—The question involved in this application under Article 226 of the Constitution, is, whether the petitioner No. 1 is entitled to compensation in accordance with the provisions of the Indian Electricity Act, 1910 for the right of option exercised by the respondents. Originally, in the petition, the petitioners had also challenged the exercise of that option but during the hearing of this application on behalf of the petitioners that challenge was not pressed.

2. This application is by two petitioners, one, being Patna Electric Supply Co. Ltd. and another being a director and shareholder of the said company. In order to appreciate the challenge, it may be necessary to refer to certain facts. It appears that on the 6th Feb. 1924, a licence was granted by the Government of Bihar to M/s. Octavius Steel & Co. Ltd. for the supply of Electrical energy. There was a notification on the 13th Feb. 1924 in respect of grant of the said licence and the said licence was thereafter transferred in favour of the petitioner No. 1. A notice was published by the Government of Bihar relating to certain proposed amendments to be made to the said licence dated 6th Feb. 1924. It is not necessary for the purpose of this application to set out the said amendments.

The petitioner No. 1, however, on the 27th Nov. 1972 objected to the amendments proposed in the notice. On the 5th Jan. 1973 a notice was given by the respondent No. 1 purporting to exercise option to purchase the undertaking of the petitioner No. 1 on the expiration of 50 years from the date of commencement of the said licence and the. petitioner No. 1 was required to deliver possession of the said undertaking at 12 O'clock in between the 5th & 6th Feb. 1974 pending determination and payment of purchase price. It is, therefore, necessary to refer to the relevant section which authorises exercise of such option. Section 6 of the Indian Electricity Act, 1910 permits purchase of the undertaking and for ray present purpose it would be sufficient if I set out Section 6(1) of the Act which reads as follows:

Section 6(1); 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 (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 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". Sub-section (6) of Section 6 provides as follows:

"Section 6(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-section (1) pending the determination and payment of the purchase price."

If an option is exercised, in the manner indicated, u/s 6 then the determination of the purchase price has to be made u/s 7A of the said Act. The said section reads as follows :

"Section 7A(1) Where an undertaking of a licensee not being a local authority, is sold under Sub-section (1) of Section 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-section (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-section (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 license 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 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, but without any addition in respect of compulsory purchase or of goodwill or of any profits 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-section (1) of Section 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 u/s 6, the purchase price shall be the value thereof, as determined in accordance with the provisions of Sub-sections (1) and (2):

Provided that there shall be added to such value such percentage, if any, not exceeding twenty per centum of that value as may be specified in the license on account of compulsory purchase." On the 2nd Feb. 1973, the Government of Bihar sought to amend Clause 10 (1) of the Licence which again is not very relevant for my present purpose. But, on the 2nd Feb. 1974, the Indian Electricity (Bihar Amendment) Ordinance, 1974 was promulgated whereby Sections 5, 6, 7 and 7A of the Indian Electricity Act, 1910 were amended and/or substituted. It may, in this connection, be relevant to refer to the amended provisions of Section 6 of the said Act which was done by Section 3 of the Ordinance. The said provision reads as follows:

"3. Substitution of new section for Section 6 of Act IX of 1910 -- For Section 6 of the said Act, the following section shall be substituted, namely;--

6. Purchase of undertakings: (1) Where a license has been granted to any person, the State Electricity Board shall, on the expiration of the period for which the licence may be presently valid on the date the Indian Electricity (Bihar Amendment) Ordinance, 1974 comes into force, or on the expiry of subsequent period, not exceeding three years, have the option of purchasing the undertaking and such option shall be exercised by the State Electricity Board serving upon licensee a notice in writing of not less than six months requiring the licensee to sell the undertaking on the expiry of the relevant period referred to in this sub-section.

(2) If the State Electricity Board intend? to exercise the option of purchasing the undertaking under this section, it shall send an intimation in writing of such

intention to the State Government at least one year before the expiry of the relevant period referred to in subsection (1) and if no such intimation as aforesaid is received by the State Government the State Electricity Board shall be deemed to have elected not to purchase the undertaking.

(3) Where the State Electricity Board has not elected to purchase the undertaking, the State Government shall have the like option to be exercised in the like manner of purchasing the undertaking.

(4) 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 or the State Government as the case may be, on the expiration of the relevant period referred to in Sub-section (1) pending the determination and payment of the amount referred to in Sub-section (5) of this section.

(5) Where an undertaking is purchased under this section the purchaser shall pay to the licensee an amount, determined in accordance with the provisions of Sub-sections (1) and (2) of Section 7A". Section 5 which amended Section 7A of the said Act is also material and it reads as follows:

"5. Substitution of new section for Section 7A of Act IX of 1910 -- For Section 7A of the said Act, the following section shall be substituted, namely:--

A. Determination of amount payable-(1) Where an undertaking of a licensee is sold under Sub-section (1) of Section 5 or purchased u/s 6, the amount payable for the undertaking shall be the book value of the undertaking at the time of purchase or where the undertaking has been delivered before the purchase under Sub-section (3) of Section 5, at the time of delivery of the undertaking.

(2) The book value of an undertaking for the purpose of Sub-section (1) shall be deemed to be the depreciated book value as determined under the provisions of the Fourth Schedule to the Electricity (Supply) Act, 1948 (Act 54 of 1948) of all lands, buildings, works for the purpose of the undertaking other than (i) a generating station declared in the license as 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 the consumer, but without any addition in respect of compulsory purchase or of goodwill or any profits which may be or might have been made from the undertaking or of any similar consideration.

(3) Notwithstanding anything contained in any license or any instrument, order, agreement or law for the time being in force in respect of any additional sum by whatever name it may be called, payable to licensee for compulsory purchase, the licensee shall be entitled only to a solatium of ten per centum of the book value as determined under Sub-sections (1) and (2) for purchase of his undertaking.

(4) No provision of any Act for the time being in force including the other

provisions of this Act and of any rules made thereunder or of any instrument including license having effect by virtue of any of such Acts or any rule made thereunder, shall, in so far as it is inconsistent with any of the provisions of this section, have any effect".

The effect of the said amendment was that instead of market price of the undertaking, certain depreciated book value computed in the manner indicated in the section for the purchase was to be paid in case option was exercised under the Act.

3. On the 5th-6th Feb. 1974 the possession of the undertaking was taken by the respondent No. 1, which is the Bihar State Electricity Board. On the 5th Feb. 1974 by a letter the respondent No. 1 recorded that they had taken over possession of the said undertaking at 12 O'clock in the night between 5/6th Feb. 1974. On the 27th Feb. 1974 a letter was written by the petitioner No. 1 to the respondent No. 1 asking for ad hoc or interim payment without prejudice to the rights and contentions of the parties. There were further letters written by the petitioner No. 1 to the respondent No. 1 for certain interim payments. It is not necessary for the purpose of this application to refer to all these letters. On the 2nd April, 1974 the respondent No. 1 paid to the petitioner No. 2 a sum of Rs. 36 laks on account of ad hoc or interim payment without prejudice to the respective rights and contentions of the parties. The petitioner No. 1 wrote again on the 9th April, 1974 to the respondent No. 1 asking for further ad hoc or interim payment. Thereafter the Indian Electricity (Bihar Second Amendment) Ordinance, 1974 was promulgated replacing the first ordinance and it is not necessary for my present purpose to refer to the said Ordinance. On the 22nd July, 1974 Indian Electricity (Bihar Third Amendment) Ordinance, 1974 was issued to which it is also not necessary for my present purpose to refer. The petitioner, however, states that the Supreme Court in the case of The Godhra Electricity Co. Ltd. and Another Vs. The State of Gujarat and Another, , had declared on or about the 12th Sept. 1974 that the Section 6(6) of the said Act was ultra vires the Constitution. It is also not necessary for me to refer to this aspect if the matter for the present application. By a letter written on the 20th Sept. 1974 the petitioner No. 1 demanded from the respondent No. 1 the market value of the undertaking as on the 6th Feb, 1974. The petitioner contends that the said market value of the undertaking in terms of Section 7A of the Indian Electricity Act, 1910 would come to about Rs. 7 crores. I am, however, not concerned in this application with the actual amount of the market value of the undertaking. On behalf of the petitioners, their lawyers wrote on the 20th Dec. 1974 to the respondents Nos. 1 & 2 demanding payment of the said market value or delivery back of the said undertaking to the petitioners. On the 15th January, 1975 the Indian Electricity (Bihar Amendment) Act, 1974 was enacted replacing the Third Ordinance. On the 1st Feb. 1975 the respondent No. 1 wrote to the lawyers for the petitioners that they were arranging for payment of the amount legally payable for the undertaking under the provisions of the Indian Electricity Act, 1910. On the 19th March, 1975, this application under Article 226 of the

Constitution was moved and a rule nisi was obtained. On the 19th Feb. 1976 the Indian Electricity (Bihar Amendment) Act, 1976 was enacted.

4. It is necessary to refer to certain provisions of the said Act. Section 2 of the said Act provides, inter alia, as follows;

"2. Amendment of Section 6 of Act IX of 1910 -- In Section 6 of the Indian Electricity Act, 1910 (Act IX of 1910) as substituted by the Indian Electricity (Bihar Amendment) Act, 1974 (Bihar Act XV of 1975)-

(i) to Sub-section (4) the following proviso shall be added, namely:--

"Provided that -- (a) the State Electricity Board or the State Government, as the case may be, shall pay or tender payment of the amount referred to in Sub-section (5) of this section as soon as the amount has been determined, together with interest on such amount from the date of purchase to the date of payment or tender of payment as aforesaid at the rate of one per centum above the average of the Reserve Bank rates between the date of delivery of the undertaking and the dates of payment : (b) the receipt of the licensee shall notwithstanding anything in any other law be a full and sufficient discharge to the State Electricity Board or the State Government as the case may be, for the payment of dues in respect of the purchase".

(ii) after Sub-section (5), the following sub-section shall be added, namely :--

"(6) where a notice exercising the option of purchasing the undertaking has been served upon the licensee before the commencement of the Indian Electricity (Bihar Amendment) Act, 1974 (Bihar Act XV of 1975) and the undertaking has been purchased thereafter, the amount payable to the licensee on account of the purchase of the undertaking shall be determined in accordance with the provisions of Section 7A of the Indian Electricity Act, 1910 as substituted by the Indian Electricity (Bihar Amendment) Act, 1974 (Bihar Act XV of 1975) as if the last mentioned Act was then in force and it shall be deemed to have been always in force."

Subsequently the petitioner made an application under Article 226 of the Constitution incorporating the challenge to the said amended Act.

5. As I have mentioned before, initially the petitioner had challenged the exercise of the option under the Act and alternatively had claimed the payment of compensation under provisions of Section 6(6) of the Indian Electricity Act, 1910 read with the provisions of Section 7A of the said Act. Before me, the other aspect of the matter was not pressed. I am, therefore, concerned only with the question whether the petitioner is entitled to payment of compensation in terms of Section 6(6) read with Section 7A of the Indian Electricity Act, 1910 or not.

6. Before me, it was not disputed on behalf of the respondents that the petitioners were entitled to payment of compensation. The only question, however, is, whether the petitioners are entitled to compensation on the basis of

Section 6(6) of the Indian Electricity Act, 1910 read with Section 7A of the said Act or on the basis of the compensation provided under the Indian Electricity (Bihar Amendment) Ordinance, 1974 read with the provisions of the Indian Electricity (Bihar Amendment) Act, 1975.

7. On the question whether the State Electricity Board is State in terms of Article 12 which is amenable to jurisdiction of the Court under Article 226 of the Constitution, reliance was placed on the observation of the Supreme Court in the case of Rajasthan State Electricity Board, Jaipur Vs. Mohan Lal and Others, and also in the case of Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, . This proposition was, however, not disputed on behalf of the respondents before me.

8. It is also not disputed that where the option was exercised u/s 6(8) of the Indian Electricity Act, 1910 it was not a case of compulsory acquisition, or compulsory purchase. For this purpose reliance was placed on the observations of the Supreme Court in the case of The Fazilka Electric Supply Co. Ltd. Vs. The Commissioner of Income Tax, Delhi, , On behalf of the petitioners it was urged that the rights of the parties had to be worked out on the basis of the position when the option was exercised. Reliance was placed on the observations of the Supreme Court in the case of The Gujarat Electricity Board Vs. Shantilal R. Desai, . There, the Supreme Court observed that the exercise of option to purchase as well as electing to purchase were parts of one integral process and not two independent steps and the rights of the parties were to be worked out on the basis when the option was exercised.

9. The main question, as I have mentioned hereinbefore, is the question as to on what basis the petitioners are entitled to be paid compensation. Sub-section (2) of Section 7A of the Indian Electricity Act states when an undertaking was taken over pursuant to the option exercised u/s 6(6), purchase price for the undertaking had to be paid on the basis of the market value and Sub-section (2) of Section 7A provides how the market value was to be computed. I have set out hereinbefore the provisions of the said section which provides that the market value of an undertaking 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 a generating station declared by the licensee not to form a part of the undertaking for the purpose of purchase and service lines or other capital works or any part thereof which have been constructed at the expense of consumers. Excepting these items, all other items would have to be taken account of having due regard to the nature and condition at 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 undertaking, but without any addition In respect of compulsory

purchase or of goodwill or of any profits which may be or might have been made from the undertaking or of any similar consideration. But, as I have indicated before, under the first Ordinance this basis was changed and for the purchase of the undertaking, determination of the value has been provided for in the substituted Section 5 of the first Ordinance which provides that the amount payable for the undertaking shall be the book value of the undertaking at the time of purchase Or where the undertaking has been delivered before the purchase under Sub-section (3) of Section 5, at the time of delivery of the undertaking. Then Sub-section (2) of the said section provides the book value of an undertaking for the purpose of Sub-section (1) shall be deemed to be the depreciated book value as determined under the provisions of the Fourth Schedule to the Electricity (Supply) Act, 1948.

10. On behalf of the petitioners it was contended that the right which the petitioners had accrued was being denied to them when there were being acquired for public purpose of that right (sic) because if that right was to be acquired for public purpose then there should have been certain provisions for compensation and in this connection it was urged that the deprivation of the right to get the market value on the basis of Section 7A, as I have indicated before, of the Indian Electricity Act, 1910, was in violation of Article 31(2) of the Constitution which provided that no property should be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provided for compensation for the property so acquired or requisitioned and the amount which would be fixed for such compensation should have been determined in accordance with such principle or to be given in such manner as might be specified in such law and no such law can be called in question in any court on the ground that the amount so fixed or determined was inadequate for the whole or part of it. In this connection my attention was also drawn to Clause (2A) of Article 31 of the Constitution which provides that where a law does not provide for the transfer of the ownership or right to possession of any property to the State or to a corporation owned or controlled by the State, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of his property. In this connection reliance was also placed on Article 19 of the Constitution. The petitioners mainly relied in support of their claim on the observations of the Supreme Court in the case of Madan Mohan Pathak and Another Vs. Union of India (UOI) and Others, . There, the facts were that there was a settlement between the parties, being the employees of the Life Insurance Corporation and the Life Insurance Corporation itself on the payment of bonus and pursuant thereto the bonus was claimed by the petitioners in that case. Thereafter as the Life Insurance Corporation had failed to pay the bonus, the petitioner moved this High Court and obtained a Writ of Mandamus directing the Life Insurance Corporation to make payment on the basis of settlement and an order to that effect was passed. Thereafter the Parliament enacted the Life Insurance Corporation (Modification & Settlement) Act, 1976. There was an appeal preferred from the decision of the Calcutta High

Court and the decision of the learned single Judge referred to hereinbefore. But the said appeal, however, was not pressed and no order was passed. The result was that the decision of the learned single Judge of the Calcutta High Court remained. The Life Insurance Corporation, however, refused to pay on the ground of the new Act. This was challenged before the Supreme Court under Article 31 of the Constitution. There, the Supreme Court held that the expression "property" had the same meaning in Article 19(1)(f) and Article 31(1) and Article 31(2) and property meant all kinds of property, tangible and intangible and the rights secured by settlement by employees were property within the meaning of Articles 31(1) and 31(2) of the Constitution and it was further held that the rights of the parties had crystallised in the order of the learned single Judge of the Calcutta High Court which remained unaffected as the Act which (sic) did not affect the decision. In paras 23, 24 & 27 of the judgment, Mr. Justice Bhagwati had given the relevant facts relating to this aspect of the matter which may be relevant to set out in order to appreciate that observations made in Para. 38 of the judgment:

"23. There were two grounds on which the constitutionality of the impugned Act was assailed on behalf of the petitioners and they were as follows:

A. The right of Class II and Class IV employees to annual cash bonus for the years 1st April, 1975 to 31st March, 1977 under Clause 8 (ii) of the Settlement was property and since the impugned Act provided for compulsory acquisition of this property without payment of compensation, the impugned Act was violative of Article 31(2) of the Constitution and was hence null and void.

B. The impugned Act deprived Class III and Class IV employees of the right to annual cash bonus for the years 1st April, 1975 to 31st March, 1976 and 1st April, 1976 to 31st March, 1977 which was vested in them under Clause 8 (ii) of the Settlement and there was, therefore, clear infringement of their fundamental right under Article 19(1)(f) and since this deprivation of the right to annual cash bonus, which was secured under a settlement arrived at as a result of collective bargaining and with full and mature deliberation on the part of the Life Insurance Corporation and the Central Government after taking into account the interests of the policy-holders and the community and with a view to approximating towards the goal of a living wage as envisaged in Article 43 of the Constitution, amounted to an unreasonable restriction, the impugned Act was not saved by Article 19(5) and hence it was liable to be struck down as invalid.

We shall proceed to consider these grounds in the order in which we have set them out, though we may point out that if either ground succeeds, it would be unnecessary to consider the other.

24. But before we proceed further, it would be convenient at this stage to refer to one other contention of the petitioner based on the judgment of the Calcutta High Court in Matter No. 371 of 1976 : (1977 Lab IC NOC 41 (Cal)). The contention was that since the Calcutta High Court had by its judgment dated

21st May, 1976, issued a Writ of Mandamus directing the Life Insurance Corporation to pay annual cash bonus to Class III and Class IV employees for the year 1st April, 1975 to 31st March, 1976 along with their salary for the month of April, 1976 as provided by the Settlement and this judgment had become final by reason of withdrawal of the Letters Patent Appeal preferred against it, the Life Insurance Corporation was bound to obey the Writ of Mandamus and to pay annual cash bonus for the year 1st April, 1975 to 31st March, 1976 in accordance with the terms of Clause 8 (ii) of the settlement. It is, no doubt, true, said the petitioners that the impugned Act, if valid, struck at Clause 8 (ii) of the settlement and rendered it ineffective and without force with effect from 1st April, 1975 but it did not have the effect of absolving the Life Insurance Corporation from its obligation to carry out the Writ of Mandamus. There was according to the petitioners, nothing in the impugned Act which set at naught the effect of the judgment of the Calcutta High Court or the binding character of the Writ of Mandamus issued against the Life Insurance Corporation. This contention of the petitioners requires serious consideration and we are inclined to accept it and there referring to the question of deprivation of right and property the learned Judge observed at page 818 of report as follows:

"This ground raises the question whether the impugned Act is violative of Clause (2) of Article 31. This clause provides safeguards against compulsory acquisition or requisitioning of property by laying down conditions subject to which alone property may be compulsorily acquired or requisitioned and at the date when the impugned Act was enacted, it was in the following terms:

"No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for acquisition or requisitioning of the property for an amount which may be fixed by such law or which may be determined in accordance with such principles and given in such manner as may be specified in such law, and no such law shall be called in question in any Court on the ground that the amount so fixed or determined is not adequate or that the whole or any part of such amount is to be given otherwise than in cash".

Clause (2) in this form was substituted in Article 31 by the Constitution (Twenty-fifth Amendment) Act, 1971 and by this amending Act, Clauses (2-A) and (2-B) were also introduced in Article 31 and they read as follows:

"(2-A) Where a law does not provide for the transfer of the ownership or right to possession of any property to the State or to a Corporation owned or controlled by the State, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of his property,

(2-B) Nothing in Sub-clause (f) of Clause (1) of Article 19 shall affect any such law as is referred to in Clause (2)".

The argument of the petitioners was that the right of Class III and Class IV

employees to "annual cash bonus" for the years 1st April, 1975 to 31st March, 1976 and 1st April 1976 to 31st March, 1977 under the settlement was property and since the impugned Act provided for transfer of the ownership of this right to the Life Insurance Corporation which was "State" within the meaning of Article 12, it was a law providing for compulsory acquisition of property as contemplated under Clause (2-A) of Article 31 and it was, therefore, required to meet the challenge of Article 31, Clause (2). The compulsory acquisition of the right to "annual cash bonus" sought to be effectuated by the impugned Act, said the petitioners, was not supported by public purpose nor did the impugned Act provide for payment of any compensation for the same and hence the impugned Act was void as contravening Clause (2) of Article 31." and there Mr. Justice Bhagwati observed at page 827 of the report as follows -

***** "38. In the light of this discussion, the conclusion is inevitable that the direct effect of the impugned Act was to transfer ownership of the debts due and owing to Class III and Class IV employees in respect of annual cash bonus to the Life Insurance Corporation and since the Life Insurance Corporation is a corporation owned by the State, the impugned Act was a law providing for compulsory acquisition of these debts by the State within the meaning of Clause (2A) of Article 31. If that be so, the impugned Act must be held to be violative of Article 31, Clause (2) since it did not provide for payment of any compensation at all for the compulsory acquisition of these debts." On this aspect the majority of the learned Judges agreed with the aforesaid (sic) as Article 31(2) of the Constitution.

11. At one point of time, I thought that by the amended provisions, there has been substitution of a different principle for determination of the debt which has accrued, that is to say, the debt to pay the market value. Section 7A of the Indian Electricity Act, 1910 had provided for a method of computation of that debt but the new Act had provided a different method. But on a closer examination it appears that by the amending Act, the right to get the market value is being taken away without compensation for the deprivation of that right or by providing any principle for determination of compensation on that account. The price that has been provided in the amended provision for the undertaking was not for the deprivation of the right to get the market value u/s 7A(2) of Indian Electricity Act 1910 which right had crystallised on the exercise of the option at the time when the option was exercised in terms of Section 6(6) read with Section 7A of the Indian Electricity Act. In that view of the matter, the provision of the said Act in so far as it sought to interfere with the petitioners' right to get the market value as computed u/s 7A was in violation of the provisions of Article 31 of the Constitution and would necessarily be an unreasonable restriction and would be in violation of Article 19 of the Constitution. Reliance may also be as (sic) (placed on?) the observation of the Supreme Court in the case of Maharana Shri Jayvantsinghji Ranmalsinghji etc. Vs. The State of Gujarat, .

12. Furthermore, on behalf of the petitioners it was urged that Sub-section (6) of Section 2 of the Indian Electricity (Bihar Amendment) Act, 1975 could only come into operation where the notice of exercising the option of purchasing the undertaking had been served upon the licensee before the commencement of the Indian Electricity (Bihar Amendment) Act, 1974. The right of option, as I have mentioned hereinbefore, was exercised before that date. Strictly speaking, Sub-section (6) of Section 2 of the said Act would not apply to the present exercise of the option but I need not express any definite view on this aspect in the view I have taken in this matter.

13. On the ratio of the last two mentioned (cases) of the Supreme Court I hold that the Indian Electricity (Bihar Amendment) Ordinance 1974 in so far as it alters the basis of compensation to be paid u/s 7A of the Indian Electricity Act, 1910 is void and bad and unenforceable. I, therefore, direct the respondents to pay the purchase price of the said undertaking to the petitioner No. 1 in accordance with the provisions of Section 7A of the Act, as it stood at the relevant time, ignoring the provisions of Indian Electricity (Bihar Amendment) Ordinance, 1974 and the subsequent Ordinance as well as the provisions of the Indian Electricity (Bihar Amendment) Act, 1974. As the matter has been pending for a long time, I therefore direct the respondent authorities should compute such market value in accordance with the aforesaid direction within a period of four months from this date and to pay the petitioners within eight weeks thereafter,

14. The Rule is made absolute to the extent indicated above. There will be no order as to costs.

15. Stay asked for is refused.