

(1987) 09 CAL CK 0023

In the Calcutta High Court

Case No : A.F.O.O. No. 6 of 1983 and Matter No. 1681 of 1981

U.P. State Electricity Board

APPELLANT

Vs

Upper Jumna Valley Electricity Supply Co. Ltd. and Others

RESPONDENT

Date of Decision : 17-09-1987

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 31
Electricity (Supply) Act, 1948 — Section 6(1)
Electricity Act, 1910 — Section 6, 7

Citation : AIR 1988 Cal 336

Hon'ble Judges : Shyamal Kumar Sen, J; Dipak Kumar Sen, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

This Judgment has been overruled by : U.P. State Electricity Board Vs. Banaras Electric Light and Power Co. Ltd., (2001) 7 AD 104 : AIR 2001 SC 3687 : AIR 2001 SC 2727 : (2001) 7 JT 116 : (2001) 6 JT 501 : (2001) 5 SCALE 539 : (2001) 5 SCALE 325 : (2001) 7 SCC 637 : (2001) 7 SCC 117 : (2001) AIRSCW 3465 : (2001) AIRSCW 2984 : (2001) 6 Supreme 190 : (2001) 6 Supreme 582

Dipak Kumar Sen, J.—The material facts and proceedings leading up this appeal are, inter alia, that the Government of United Provinces of Agra and Oudh, the predecessor of the present Government of Uttar Pradesh granted a licence under the Indian Electricity Act, 1910, dt the 28th June 1929, for generation and distribution of electricity in the districts of Saharanpur, Muzaffarnagar and Meerat in the then province of Uttar Pradesh in favour of one Martin & Co. The said Martin & Co. assigned the said licence in favour of Upper Jumna Valley Electricity Co. Ltd. the respondent No. 1 herein, whereupon the latter became a licensee within the meaning of the said Act of 1910.

2. Under Clause 12(1) of the said Licence an option was conferred on the State Government to purchase the electricity undertakings of the licensee after the expiry of 35 years from the commencement of the licence and also on the

expiration of every subsequent period of 20 years during the subsistence of the licence on one year's notice and upon payment of the market value thereof at that time.

3. The respondent 1 set up its undertakings at Saharanpur, Muzaffarnagar, and Meerat for supply and distribution of electricity in the specified areas and had been supplying and distributing electricity in terms of the said licence till the midnight of the 27th/28th June, 1964.

4. On the 1st April 1959, the U.P. State Electricity Board the appellant was constituted u/s 5 of the Electricity Supply Act of 1948 (hereafter referred to as the said Act of 1948).

5. The right or option to purchase the undertakings of the respondent No. 1 vested in the appellant u/s 6(1) of the Act of 1910 after the constitution of the appellant.

6. On the 30th Nov. 1962, the appellant issued a notice to the respondent 1 u/s 6(1) of the Act of 1910 requiring the respondent 1 to sell its undertakings to the appellant with effect from the date of the expiration of 35 years computed from the commencement of the said licence dated the 28th June 1929. The said period expired on the midnight of the 27th/28th June 1964. "

7. At the midnight of the 27th/28th June 1964, possession of the said undertakings was taken over by the appellant and a sum of Rs. 9,36,868.86 p. was paid by the appellant to the respondent No. 1.

8. The respondent No. 1 valued its said undertakings including solatium payable u/s 7A(4) of the said Act of 1910 at Rs. 91,40,480.79 p. and claimed the same from the appellant under Sub-sections (1) and (2) of Section 7A of the said Act of 1910. The said claim of the respondent No. 1 was not accepted by the appellant. Disputes and differences, between the appellant and the respondent 1 on the amount payable for the taking over of the said undertakings were referred to arbitration as provided in Section 7A(1) of the said Act of 1910.

9. Both the appellant and the respondent No. 1 appointed their respective arbitrator who entered into the reference. The arbitrators appointed a former Judge of the Allahabad High Court as the Umpire. On the 5th July 1972 there was a difference of opinion between the arbitrators. The respondent No. 1 called upon the Umpire to enter into the reference. The Umpire duly entered into the reference and issued notices to the parties to appear before him on the 12th Nov. 1972 and thereafter on the 22nd Nov. 1972. The appellant who did not appear before the Umpire moved the Civil Judge, Lucknow and obtained an interim injunction restraining the Umpire from proceeding with the arbitration.

10. The said application of the appellant was ultimately dismissed by the Additional Civil Judge (Small Cause Court) Lucknow on the 14th Feb. 1974. The appellant, thereupon, moved in revision before the District Judge, Lucknow, against the said order of dismissal.

11. Thereafter a number of Ordinances and Acts were promulgated by "the Government of Uttar Pradesh by which the said Act of 1910 were amended. The relevant provisions of the said Ordinances and Acts are noted hereafter.

12. On the 26th Feb. 1975 the revision application of the appellant against the order of the Additional Civil Judge. Lucknow, was dismissed.

13. Thereafter on the 29th Mar. 1976 the State of Uttar Pradesh, the respondent No. 4 appointed one J. P. Mittal, a retired Chief Engineer of the Irrigation Department of the Government of Uttar Pradesh as the Special Officer under the provisions of the amended Acts for determination of the value of the undertakings. J. P. Mittal, however, refused to take up the assignment and ultimately on the 12th April 1978 the respondent No. 4 appointed one Sher Singh the then Chief Electrical Inspector to the Government of Uttar Pradesh as the Special Officer and proceedings were had before the Special Officer in which the respondent No. 1 participated under protest.

14. On the 20th June 1979 the Constitution (44th Amendment) Act came into effect. u/s 7 of the said Amendment Act, Articles 31 and 19(1)(f) were deleted from the Constitution.

15. On the 4th Mar. 1980 one U.P. Electricity Supply Co. Ltd. moved this Court under Article 226 of the Constitution challenging the vires of the said Amendments and Validation Ordinances and Acts resulting in the Amendment of the said Act of 1910. The respondent 1 was a party to the said proceedings. A Rule was issued by this Court in the said matter and leave was given to the respondent 1 to participate in the proceedings before the Special Officer without prejudice to its rights and contentions.

16. Between the 19th and the 24th June 1980 the Special Officer held several sittings at Calcutta for determination of the valuation of the said undertakings of the respondent No. 1 and on the 13th July 1981 the Special Officer assessed the value of the undertakings of the respondent No. 1 at Rs. 9,32,126/- as payable by the appellant to the respondent No. 1 including 10% solatium and interest up to the 13th July 1981 under the said Amendment and Validation Acts.

17. On the 22nd Sept. 1981, the writ petition out of which this appeal arises was filed by the respondents I, 2 and 3 in this Court against the appellant, the State of Uttar Pradesh, the respondent 4 and the Special Officer the respondent No. 5 herein for, inter alia.

(a) A declaration that the Amendment and Validation Ordinances and Acts of 1975 and 1976 did not apply to the respondent 1 and were unconstitutional, void and of no effect.

(b) A writ or an order in the nature of mandamus commanding the Special Officer, to amend or rectify his determination or assessment of valuation dt. 13th July 1981.

(c) A writ or an order in the nature of certiorari directing the Special Officer to produce before this Court the records relating to his determination or assessment dt. 13th July 1981 and all communications made pursuant thereto so that the same may be quashed as void, illegal, of no effect and not binding.

18. It was contended in the writ petition, inter alia, that the said Amendment and Validation Ordinances and Acts of 1976 had no application to the undertakings of the respondent 1. In the case of the respondent 1 the notice exercising the option to purchase was given long before the said Amending and Validating Ordinances and Acts came into existence.

19. If it was held that the Amendment and Validation Ordinances and Acts of 1975 and 1976 were applicable in respect of the taking over of the said undertakings of the respondent 1 the same should be held to be ultra vires the Constitution, void and of no effect.

20. It was contended that the said Amendment and Validation Ordinances and Acts were unconstitutional and were violative of the fundamental rights of the writ petitioners guaranteed under Articles 14, 19(i)(f) and (g) and 31 of the Constitution. It was contended that the said Ordinances and Acts had not provided for fair and reasonable compensation and the amount provided to be paid for acquisition of such undertakings was illusory and arbitrary and ultra vires Article 31, 21 of the Constitution.

21. It was contended that the said Act of 1910, as it stood originally, provided that on taking over of an undertaking purchase price would be paid on the basis of market value and solatium.

22. Under the said Amendment and Validation Ordinance and Acts the basis of determination of the value of the undertaking had been changed providing for payment of only depreciated book value of the assets of the undertaking at the time of the purchase, which would be arbitrary and illusory.

23. It was contended that the option to take over the undertakings of the respondent No. 1 had been exercised in terms of the said Act of 1910 as it stood prior to the amendments and therefore a right vested in the respondent No. 1 to obtain the market value of its undertakings as computed under the original Act of 1910. The subsequent Amendment and Validation Ordinances and Acts have resulted in interference with such vested right of the respondent 1 in violation of Articles 19 and 31 of the Constitution and also constituted an unreasonable restriction on the respondent 1.

24. It was contended that right of the respondent No. 1 to obtain the market value of its undertakings had become fixed and crystallised under the unamended Act of 1910 and such right could not be abrogated, abridged or defeated. Alteration of the basis of value by the Amendment Ordinances and Acts of 1975 and 1976 resulted in confiscation of such vested rights of respondent 1.

25. The competence of the Special Officer to act as such and the validity of his

appointment were also challenged. The actual determination of the amount payable to the respondent No. 1 under the Amendment and Validation Ordinances and Acts of 1975 and 1976 was also challenged on a number of grounds.

26. On the 25th Nov. 1981, a Rule nisi was issued on the said application.

27. The application was opposed by the appellant and the State of Uttar Pradesh the respondent 4. One Ganga Shankar Awasthi, the Deputy Secretary, Energy Department, Government of Uttar Pradesh, affirmed an affidavit on the 27th Jan. 1982 which was filed in opposition to the writ petition on behalf of the appellant, the respondent No. 4 and the respondent No. 5. The allegations in the petition were denied and the contentions disputed. It was, alleged in this affidavit inter alia that the Special Officer, had sufficient knowledge and experience in accounts and in particular of the accounts of electrical undertakings. It was contended that the Amendment and Validation Ordinances and Acts provided for payment of a fair and reasonable value for the undertakings acquired for public purpose. It was alleged that the price of the undertakings of the respondent 1 had not been determined when the Amendment and Validation Ordinances and Act came into force. It was contended that book value was one of the recognised methods of valuation and the legislature having provided for payment in accordance with such book value it could not be said that the compensation payable was arbitrary or illusory. It was contended that the right of the respondent 1 to obtain the market value and 20% solatium under the said Act of 1910 as it stood prior to the amendments had been taken away by the subsequent Amendment and Validation Ordinances and Acts. The Amendments in the statute provided for reasonable compensation to the owners of electricity undertakings in conformity with the Constitution. The legislature was competent to amend the existing law in the manner it was done.

28. Anil Bandhu Bhattacharya, one of the liquidators of the respondent No. 1 affirmed an affidavit on 8th Feb. 1982 which was filed in reply to the said affidavit of Ganga Shankar Awasthi.

29. One S. N. Agarwal, Executive Engineer, Uttar Pradesh State Electricity Board affirmed an affidavit on the 12th July 1982 which was also filed in opposition to the writ petition. It was, stated in this affidavit that the report of the Special Officer dt. 13th July 1981 was also under challenge by the appellant in a writ petition filed in the High Court of Allahabad. The said Anil Bandhu Bhattacharya has affirmed an affidavit on 13th July 1982 which has been filed in reply to the affidavit of S. N. Agarwal.

30. The writ application was disposed of by a judgment and order passed by the first court on 19th July, 1982.

31. The learned Judge in the first Court noted that a similar question had come up before this Court in the case of the Patna Electricity Supply Co. Ltd. whose undertaking was taken over by the Bihar State Electricity Board. The question in that case was whether the owner of the undertaking was entitled to receive

compensation in terms of Section 7(2) of the said Act of 1910 on the basis of market value of its undertaking or on the basis of the book value of the assets of its undertaking less depreciation under the subsequent amendment effected to the said Act of 1910 under the Bihar Validation Act. The said question was decided by Sabyasachi Mukherji, J. as His Lordship then was, in favour of the owner of the undertaking in Patna Electric Supply Co. Ltd. and Another Vs. Bihar State Electricity Board and Others, . It was also noted that an appeal preferred by the Bihar State Electricity Board against the said judgment was dismissed by the Appeal Court, in Bihar State Electricity Board and Others Vs. Patna Electric Supply Co. Ltd. and Another, .

32. It was held by the learned Judge that the amending provisions of the Bihar Validation Act were in pari materia with the provisions of the U.P. Validation Ordinances and Acts. Following the said decision, the learned Judge allowed the application and directed the Special Officer to determine the compensation payable to the respondent 1 on the date of the taking over in accordance with the provisions" of Section 7A(2) of the unamended Act of 1910 ignoring the provisions of the Amendment and Validation Ordinances and Act. The State of Uttar Pradesh was also directed to reconsider whether the Special Officer appointed had the requisite qualifications as laid down in Sub-section (6) of Section 7A of the Act of 1910 as amended by the Validation Acts and in particular whether the Special Officer had adequate knowledge and experience in matters relating to accounts. If it was found that the Special Officer appointed lacked such experience the State of Uttar Pradesh was directed to take steps to appoint another Special Officer. The Rule was made absolute to the extent as aforesaid.

33. The present appeal is from the said judgment and order dt. 19th July 1982.

34. At the hearing before us, learned Advocate for the appellant drew our attention to the relevant provisions of the Statutes and Ordinances involved which are noted as hereafter:

Indian Electricity Act, 1910 :

Section 6. (1) Where a licence has been granted to any person, not being a local authority, the State Electricity board shall,--

(a) in the case of a licence granted before the commencement of the Indian Electricity (Amendment) Act, 1959 (32 of 1959), on the expiration of each such period as is specified in the licence;

(b)

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.....

(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.

(7) Where an undertaking is purchased under this section, the purchaser shall pay to the licensee the purchase price determined in accordance with the provisions of Sub-section (4) of Section 7A."

Section 7-A(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 : (1) a generating station declared by the licence 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 land, 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."

(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 cent of that value as may be specified in the licence on account of compulsory purchase."

The Electricity (Supply) Act, 1948 : Section 2. Interpretation.-- In this Act, unless there is anything repugnant in the subject or context.-

Section 23, Loans by Board to licensees,--

(1)

(2) The Board in the discharge of its functions may call upon a licensee to expand his undertaking and of fer to advance to him a loan on such terms and conditions as it may deem proper for such expansion, and if the licensee refuses,

fails or neglects to accept the loan from the Board on the terms and conditions offered or to raise a loan from , other sources or to employ his own funds..... for purposes of such expansion and to carry out such expansion, the Board may, after giving the licensee six months notice in writing purchase his undertaking."

Section 37 : Purchase of generating stations or undertakings or main transmission lines by the Board-- (1) Where under the Firstor Third Schedule any generating station or undertaking is to be purchased by the Board.....

(a) the generating station of undertaking from such date of purchase as may be fixed under the appropriate Schedule, or the main transmission line from such date of purchase as the Board shall, by notice in writing given not less than one month before the said date, intimate to the licensee, shall vest in the Board free, save as provided in Sub-section (2), from any debt, mortgage, lien or other similar obligation of the licensee or attaching to the station or undertaking or line, as the case may be, and any such debt, mortgage, lien or obligation shall, save as aforesaid, attach to the purchase-money in substitution of the station or undertaking or line.....

(b) without prejudice to the provisions of Section 47, the Board shall pay, or tender payment of, the price to be determined in accordance with the Fourth Schedule as soon as the amount thereof 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 over the average of the Reserve Bank rates between the said dates;

The Fourth Schedule :

Price for Undertakings, Generating Stations and Main Transmission Lines purchased by the Board.

I.

II. The price to be paid for any undertaking, generating Station or main transmission line as the case may be purchased by the Board under this Act shall be such sum as may be certified by an auditor appointed by the State Government in this behalf to have been the amount properly incurred on and incidental to the establishment of the undertaking, station or main transmission line, as the case may be, less depreciation thereon calculated in accordance with the provisions of Part VI of the Sixth Schedule.

Provided that there shall be added to such sum as aforesaid on account of such purchase of the generating station or main transmission line such reasonable compensation as may be determined by the Board having due regard to the fact that a portion of the undertaking is to be acquired :

Provided further that if the Board or the licensee is dissatisfied with the sum so certified, the matter shall, in default of agreement between them, be determined by arbitration as provided in Section 76"

Indian Electricity Rules. 1956 :

Rule 26. Preparations and submission of accounts.-- (1) Every licensee unless exempted u/s 11. shall cause the accounts of his undertaking to be made up to the thirty-first day of March each year.

(2) Such licensee shall prepare and render an annual statement of his accounts in accordance with the provisions of Section 11 within a period of six months from the aforesaid date, or such extended period as the State Government may authorise after it is satisfied that the time allowed is insufficient owing to any cause beyond the control of the licensee; and the statement shall be rendered in quadruplicate if the State Government desires.

(3) The accounts shall be made up in the prescribed forms set out in Annexures IV and V and shall be rendered in Indian currency."

35. Learned Advocate for the appellant drew our attention in particular to the forms of statement in Annexure V of the said Rules which required the licensee to show the written-down cost of fixed assets which were retired on account of obsolescence, inadequacy, superfluity, etc. as also the form of the statement for provision of depreciation and the form of the general balance sheet.

36. Learned Advocate also drew our attention to the Amendment and Validation Acts promulgated by the State of Uttar Pradesh as follows : --

The Indian Electricity (Uttar Pradesh Amendment and Validation) Ordinance, 1975

Section 3. In Section 6 of the principal Act, sub-sections (6) and (7) are hereby repealed with effect from Sept. 5, 1959, and are re-enacted and shall be deemed to have been re-enacted with effect from the same date as follows. namely : --

(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 (i) pending the determination and payment of the amount referred to in Sub-section (7).

Provided that the licensee shall, in addition to the said amount, be entitled to interest thereon at the Reserve Bank rate ruling at the time of delivery of the undertaking plus one percentum for the period from the date of delivery of the undertaking to the date of payment of said amounts.

(7) Where an undertaking is purchased under this section, the purchaser shall pay to the licensee an amount determined in accordance with the provisions of Section 7 and Section 7-A as substituted by the Electricity (Uttar Pradesh Amendment and Validation) Ordinance 1975".

Section 5 For Section 7-A of the principal Act, the following sections shall be substituted, namely : --

"7A(1) Where an undertaking of a licensee is sold under Sub-section (1) of Section 5 or is purchased u/s 6, the amount payable therefore shall be determined as hereinafter provided.

(2) The gross amount payable to such license shall be the aggregate value of the amounts specified below : --

(i) the book value of all completed works in beneficial use pertaining to the undertaking and taken over by the State Electricity Board, the State Government or local authority, as the case may be, (excluding works paid for by consumers), less depreciation calculated in accordance with the Sixth Schedule read with the Seventh Schedule to the Electricity (Supply) Act. 1948;

(ii) the book value of all works in progress taken over, excluding works paid for by the consumers or prospective consumers;

(iii) the book value of all stores, including spare parts taken over, and in the case of used stores and spare parts, if taken over, such sum as may be decided upon by the Special Officer referred to in Sub-section (6) (hereinafter referred to as the Special Officer);

(iv) the book value of all other fixed assets in use on the date of vesting u/s 7, hereinafter referred to as the vesting date, and taken over, less depreciation calculated in accordance with the said Schedules;

(v) the book value of all plants and equipments existing on the vesting date, if taken over but no longer in use owing to wear and tear or to obsolescence, to the extent such value has not been written off in the books of the licensee, less depreciation calculated in accordance with the said Schedules;

Explanation -- The book value of any fixed asset means its original cost, and shall comprise --

(i) The purchase price paid by the licensee for the asset, including the cost of delivery and all charges properly incurred in erecting and bringing the asset into beneficial use as shown in the books of the undertakings;

(ii) the cost of supervision actually incurred but not exceeding fifteen per cent of the amount referred to in para (i) :

Provided that before deciding the amount under this sub-section, the licensee shall be given an opportunity by the Special Officer of being heard, after giving him a notice of at least 15 days therefor.

(3) A sum equal to 10 per cent of the amounts assessed under els. (i) to (iv) of Sub-section (2) shall be paid to the licensee in respect of compulsory purchase u/s 6.

Provided that before deciding the book value of any such asset the licensee shall be given an opportunity by the Special Officer of being heard, after giving him a notice of at least 15 days therefor.

(5) The purchaser shall be entitled to deduct the following sums from the gross amount payable under the foregoing sub-section to a licensee -

(a) the amount, if any, already in advance;

(b) where the purchaser is the State Electricity Board the amount due, if any, including interest thereon, from the licensee to the Board, for energy supplied by the Board before the vesting date;

(c) all amounts and arrears of interest, if any, thereon due from the licensee to the State Govt. or the State Electricity Board.

(d) the amount, if any, equivalent to the loss sustained by the purchaser by reason of any property or rights belonging to the undertaking not having been handed over to the purchaser, the amount of such loss being deemed to be the amount by which the market value of such property or rights exceeds the amount payable therefore under this section, together with any income which might have been realised by the purchaser, if the property or rights had been handed over on the vesting date;

(e) the amount of all loans due from the licensee to any corporation as defined in the Uttar Pradesh Public Moneys (Recovery of Dues) Act, 1972 and arrears of interest, if any, thereon;

(f) all sums paid by the 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 purchaser, less than amounts which according to the books of the licensee are due from the respective consumers to the licensee for energy supplied by him before that date;

(g) all advances from consumers and prospective consumers and sums which have been or ought to be set aside to the credit of the consumers, in so far as such advance or sums have not been paid over by the licensee to the purchaser;

(h) the amounts remaining in Tariffs and Dividends control, Reserve, contingencies Reserve and the Development Reserve, in so far as such amounts have not been paid over by the licensee to the purchaser.

(6) The State Government shall appoint, by order in writing a person having adequate knowledge and experience in matter relating to accounts, to be Special Officer to assess the net amount payable under this section to the licensee, after making the deductions mentioned in this section."

Section 7. The provisions of this Ordinance shall apply to all licensees in respect of their undertakings sold after Sept. 5, 1959, u/s 5 or Section 6 of the principal Act as amended in its application to Uttar Pradesh and purchase price in respect whereof was not determined prior to the commencement of this Ordinance.

Section 8.(1) Notwithstanding any judgment, decree or order of any court or tribunal to the contrary.

(a) every option of purchase of an electricity undertaking exercised by the Uttar Pradesh State Electricity Board, by serving notice upon a licensee u/s 6 of the Principal Act, and every delivery of an undertaking effected by a licensee to the said Board, in pursuance of such notice at any time after Sept. 5, 1969, and anything done or purporting to have been done and any action taken or purporting to have been taken (including purchase and delivery of every undertaking before the commencement of delivery of an undertaking) before the commencement of this Ordinance, under Sections 6, 7 and 7A of the principal Act shall be deemed to be and always to have been as valid as if the provisions of this Ordinance were in force at all material times, and shall not be called in question in any court or tribunal or before any other authority on the ground that Section 6 of the principal Act did not provide for the payment of any interest on the purchase price for the period from the date of delivery of the undertaking to the date of payment of the amount."

37. The aforesaid sections of the Ordinance were reproduced in toto in the corresponding sections, of the Indian Electricity (Uttar Pradesh Amendment and Validation) Act, 1975.

38. Learned Advocate for the appellant also drew our attention to the relevant provisions of the Amendment Ordinances and Acts passed by the State of Bihar. Under the said legislation by the State of Bihar Section 6 of the Indian Electricity Act, 1910 was substituted as follows : --

6. Purchase of undertakings.-- (1) Where a licence 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 intends 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 Sub-section (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."

(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 :

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)

(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.

(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."

39. The Validation Act passed by the State of Bihar in 1976 provided as follows :

Section 3 "Validation -- Notwithstanding anything contained in any judgment, decree or order of any court, every delivery of an undertaking effected by a licensee to the Bihar State Electricity Board, the Government of Bihar or local authority, as the case may be, after the 2nd Feb. 1974 and before the commencement of this Act shall be deemed to have been exercised or effected, as the case may be, u/s 6 of the Indian Electricity Act, 1910 (Act IX of 1910) as amended by Bihar Act XV of 1975 and this Act, as if the said Section 6 so amended was in force at all material times when the delivery was effected and accordingly every delivery of the undertaking so effected and all things done or actions taken in consequence of such delivery of the undertaking shall be, and shall be deemed always to have been valid and shall not be called in question in any Court or tribunal or before any other authority on the ground that Section 6 of the Bihar Act XV of 1975 did not provide for payment of any interest on the amount payable for the period from the date of delivery of the undertaking to the date or dates of its payment,"

40. Section 7A of the Indian Electricity Act, 1910 was substituted by the Bihar Amendment Act of 1975 as follows :

"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 licence as not to form part of the undertaking for the purposes of purchase, and (ii) service-lines or other capital works or any part thereof which have been constructed at the expense of the consumers, but without any addition in respect of compulsory purchase or of good will 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 licence 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 licence 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."

41. Construing the aforesaid statutory provisions learned Advocate for the appellant submitted that the decision of this Court in *Patna Electric Supply Co. Ltd. and Another Vs. Bihar State Electricity Board and Others*, and the principles laid down therein had no application in the instant case as the amendments to the said Act of 1910 made by the State of Uttar Pradesh were different from the amendments made in the said Act by the State of Bihar. He submitted that under the Amendment and Validation Ordinances and Acts promulgated by the State of Uttar Pradesh, the existing Section 6 of the Act of 1910 was repealed and thereafter a new Section 6 was re-enacted with retrospective effect. If it was contended that rights had accrued to the respondent I under the repealed statute as it stood originally the same were not saved or preserved as the re-enacted section expressly manifested an intention that rights which accrued under the repealed statute would not be preserved. Therefore, u/s 6 of the General Clauses Act the rights, if any, accruing under the repealed statute must be deemed to have been destroyed or taken away. The re-enactment of the provisions of the statute which followed the repeal was coupled with a legal fiction, namely, that the provisions of the Amendment Act would apply to all licensees in respect of their undertakings sold after 5th Sept. 1959 u/s 6 of the statute the purchase price whereof had not been determined prior to the commencement of the Amending Act. The Amending Act further provided that every option to purchase

the electricity undertakings exercised by the appellant and every delivery of such undertaking effected by the licensee to the said Board in pursuance of such notice at any time after 5th Sept. 1959 and anything done or any action taken thereunder must be deemed to be and always to have been valid as if the provisions of the Amendment Act were in force at the material time. Learned Advocate submitted that the Court had to give effect to the said legal fiction and the deeming provisions.

42. Learned Advocate for the appellant next submitted that if it was assumed that the impugned legislation which had a retrospective operation constituted a restriction on the right to property of the respondent No. 1, such restriction was reasonable and would be saved by the operation of Article 19(5) of the Constitution. He submitted that under the amendments effected to the Act of 1910, the notice issued by the appellant to the respondent No. 1 on 30th Nov. 1962 must be deemed to have been issued under the amended statute as the amendment had a retrospective effect. The right to property, if any, of the respondent 1 would be as created by the said notice which must be deemed to have been issued under the amended provisions of the Act of 1910. In view of the retrospective operation of the amended provisions it was not open to the respondent No. 1 to contend that rights other than that created by the amended provisions of the Act of 1910 had come into existence and accrued in favour of the respondent 1.

43. Learned Advocate for the appellant submitted that law stood settled that the legislature was empowered in suitable cases to promulgate laws which had retrospective effect and such law having retrospective effect could not be impugned except on the ground that the same was unreasonable.

44. Construing the relevant provisions of the Electricity Supply Act, 1948 and the Electricity Rules, 1956, learned Advocate for the appellant submitted that a licensee under the said Act of 1910 had to maintain accounts and submit statements of its assets and liabilities, inter alia, on the basis of book-value of the assets of the undertaking subject to depreciation. The book value of such assets was a reasonable basis on which purchase price payable to a licensee on the taking over of his undertaking by the State Government or the State Electricity Board could be determined. It was not, as if, the property of the licensee was being expropriated without any compensation at all.

45. In support of his contentions, learned Advocate for the appellant cited the following decisions :

(a) Rai Ramkrishna and Others Vs. The State of Bihar, .

46. This decision was cited for the following observations made and proposition laid down by the Supreme Court.

"Where the Legislature can make a valid law, it may provide not only for the prospective operation of the material provisions of the said law but it can also

provide for the retrospective operation of the said provisions. Similarly, there is no doubt that the legislative power in question includes the subsidiary or the auxiliary power to validate laws which have been found to be invalid. If a law passed by a legislature is struck down by the Courts as being invalid for one infirmity or another, it would be competent to the appropriate Legislature to cure the said infirmity and pass a validating law so as to make the provisions of the said earlier law effective from the date when it was passed. This position is treated as firmly established since the decision of the Federal Court in the case of AIR 1941 16 (Federal Court) ."

"It is also true that though the Legislature can pass a Law and make its provisions retrospective, it would be relevant to consider the effect of the said retroactive operation of the law both in respect of the legislative competence of the Legislature and the reasonableness of the restrictions imposed by it. In other words, it may be open to a party affected by the provisions of the Act to contend that the retrospective operation of the Act so completely alters the character of the tax imposed by it as to take it outside the limits of the entry which gives the Legislature competence to enact the law; or, U may be open to it to contend in the alternative that the restrictions imposed by the Act are so unreasonable that they should be struck down on the ground that they contravene his fundamental rights guaranteed under Article 19(1) (f) and (g)."

..... "It is conceivable that cases may arise in which the retrospective operation of a taxing or other statute may introduce such an element of unreasonableness that the restrictions imposed by it may be open to serious challenge as unconstitutional; but the test of the length of time covered by the retrospective operation cannot, by itself, necessarily be a decisive test. We may have a statute whose retrospective operation covers a comparatively short period and yet it is possible that the nature of the restriction imposed by it may be of such a character as to introduce a serious infirmity in the retrospective operation. On the other hand, we may get cases where the period covered by the retrospective operation of the statute, though long, will not introduce any such infirmity."

47. (b) Epari Chinna Krishna Moorthy, Proprietor, Epari Chinna Moorthy and Sons, Berhampur, Orissa Vs. State of Orissa, . Under a notification issued u/s 6 of the Orissa Sales Tax Act, 1947, sales tax was exempted on gold ornaments where the manufacturers selling such articles charged separately for the value of the gold and the cost of manufacture. The petitioners before the Supreme Court contended that the persons who caused gold ornaments to be manufactured either by their paid employees or by independent artisans on payment of labour charges and supply of raw materials were also manufacturers entitled to exemption under the notification. The petitioners were initially allowed such exemption by the Government of Orissa but subsequently their sales tax assessments were sought to be reopened. The petitioners successfully moved the Orissa High Court under Article 226 of the Constitution where a Division Bench

accepted the contention of the petitioners.

48. Subsequently, the Legislature of Orissa promulgated an Act called the Orissa Sales Tax Validation Act, 1961. Section 2 of the said Act provided, inter alia, that notwithstanding anything contained in any judgment, decree or order of any court the expression "manufacturer" as contained in the said notification of the Government of Orissa would mean and always would be deemed to have meant a person who manufactured gold ornaments by his own labour or who owned or ran a manufactory for such manufacture for the purpose of business.

49. The validity of the said Act of 1961, was challenged before the Supreme Court by the petitioners. It was contended before the Supreme Court, inter alia, that the exemption already granted under the said notification and the Sales Tax Act could not be taken away retrospectively as the power to grant exemption had been validly exercised by the Government. It was further contended that the provisions of the impugned Act were discriminatory and imposed unreasonable restriction on the fundamental rights of the petitioners thereby contravening Articles 14 and 19(1)(g) of the Constitution.

50. The contentions of the petitioners were rejected by the Supreme Court and it was held that it was the intention of the State Government in issuing this notification to give benefit of exemption only to the persons who manufactured gold ornaments themselves or owned or ran a manufactory for the purpose of their business. It was held further that by the impugned Act, this intention has been made clear and that, in any event, it was open to the State Government to grant or withdraw such exemption, The Legislature was competent to pass the impugned Act retrospectively and the persons who were allowed the benefit of exemption formed a class different from that of the petitioners. There was no violation of Article 14 of the Constitution. The retrospective operation, it was held, was not unreasonable though it might operate harshly in some cases. The retrospective operation did not go back for a long period and, in any event, the petitioners did not come with the case that they had not recovered sales tax from their customers. The restriction imposed by the retrospective operation of, the impugned Act on the fundamental rights of the petitioners under Article 19(1) (g) was reasonable and in the interests of the general public.

51. (c) Krishnamurthi and Co. etc. Vs. State of Madras, . In this case under Entry 47 of the First Schedule to the Madras General Sales Tax Act, 1959, sales tax was imposed on lubricating oils, all kinds of mineral oils (not otherwise provided for in the Act) quenching oils and greases. Subsequent thereto, the Board of Revenue of the State sought to charge sales tax on furnace oil. The dealers of furnace oil moved the High Court under Article 226 of the Constitution successfully and it was held by the High Court that the said entry did not apply to furnace oil which was a non-lubricating mineral oil. Subsequent to the judgment of the High Court, the legislature of the State of Madras promulgated the Madras General Sales Tax (Third Amendment) Act, 1967 which came into force on 5th Jan. 1968. Under the Amending Act, a new Entry No. 47A was introduced in the

first Schedule to the original Act of 1959 whereby sales tax was imposed on all kinds of mineral oils other than those falling under item 47 and not provided for in the Act including furnace oil. Sales tax under the new Entry No. 47A at a prescribed rate was imposed on furnace oil on and from 1st April 1964. It was provided in the amending Act that notwithstanding anything contained in any judgment, decree or order of any court, sales tax levied or collected on sale of items specified under the new Entry 47A could be deemed to have been validly levied or collected in accordance with law as if the new entry had been in force at all material times and all acts and proceedings initiated for levy or collection of such tax was declared to be deemed to have been done or taken in accordance with law.

52. The validity of the amending Act was challenged before the Madras High Court in several writ petitions. The said applications were dismissed in the High Court and appeals were preferred before the Supreme Court.

53. The validity of the Amending Act was impugned before the Supreme Court, inter alia, on the ground that the retrospective operation of the same was violative of Article 19(1)(g) of the Constitution as it constituted an unreasonable restriction on the fundamental rights of the appellants to carry on their business. The Supreme Court rejected the contention of the appellants and held that the impugned provisions of the amending Act did not suffer from any legal infirmity. The Supreme Court observed as follows : --

"Where the legislature can make a valid law, it may provide not only for the prospective operation of the material provisions of the said law, it can also provide for the retrospective operation of the said provisions. The legislative power, in addition, includes the subsidiary or auxiliary power to validate laws which have been found to be invalid. If a law passed by a legislature is struck down by the court as being invalid for one infirmity or another, it would be competent to the appropriate legislature to cure the infirmity and pass a validating law so as to make the provisions of the said earlier law effective from the date when it was passed."

..... "It would thus appear that the amending Act was intended to cure an infirmity as revealed by the Judgment of the High Court and to validate the past levy and collection of tax in respect of all kinds of non-lubricating mineral oils, including furnace oil, with effect from April 1, 1964,"

"The fiscal enactments brought on the statute book in that connection are sometimes challenged by the tax payer in courts of law. The courts then scrutinise the legal provision to decide whether the levy of tax is legally valid or suffers from some infirmity. In case the court comes to the conclusion that the levy of tax is not valid as the legal provision enacted for this purpose does not warrant the levy of tax imposed because of some defect in phraseology or other infirmity, the legislature quite often passes an amending and validating Act. The object of such an enactment is to remove and rectify the defect in phraseology or

lacuna of other nature and to validate the proceedings, including realisation of tax, which have taken place in pursuance of the earlier enactment which has been found by the Court to be vitiated by an infirmity. Such an amending and validating Act in the very nature of things has a retrospective operation. Its aim is to effectuate and carry out the object for which the earlier principal Act had been enacted. Such an amending and validating Act to make "small repairs" is a permissible mode of legislation and is frequently resorted to in fiscal enactments."

54. The contentions of the appellants that during a part of the period for which retrospective operation of the said amending Act have been given, sales tax had not been realised by the appellants from the purchasers and, therefore, the amending Act should be struck down was also rejected by the Supreme Court. It was held that the fact that a dealer was not in a position to pass on sales tax to others could not affect the competence of the legislature to impose the sales tax retrospectively and it was a matter of legislative policy.

55. (d) *Sunder Dass Vs. Ram Prakash*, . In this case, the appellant purchased a building from the Central Government and upon payment of the full purchase price obtained possession thereof. The appellant thereafter instituted a suit to evict a tenant in the said building. The tenant contended that Delhi Rent Control Act, 1958, had come into force prior to the proceedings initiated by the purchaser and he was entitled to protection thereunder. The contention of the tenant was rejected on the ground that the provision of the Delhi Rent Control Act, 1958, did not apply to premises belonging to the Government and as no certificate of sale had been issued to the purchaser, the property, in law, continued to belong to the Government and the tenant was not entitled to the protection of the Rent Control Act. A decree for eviction was passed against the tenant which was affirmed in successive appeals by the Additional District Judge and the High Court. Before the said decree could be executed, the Delhi Rent Control Act, 1958 was amended. By the amendment it was provided that where any premises belonging to the Government had been lawfully let out to any person by virtue of an agreement with the Government or otherwise, then notwithstanding any judgment, decree or order of any court or any competent authority, the provisions of the Delhi Rent Control Act would apply to such a tenancy. The said amendment was given retrospective effect from the time of the enactment of the principal Act.

56. When the appellant sought to execute the decree, the tenant contended that by reason of the retrospective amendment of the Delhi Rent Control Act, a decree for eviction had become null, void, without jurisdiction and was not executable. The contention of the tenant was rejected by the executing Court. The decision of the executing Court was upheld by the first Appellate Court but on appeal, the High Court accepted the contention of the tenant. On further appeal before the Supreme Court, the decision of the High Court was affirmed. It was held by the Supreme Court that the legal fiction created by the retrospective operation of the statute the amended section of the Delhi Rent Control Act, 1958

must be held to form part of the said statute from the date of its enactment and in that view the civil court had no inherent jurisdiction to entertain the suit. It was held further that the fact that a decree had been passed against the tenant and had become final between the parties prior to the amendment of the statute would not affect the retrospective operation of the statute, full effect of which should be given in the facts. It was noted that the operation of the amendment would be retrospective notwithstanding any judgment, decree or order of court.

57. Learned Advocate for the respondent No. 1 contended to the contrary. He submitted that on the exercise of the option by the appellant to take over the aforesaid undertakings of the respondent 1 on 30th Nov. 1962 a right accrued in favour of the respondent No. 1 namely, a right to obtain the purchase prices of its undertakings at the market value thereof at the time of the purchase or at the time of delivery. This right by itself was a property within the meaning of Article 19(1)(f) of the Constitution, Articles 31 and 19(1)(f) remained in the Constitution till the 20th June 1979 when the Constitution (44th Amendment) Act came into effect. Such right could not be taken away from the respondent No. 1 without paying adequate compensation.

58. Learned Advocate for the respondent 1 drew our attention to the relevant provisions of the Bihar Amendment Act of 1976 and submitted that amendment of Section 6 and Section 7A of the Indian Electricity Act, 1910 as amended in Bihar were also given retrospective effect. In spite of the aforesaid it was held by this Court in the case of Patna Electric Supply Co. Ltd. (AIR 1980 SC 222) (supra) that the owner of the undertaking in the said case was entitled to the market value of its undertaking for the purchase thereof by the State Electricity Board concerned. Drawing our attention to the relevant provisions of the amendments effected in the Indian Electricity Act, 1910 by the Ordinances and Act of the State of Uttar Pradesh, learned Advocate submitted that the said provisions stood on no firmer ground than those effected under the corresponding Acts of Bihar. In the instant case the appellant took over the electricity undertaking of the respondent 1 in 1964 long before the amendments were effected to the said Act of 1910 by the State of Uttar Pradesh and certainly before the 20th June 1970 when Article 31 and Article 19(1)(f) were deleted from the Constitution. It was submitted that the amendments were, Therefore unconstitutional and could not be sustained.

59. It was submitted that the substituted sections of the Indian Electricity Act, 1910 as incorporated by the impugned amendment Ordinances and Acts were expropriatory in nature. They provided for payment of book value only in respect of some assets. There was no provision for compensation for the loss of the valuable right of the respondent 1 to get the market value of its assets. It was submitted that the rights of the parties were required to be worked out on the basis of law as it stood in 1964.

60. It was submitted that the doctrine of eclipse was not applicable to the instant case.

61. Learned Advocate for the respondent No. 1 submitted that the decisions cited on behalf of the appellant and the principles laid down therein had no application in the facts of the instant case. In *Rai Ramkrishna and Others Vs. The State of Bihar*, the Supreme Court was concerned with the validity of the retrospective operation of a taxing statute. In the instant case the question which fell for determination was the reasonableness of the Amending and Validating Acts which took away vested rights of property without compensation. The retrospective operation of the legislation in the instant case would amount to complete expropriation or elimination of a property or right to property without compensation. In the case of taxing statutes it was not open to the tax payers to contend that they had any statutory or contractual rights not to pay the tax or nor any such right could be said to have vested in them.

62. In the present case, three alternative positions so far as the respondent No. 1 was concerned could be visualised. First, it could be contended that the respondent 1 had a, statutory right to obtain market value against purchase and taking over of its undertaking under the original Sections 6 and 7A of the Act of 1910. The respondent No. 1 also had a contractual right under Clause 12(1) of the licences issued on the 28th June 1929 to receive the market value for its undertakings at the time of purchase. Such a contract had come into existence under the licences themselves to the effect that there could be sale and purchase of electricity undertaking and the price payable would be the market value at the time of the transaction.

63. The second alternative position could be that the right of the respondent No. 1 to receive the market value for its undertaking had crystallised in 1962 but was prevented from crystallising by reason of the retrospective legislation which went as far back as 5th Sept. 1959.

64. The third alternative position might be that the right to receive the market value for its undertakings crystallised in favour of the respondent 1 in Nov. 1962 when the said undertakings were taken over but such right was destroyed subsequently under the Amending and Validation Acts of 1975 and 1976.

65. It was contended that whatever was the position, the net result would be the same. The right which accrued in favour of the respondent 1 under the licences issued supported by the principal Act of 1910 was being sought to be taken away by retrospective legislation. It could not be disputed that when the Amending and Validating Act came into force, a clear right had accrued in favour of the respondent No. 1 which was sought to be taken or destroyed with retrospective effect without compensation. The decision in the case of *Rai Ramkrishna and Others Vs. The State of Bihar*, did not deal with destruction of such vested right. If such a right accrued in favour of the respondent No. 1 since 1929 viz., the date of the licences the retrospective legislation which went back up to 1959 could not affect such right at all and such a right could be protected by Articles 14, 19(1)(f) and 31(2) of the Constitution. The 44th Amendment to the Constitution came into effect only from the 20th June 1979.

66. In any event, the Supreme Court laid down in *Rai Ramkrishna* (supra), inter alia, that the legislative competence and the reasonableness of restriction imposed retrospectively could be questioned and if it was found that by the retrospective operations of the Act of the restriction imposed retrospectively contravened Article 19 of the Constitution the same could be impugned as unreasonable.

67. Learned Advocate for the respondent No. 1 contended that the decision of the Supreme Court in *Krishnamurthi and Co. etc. Vs. State of Madras*, did not lay down anything new. This case was also a case of retrospective levy of a tax as in *Rai Ramkrishna*. In *Krishnamurthy's* case retrospective legislative amendment was justified inasmuch as the same was in aid of revenue which the Government required for administration and for the benefit of the citizens. The same was also justified on the ground that by the retrospective amendment an existing infirmity or defect in phraseology or some other lacuna was cured.

68. In the instant case the Amending and Validating Acts were not intended to cure any infirmity or defect or lacuna in the original statute nor were the statutes in aid of revenue. The only object of the said Amending and Validating Act was to deprive the respondent No. 1 of its vested rights and enriching the appellant unjustly. The said Acts provided for payment only of the book value of some of the assets of the undertaking which amounted to about 10% of the market value of the undertaking.

69. The Supreme Court laid down in *Sunder Dass Vs. Ram Prakash*, that the legal fiction created by the retrospective operation of a statute must be carried to its logical extent and that full effect should be given to the deemed situation. The Constitutional validity of a retrospective legislation which took away or confiscated a vested right of property was not considered in this case. The reasonableness of the retrospective legislation was also not considered. The Supreme Court was only concerned on the interpretation of the proviso which was incorporated in the statute by way of amendment and to what extent the retrospective operation should be given to the same.

70. In support of his contentions, learned Advocate for the respondent No. 1 cited the following decisions :

(a) *Maharana Shri Jayvantsinghji Ranmalsinghji etc. Vs. The State of Gujarat*, . The facts in this case were that the legislature of the Province of Bombay abolished Taluqdari tenancies in the State by the Taluqdari Tenure Abolition Act, 1949 which came into force on 15th Aug. 1950. A taluqdar was converted into a mere occupant. The said Act of 1949 was amended in 1955 when a new Section 5A was incorporated in the Act. Under the new section, a permanent tenant in possession of taluqdari land was given the right to become the occupant on payment of six times of the assessed revenue. The right of non-permanent tenants continued to be governed by the Bombay Tenancy and Agricultural Land Act of 1948. u/s 32H of the Tenancy Act of 1948, non-permanent tenants were

given the right to become the purchaser of land in their occupation upon payment of much higher price. Subsequently in 1958, Bombay Land Tenure Abolition Laws (Amendment) Act, 1968 was passed whereby all non-permanent tenants were converted into permanent tenants.

71. The writ petitioner before the Supreme Court who was a taluqdar in Gujarat and on whose land there were permanent and non-permanent tenants, challenged the said Amendment Act of 1958 contending that by converting the non-permanent tenants into pennenant tenants resulted in deprivations of the higher purchase price which the writ petitioner would be entitled u/s 32H of the Tenancy Act, 1948, and the same was unconstitutional. By a majority judgment, it was held by the Supreme Court that the said Act of 1958 was unconstitutional and void as by seeking to change the definition of permanent tenants the impugned legislation took away substantial right of the writ petitioner to obtain the purchase price as provided under 32H of the Bombay Tenancy and Agricultural Land Act, 1948.

72. (b) The Fazilka Electric Supply Co. Ltd. Vs. The Commissioner of Income Tax, Delhi, . In this case the Supreme Court considered and construed Section 7 of the Indian Electricity Act, 1910 and observed as follows :

"If the provisions of the Electricity Act are read along with the rules made thereunder it becomes manifest that the condition as to the option of purchase, either by the local authority or Government, is the result of an agreement between the applicant who has applied for the license and Government who grants the license. Section 7 is merely an enabling provision which allows the parties to specify in the license the periods on the expiration of which the right of option shall be exercised, subject to the maximum periods mentioned therein. This section does not provide for a compulsory purchase or compulsory acquisition without reference to and independent of any agreement by the licensee. If the whole scheme of the Electricity Act and the rules made thereunder, is kept in mind, it becomes obvious that notwithstanding the use of the expression" compulsory purchase in the second proviso to Sub-section (1) of Section 7, there is not compulsory purchase or compulsory acquisition in the sense in which that expression is ordinarily understood. The transaction of the exercise of option amounts to a sale within the meaning of Section 10(2)(vii) of the Income Tax Act."

..... "There was an undertaking on the part of the applicant for the license to sell the undertaking to the local authority or Government upon certain terms set out in the license, and the time at which the option was to be exercised and the price which was to be paid for the property were specified. There was consideration for the contract as the license was granted on these terms. Therefore, all the elements necessary for a contract were present and the sale in pursuance thereof was not a compulsory purchase or acquisition."

73. (c) The The Gujarat Electricity Board Vs. Shantilal R. Desai, . In this case it

was held by the Supreme Court that when a notice u/s 7 of the Indian Electricity Act, 1910 was issued by the State Electricity Board, the latter was not required again to exercise its option to purchase the undertaking on the expiration of the period of the licence. Such a right would accrue on the expiration of the licence. The exercise of option to purchase and the election to purchase was one integral process.

74. The Supreme Court held further that the right to purchase the undertaking was a contractual right and not a right conferred by Section 7 of the Act of 1910 and in any event whether such a right accrued under a contract or under the said Section 7 the same vested in the authorities concerned. In the facts of the case it was held that though Section 7 of the Act of 1910 had been since amended and Section 71 of the Electricity (Supply) Act, 1948 stood repealed by the time the period of the licence expired the rights already acquired under the earlier provisions were not taken away as the repeal or amendment did not lay down that the existing rights, obligations or liabilities under the earlier enactments would stand repealed. Rights which vested under the earlier enactments had to be worked out on the basis of law as it stood on the day the notice u/s 7 of the Act of 1910 was issued.

75. (d) *The Godhra Electricity Co. Ltd. and Another Vs. The State of Gujarat and Another*, . In this case the Supreme Court held that Section 6(6) of the Indian Electricity Act, 1910 violated the fundamental right conferred under Articles 19(1)(g) and 19(1)(f) of the Constitution inasmuch as the same provided for delivery of the undertaking without payment of purchase price and the arbitrator in determining the purchase price u/s 7A could not award any interest on the market value of the undertaking as determined though it was open to the licensee to claim interest under the general law and proceed to enforce such claim by way of a regular suit. The deprivation caused to the licensee on the taking over of his undertaking without payment of the purchase price was unreasonable.

76. (e) *Madan Mohan Pathak and Another Vs. Union of India (UOI) and Others*, . In this case, subsequent to an order passed u/s 11 of the Life Insurance Corporation Act, 1956, which expressly stated that no bonus would be paid to class III and class IV of the employees of the Life Insurance Corporation, other orders were passed and settlements were made by and between the Corporation and its employees providing for payment of bonus. In 1974 a settlement was effected providing for payment of bonus at prescribed rates for the years 1973 till 1977. This settlement was approved by the Corporation and the Central Government. Bonus under the said settlement was paid in 1974 and 1975. Subsequently, by an Ordinance promulgated on 25th Sept. 1975, a circular was issued by the Corporation stating that payment of bonus was being reviewed and such payment would be withheld for the next year and till the final decision was taken.

77. This decision to withhold payment of bonus was successfully challenged in

this Court in a writ petition whereby the Corporation was directed to pay the bonus as settled.

78. On 29th May 1976, Life Insurance Corporation Modification of Settlement Act, 1976 was passed by the Parliament providing in Section 3 thereof that notwithstanding anything contained in the Industrial Disputes Act, the provisions in the settlement relating to the payment of bonus to the class III and class IV employees of the Corporation would not have any force or effect on and from 1st April 1975. The object of the said Act was to set aside the settlement on and from 1st April 1975 and to permit the Corporation to make ex gratia payments to its employees at rates on the basis of Government policy laid down for making such payments to the employees of the non-competing public sector industries.

79. The vires of the Act was challenged before the Supreme Court. It was held by the Supreme Court that the rights of the employees under the settlement which had been implemented by the judgment of the High Court which had become final could not be taken away indirectly by the impugned Act. Section 3 of the impugned Act, it was held, violated Article 19(1)(f) of the Constitution and was not saved by Article 19(6) thereof. It was held further that the right of the employees to receive bonus was "property" within the meaning of Article 31(2) of the Constitution and represented a debt from the Corporation to its employees. The impugned statute extinguished such right without providing for corresponding compensation as required under Article 31(2).

80. (f) Tara Prasad Singh and Others Vs. Union of India (UOI) and Others, . In this case it was held by the Supreme Court that the 44th Amendment Act amending the Constitution came into force prospectively with effect from the 20th June 1979.

81. (g) Ishwari Khetan Sugar Mills (P) Ltd. and Others Vs. State of Uttar Pradesh and Others, . In this case the Supreme Court considered as to what extent a legislation would be void if the same was in contravention of Article 31(2) of the Constitution as it stood at the relevant time. The Supreme Court held that the said Article 31(2) as it stood before the Constitution (Twentyfifth Amendment I Act, 1971 required provision for compensation for property acquired or requisitioned for public purpose. The said Article as it stood further provided that in such cases of acquisition or requisition, the legislation was required to either fix the amount of compensation or to specify the principle on which and the manner in which compensation was to be determined and given. The Supreme Court held that where the impugned legislation provided a principle for determining compensation viz., written down value of the used machinery as was understood in Income Tax Law, the same could neither be said to be irrelevant nor compensation so awarded could be held to be illusory.

82. (h) Patna Electric Supply Co. Ltd. and Another Vs. Bihar State Electricity Board and Others, . This decision has been noted earlier. In this case the Bihar State Electricity Board exercised its option u/s 7 of the Indian Electricity Act,

1910 to purchase the electricity undertaking of Patna Electric Supply Co. Ltd. and issued a notice on the 5th Jan. 1973. Pending the determination of purchase price, the possession of the undertaking was taken over in Feb. 1974. At the relevant time. Section 74 of the Indian Electricity Act, 1910 provided for payment of market price purchase of an electricity undertaking. On the 2nd Feb. 1974, the State of Bihar sought to amend the Indian Electricity Act, 1910 by passing an Ordinance viz. the Indian Electricity (Bihar Amendment) Ordinance, 1974 seeking to amend Section 7A of the Indian Electricity Act. The substituted Section 7A provided for payment not of market value but of the book value of the assets of the undertaking at the time of purchase or at the time of delivery being the depreciated book value as determined under the Fourth Sch. to the Electricity (Supply) Act, 1948. The Solatium of 20% provided in the original Section 7A was reduced to 10%. The said Ordinance was followed by two further Ordinances and finally by the Indian Electricity (Bihar Amendment) Act, 1974. The vires of the Amended Act was challenged in this Court in an application under Article 226 of the Constitution.

83. It was held by Sabyasachi Mukharji, J. as his Lordship then was, that the Electricity Act (Bihar Amendment) Ordinance, 1974 in so far as it altered the basis of compensation to be paid u/s 7A of the Electricity Act, 1910 was void, bad and unenforceable. The Bihar State Electricity Board and the other respondents were directed to pay the purchase price of the said undertaking to the licensee in accordance with the provisions of Section 7A of the said Act as it stood at the relevant time ignoring the provisions of Indian Electricity (Bihar Amendment) Ordinance, 1974 and the subsequent Ordinances as also the Amendment Act, 1974. His Lordship observed as follows :

"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 the Indian Electricity Act, 1910 which right had crystallised on the exercise of the option at the time when the option was exercised in 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 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."

84. His Lordship relied on the decisions of the Supreme Court in the case of Maharana Shri Jayvantsinghji Ranmalsinghji etc. Vs. The State of Gujarat, and Madan Mohan Pathak and Another Vs. Union of India (UOI) and Others, .

85. (i) Waman Rao and Others Vs. Union of India (UOI) and Others, . This decision of the Supreme Court was cited for the following observation :

"By Section 7 of the Constitution (Forty-fourth Amendment) Act. 1978 the reference to Article 31 was deleted from the concluding portion of Article 31A(1) with effect from June 20, 1979, as a consequence of the deletion by Section 2 of the 44th Amendment of Clause (f) of Article 19(1) which gave to the citizens the right to acquire, hold and dispose of property. The deletion of the right to property from the array of fundamental rights will not deprive the petitioners of their arguments which were available to them prior to the coming into force of the 44th Amendment, since the impugned Acts were passed before June 20, 1979 on which date Article 19(1)(f) was deleted."

86. (j) Bihar State Electricity Board and Others Vs. Patna Electric Supply Co. Ltd. and Another, . This is a decision of a Division Bench of this Court in an appeal filed against the judgment of Sabyasachi Mukharji, J, in Patna Electric Supply Co. Ltd. and Another Vs. Bihar State Electricity Board and Others, . The Appeal Court affirmed the decision of the learned Judge in the first Court holding, inter alia, as follows : --

(i) When the option was exercised by the State Electricity Board concerned under the unamended Section 7A of the Act of 1910 the licensee became entitled to the market value of the undertaking to be determined in accordance with the provisions of the said section and the purchaser was liable to pay to the licensee the same,

(ii) The exercise of option to purchase and the election to purchase was one integral process and once such option was exercised and communicated it would be binding on both the parties.

(iii) The right to receive the market value which the licensee acquired under the unamended Section 7A of the Act of 1910 was ought to be taken away by the Amendment Act of 1976.

(iv) the right to obtain the market price could not be compensated by providing for payment of book value. The State could not acquire a debt or chose in action due to it from citizens only for augmenting the revenue or reducing the expenditure. The same would not be public purpose and void under Article 31(2) of the Constitution.

(v) The 44th Amendment of the Constitution came into effect from 20th June 1979 and deleted Article 31 of the Constitution prospectively. Law promulgated before deletion had to comply with the provisions of the said Article.

(vi) the Validation Act validated the amended Sections 6 and 7A with

retrospective effect and therefore the doctrine of eclipse could not be invoked.

87. It is established that the option to purchase the electricity undertakings of the respondent 1 was exercised by the appellant on 30th Nov. 1962 whereby the respondent No. 1 was directed to sell its electricity undertaking to the appellant on the expiry of the licence under the Electricity Act, 1910, continuing in favour of the respondent No. 1. The said licence expired on 27th/28th June 1964 and on the midnight of 27th/28th June 1964 possession of the said electricity undertakings of the respondent 1 was taken over by the appellant.

88. It follows that under the law as it stood at the relevant time the respondent 1 became entitled to be paid the market value of its undertakings as on 27th/28th June 1964 by the appellant.

89. It is also not disputed that the disputes and differences arose between the appellant and the respondent 1 as to the quantum of the market value of the undertakings of the respondent 1. Such disputes and differences were referred to arbitration and during the pendency of the proceedings in arbitration the impugned Ordinances and Acts were promulgated by the State of Uttar Pradesh, the respondent No. 4. Therefore, on the date when the Amending and Validating Acts came into force a right had already accrued in favour of the respondent 1 to receive the market value of its undertakings from the appellant.

90. Under the Amending and Validating Acts which are impugned in the instant proceedings, admittedly no provision whatsoever had been made to compensate the respondent No. 1 for taking away such vested right which had accrued to the respondent 1. This vested right is in the nature of a proprietary right and at the relevant time such a right was protected by Articles 31 and 19(1)(f) of the Constitution which were in force at the relevant time.

91. On the dates the Amending and Validating Acts " came into force, the undertakings of the respondent 1 had been taken over and were no longer the property of the respondent 1. What the respondent 1 obtained in lieu of the said undertakings was a right to obtain the market value of the same.

92. It is to be noted that the impugned Amending and Validating Acts do not, in express terms, take away the vested right of the owners of the electricity undertakings to receive the market value for such undertakings on their take over. All that the said legislation provide is that the amount payable for take over and purchase of the undertakings would be determined mainly on the basis of depreciated book value of the assets of the undertakings and not their market value. Obviously, the amount calculated on the basis of book value would be much less than the amount which would be determined on the basis of market value and, therefore, the owners of the electricity undertakings would be prejudiced as their vested right to receive the market value for their undertakings would be replaced by a right to receive much lesser amount calculated on the basis of depreciated book value. For this loss, no compensation had been provided in the impugned Amending and Validating Acts and to the

extent as aforesaid, there is considerable force in the contentions of the respondent 1 that the impugned legislation which had been given retrospective effect were unreasonable and expropriatory.

93. In *Patna Electricity Co. Ltd.* (AIR 1980 SC 222) (supra), the impugned legislation provided that where a notice had been issued by the State Government or State Electricity Board concerned exercising option to purchase the undertaking before commencement of the impugned Amending Act. the amount payable to the licensee for such purchase would be determined in accordance with the provisions of the Amending Act which would be deemed to have always been in force. In spite of the specific provision for retrospective operation, it was held by this Court that the impugned Amending Act took away the right of the licensee to obtain the market value for his undertaking. It was held that the same would amount to an acquisition of debt or chose in action of a person without any provision for compensation therefore and the same would not be for a public purpose. As the object of the same would be only augmenting the revenue or reducing the expenditure of the Government, such an acquisition would be void under Article 31.

94. It is also to be noted that the impugned Amending and Validating Acts in the instant case have been given retrospective operation only with effect from 5th Sept. 1959. The licence in the instant case was issued and vested in favour of the respondent 1 long prior to 1959 and under the terms of the licence as also under the law as it stood prior to 1959, the respondent No. 1 had a right to obtain market value of its undertakings when the same would be taken over. We also note that it was held by this Court in *Patna Electricity Co. Ltd.* (supra) that the Validation Act in that case was given retrospective effect and was sought to be invoked at a time when both Articles 31 and 19(1)(f) of the Constitution were in force. The said Articles of the Constitution were deleted with effect from 20th June 1979 and not retrospectively and as such the doctrine of eclipse could not be invoked in support of the Validating legislation. We have no reason to differ from the said decision and finding of the Appeal Court. The Supreme Court also held in *Waman Rao and Others Vs. Union of India (UOI) and Others*, that prior to the coming into force of the Constitution (Forty-fourth Amendment) Act, it would be open to a party to rely on the said Articles at a stage prior to their deletion from the Constitution. The same principle was reiterated by the Supreme Court in *Ishwari Khetan Sugar Mills (P) Ltd. and Others Vs. State of Uttar Pradesh and Others*, .

95. We also note that in *Madan Mohan Pathak and Another Vs. Union of India (UOI) and Others*, under the Life Insurance Corporation Modification of Settlement Act, an earlier settlement arrived at by and between the Life Insurance Corporation of India and its employees was sought to be set aside with retrospective effect so as to enable the Corporation to pay its employees bonus ex gratia and at rates to be determined on the basis of general Government policy. The Supreme Court struck down the said legislation holding that the right

of the employees to receive bonus was a property within the meaning of Article 31 of the Constitution and the same could not be interfered with without providing for corresponding compensation. It was held that the said debt due to the employees of the Corporation were affirmed by the judgment of a competent court and the same could not be taken away indirectly by the impugned legislation.

96. In our view, the same principles are applicable in the instance case. When the appellant exercised its option to take over the undertakings of the respondent 1, it became bound in law as it stood at the relevant time to pay the compensation on the basis of market value therefor. It could not, at that relevant time, promulgate law to reduce the quantum of such compensation or provide an entirely different basis for payment of compensation. What the respondent No. 1 could not do directly, it is not entitled to do indirectly through the machinery of retrospective legislation.

97. Apart from that it appears to us that the impugned Amending and Validating Acts suffer from a further infirmity inasmuch as the provisions of the same have been made applicable only to cases where the purchase price of an undertaking has not been determined prior to the commencement of the impugned legislation. This is provided for in Section 7 of the Amendment Ordinance and reproduced in Amendment Acts noted earlier. It is a matter of chance whether, in any particular case, the purchase price of an undertaking would or would not have been determined under the law as it stood prior to the promulgation of the impugned legislation. The owner of an electricity undertaking which had been taken over by the State Government or the State Electricity Board concerned may be lucky enough to have his claim for compensation determined without any disputes being raised as to the market value thereof. Other owners of electricity undertakings which have been so taken over might not have been lucky enough to have their claims for compensation determined on the basis of market value under the earlier law and their claims might have been in the process of determination under the machinery provided in the earlier law. There is no intelligible differentia between the said two classes of owners of undertakings. Claims of an owner of an undertaking might have been determined in arbitration but the decision of the arbitrator might have been challenged in court and the impugned legislation is not clear as to whether such a determination would be exempt or whether such claim would stand frustrated under the amending legislation. The owner of an undertaking whose claim for compensation under the earlier law is in the process of determination and the owner of an undertaking whose similar claim has been determined but not paid in our view should not be treated differently. We hold that the aforesaid provisions of the Amending and Validating legislation are discriminatory and arbitrary and offend Article 14 of the Constitution. If the retrospective legislation in the instant case is to be given its full effect then the owners of all electricity undertakings who come within the mischief of the Amending and Validating legislation should be treated equally.

98. For the reasons as above, we are unable to accept the contentions of the appellant. The appeal fails and is dismissed without any order as to costs. We affirm the judgment and order dt. 19th July 1982 under appeal making the Rule absolute for the reasons recorded in this judgment. The appellant is further directed to take appropriate proceedings in accordance with law to determine the market value of the undertakings of the respondent No. 1 as on 27th/28th June 1964 and make payment to the respondent 1 on the basis of the same.

99. All parties to act on a signed copy of the operative part of this judgment.

100. On an oral application made on behalf of the appellant, operation of this judgment is stayed till the 18th Nov. 1987.

Shyamal Kumar Sen, J.

101. I agree.