

(2025) 08 AHC CK 0624
In the Allahabad High Court
Case No : Writ Petition C No.11731 Of 1982

U.P. State Electricity Board Shakti Bhawan Lucknow	APPELLANT
Vs	
Special Officer Electricity And Another	RESPONDENT

Date of Decision : 11-08-2025

Acts Referred:

Code of Criminal Procedure Act, 1973 — Section 2(d), 154(1), 482
Protection of Women from Domestic Violence Act, 2005 — Section 2(a), 4, 5, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 31, 31(1)

Citation : (2025) 08 AHC CK 0624

Hon'ble Judges : Vinod Diwakar, J

Bench : Division Bench

Advocate : Vinod Singh

Final Decision : Allowed

Judgement

Ashutosh Srivastava, J

1. The instant writ petition has been filed questioning the Award dated 12.07.1982 rendered by the Special Officer (Electricity) appointed under Section 7-A(6) of the Indian Electricity Act, 1910 as amended vide U. P. Amendment and Validation Act, 1975 determining the net amount payable to the Ex-Licensee, M/s Agra Electricity Supply Company Ltd. (Respondent No. 2) under Section 7-A of the Indian Electricity Act, 1910 as a result of purchase of the electrical undertaking by the petitioner, The U. P. State Electricity Board (UPSEB). The relief claimed in the writ petition is being reproduced hereunder:-

- a) Quashing the Award of the Special Officer dated 12th of July, 1982 (Annexure-1);
- b) Granting such other and further relief as this Hon'ble Court may deem just and proper in the circumstances of the case;
- c) Awarding costs of this petition.

The facts giving rise to the controversy involved in the instant writ petition briefly stated are that the Indian Electricity Act, 1910 was enacted as a result of the experience gained by the Government of India after enactment of the Indian Electricity Act, 1903 and the recommendations made by the Committee constituted in this regard to consider the technical and financial aspect of the matter. Section 3 of the Act of 1910 empowered the State Government to grant license to any person to supply energy in any specified area on an application made in the prescribed form and on the payment of prescribed fee and for laying down electric supply lines for the conveyance and transmission of energy. A license cited as "The Agra City & Cantonment Licensee, 1923" was granted to the M/s Martin and Company, 6 & 7, Clive Street Calcutta for supply of electric energy in respect of the area contained within the Municipal Cantt. Limits of Agra. The License was published in the Government, United Provinces, Public Works Department, Buildings and Roads Branch Notification No. 2813W/137-1923 dated 18/12/2023. The said license was transferred to "M/s Agra Electric Supply Company Ltd." (Ex-Licensee) in accordance with the Government Notification No. 2263C/ 137W 23 dated 04.10.1924.

Clause 9 of the License conferred an option of purchase of the Electrical undertaking by the UPSEB after a period of 50 years from the date of the Notification of the License. The option of purchase as provided under the License was exercised on the expiry of the 50 years and, accordingly, the Agra Electric Supply Undertaking of the Ex-Licensee was taken over by the petitioner UPSEB at midnight on 17/18.12.1973.

On 4th February, 1975 the State Government promulgated the Indian Electricity (Uttar Pradesh Amendment and Validation) ordinance 1975 which subsequently became the U. P. Act No. 16 of 1975. The provisions of the U. P. Act No. 16 of 1975 applied to all licensees in respect of their undertakings sold after September 5, 1959 under Section 5 or Section 6 of the Indian Electricity Act, 1910 and the purchase price in respect whereof was not determined prior to the commencement of the Indian Electricity (U. P.) Amendment and Validation Act, 1975.

The State Government vide its Notification No. 7299-ELC/75-23-P-4 dated 31.08.1975 appointed one Sri R. K. Satsangi, as the Special Officer for determining the net amount payable under Section 7-A of the Indian Electricity Act, 1910 (as amended for its application to the State of U. P.). Subsequently, one Sri Sher Singh was appointed as the Special officer vide Notification No. 128-P-3/78-23 dated 09.01.1978 and No. 2083-P-3/79. Finally one Sri P. N. Agarwal was appointed as the Special Officer (Electricity) vide Notification No. 3317-P-3/80-23 dated 14.07.1980 and Notification No. 4317-P-3/81-23 dated 14.07.1981. The Ex-Licensee was requested to intimate the details of book value of all the assets including stores, plants and equipments as enumerated in sub-Section (2) and (4) of Section 7-A of the Electricity Act, 1910 taken over by the State Electricity Board i.e. the petitioner herein. The Ex-Licensee was also

requested to intimate the details of deductions which the State Electricity Board was entitled to make under sub-section (5) of the Section 7-A. The State Electricity Board/Petitioner herein was also requested to furnish the information of assets and stores as taken over along with the claims for deductions under Section 7-A (as amended) of the Indian Electricity Act, 1910. The UPSEB authorised the Superintending Engineer, Agra Electric Supply undertaking Agra to furnish various information to the Special Officer on behalf of the UPSEB in respect of taken over licensee Agra Electric Supply Co. Ltd. The Chief Electrical Inspector to Government of U. P. was requested to intimate the amount outstanding from the Ex-Licensee on account of Government Loan Electricity Duty, and any other dues of the Government along with the amount of interest due thereon. The Chief Electrical Inspector was also requested to furnish copy of the working sheet and the audit reports upto the date of take over of the undertaking.

The Ex-Licensee vide their Letter No. CE/AG/44(S)/360 dated 19.11.1975 submitted on statement showing details of the amount payable to them and the deductions which were to be made under Section 7-A of the Indian Electricity Act, 1910 (as amended). The Ex-Licensee also submitted revised statements of claims vide their letters dated 22.07.1980 and 14.11.1980. The Ex-Licensee subsequently furnished all the information and participated in the meeting held for finalising the amount payable under Section 7A of the Indian Electricity Act, 1910 (as amended).

The Special Officer (Electricity) processed the information provided to him strictly in accordance with the provisions of the Section 7-A of the Indian Electricity Act, 1910 (as amended for its application to the State of U. P.) and after affording full opportunity to both the parties and after going through the detailed arguments submitted by them and examining the relevant records and the provisions of the Act, rendered the impugned order and award dated 12.07.1982 determined that a sum of Rs. 63,41,886.26 was payable by the UPSEB/Petitioner to the Ex-Licensee together with future interest.

The petitioner by means of the instant writ petition did not challenge the validity of the entire award of the Special Officer (Electricity) but confined its challenge to the following items:-

- A. Disallowing the claim of the petitioner on account of depreciation on works constructed at the cost of local bodies for street lighting and works paid for by the consumer amounting to Rs. 20,98,226/-.
- B. Wrongly allowing the value of stores and spare parts taken over amounting to Rs. 83,243/-.
- C. Wrongly disallowing deductions of Rs. 2,50,000/- paid by the Board to the ex-licensee in advance out of collections made from consumers.
- D. Claim on account of Railway siding amounting to Rs. 31,595.69.

E. Initial payment received from consumers amounting to Rs. 8,75,393.59.

F. Employees claims amounting to Rs. 14,50,980.35 in respect of gratuity, overtime, unavailed leave, Supreme Court awards etc.

G. Wrongly disallowing the deductions of amount of Development reserves amounting to Rs. 19,95,398/-.

Sri Rakesh Pande, learned Senior Counsel assisted by Sri Abhishek Mishra, learned counsel, who has put in appearance on behalf of Agra Electric Supply Company Ltd., "Martin Burn House", 12 Mission Row, Calcutta (West Bengal) (Respondent No. 2) in opposition to the writ petition submits that the Special Officer (Electricity) while determining the amount payable (purchase price) to the Ex-Licensee in exercise of his powers has extensively dealt with the provisions of Section 7-A of the Indian Electricity Act, 1910 (amended) and applicable to the State of U. P. The amount so arrived at is wholly just, legal and has been arrived at in a proper manner. The Special Officer (Electricity) has recorded findings of fact and given adequate reasons for recording the said findings of fact. The award is wholly reasoned rendered after hearing the parties and on an objective determination of the amount payable in accordance with Section 7-A of the Act.

A. Depreciation on Works Constructed at the cost of Local Bodies for Street Lighting and Works paid for by the Consumer

Sri C. B. Yadav, learned Senior Counsel appearing for the petitioner submits that the Special Officer (Electricity) while rendering the Award dated 12.07.1982 manifestly erred in disallowing the claim of the petitioner as regards depreciation on works constructed at the cost of local bodies paid for by the consumers which worked out to Rs. 20,98,226/- as the same was in contravention of the express provision of Section 7-A(2) of the Indian Electricity Act, 1910. Learned counsel while inviting the attention of the Court to Section 7-A(2)(i) of the Act and to the definition of depreciation, submits that the Special Officer (Electricity) on an erroneous interpretation of the provisions referred to above held that the book value of the works constructed at the cost of local bodies for street lighting and work paid for by the consumers were liable to be excluded and the depreciation was required to be computed on works other than those paid by the local bodies and consumers. According to Sri C. B. Yadav, the depreciation was liable to be computed on the book value of the entire assets as reflected in the audited account of the Ex-Licensee including those created at the cost of local bodies and consumers. He further submit that the depreciation is provided for the purposes of replacement of assets when they have outlived their utility. The procedure of providing the depreciation has been laid down in para IV of the Sixth Schedule and Seventh Schedule to the Electricity (Supply) Act, 1948. The depreciation is set aside every year from the revenue earned from the consumers by the sale of electrical energy and retained in the form of reserves by the undertaking for replacing the units as and when required. The depreciation cannot be treated as profit of the Ex-Licensee so as to be disallowed

as has been done in the case at hand by the Special Officer (Electricity) while determining the amount payable under Section 7-A of the Indian Electricity Act, 1910 (as amended).

The Apex Court in the case of Pilibhit Electric Supply Co. (P) Ltd. and another Vs. Special Officer (Electricity) and another reported in 1996 (ii) SCC 288 while dealing with a similar issue regarding depreciation in Para 11 laid as under:-

In order to appreciate the rival contentions on this claim it is necessary to refer to the relevant provisions of the Sixth Schedule that applied in 1975 when the appellant's undertaking was acquired with effect from 1st December 1975. The relevant provisions for depreciation are found in paragraphs VI to XII of the Sixth Schedule as applicable at the relevant time. They read as under:

"VI. (i) There shall be allowed in each year in respect of depreciation of fixed assets employed in the business of electricity supply such an amount as would, if set aside annually throughout the prescribed period and accumulated at compound interest at 4 per centum per annum, produce by the end of the prescribed period an amount equal to 90 per cent of the original cost of the asset after taking into account the sums already written off or set aside in the books of the undertaking. Annual interest on the accumulated balance will be allowed as an expense from revenue as well as the annual incremental deposit:

Provided that, within 3 months from the date upon which these principles are enacted, a licensee may elect to adopt the straight line method of depreciation accounting in lieu of the compound interest method above prescribed.

Straight-line method of depreciation accounting means the method whereby an allowance is made in each year in respect of depreciation of fixed assets employed in the business of such an amount as is arrived at by dividing ninety percent of the original cost of the asset by the prescribed method in respect of such asset.' (2) The year in which any asset becomes available for use in the business and the relative cost thereof shall, in the absence of satisfactory record, be determined by the State Government. All sums credited to depreciation account shall be invested only in the business of electricity supply of the undertaking or where it is not practicable to so invest them in investments approved by the State Government.

(3) Any sums invested in investments approved by the State Government under sub-paragraph (2) shall, as soon as practicable, be utilized in the business of electricity supply of the undertaking and if such sums are not so utilized they shall not form part of the capital base under clause (d) of sub-paragraph (1) of paragraph XVII.

VII. (1) Where any fixed asset ceases to be available for use through obsolescence, inadequacy, superfluity or for any other reason, it shall be described in the books of the licensee as no longer in use and no further depreciation in respect thereof shall be allowed as a charge against revenue.

(2) The written down cost of such fixed asset shall be charged against the Contingencies Reserve :

Provided that where the accumulations in the Contingencies Reserve are not sufficient to permit the charging of the entire written down cost of the asset, the excess amount may, be included in the capital base for the purpose of clause (a) of sub-paragraph (1) of paragraph XVII.

(3) The amount for which any such fixed asset is sold or the amount of its scrap value when actually realised shall be credited to the Contingencies Reserve.

VIII. When any asset has been written down in the books of the undertaking to 10 percent, or less of its original cost, no further depreciation shall be allowed in respect of that asset.

IX. When any fixed asset is sold for an amount exceeding its written down cost the excess after deducting all taxes payable thereon shall be credited to the Contingencies Reserve.

X. Except with the previous consent of the State Government, no sums shall be carried forward to a reserve and no dividends in excess of 3 percent shall be paid on share capital and no other distribution of profits shall be made to the shareholders in respect of any year of account so long as any of the following sums remain to be written off in the books of the undertaking, namely:-

(i) normal depreciation due for that year of account calculated in accordance with the provisions of paragraph VI;

(ii) equated instalment in respect of arrears of depreciation, computed in accordance with the provisions of paragraph XI, for that year of account;

(iii) arrears, if any, in respect of normal depreciation referred to in clause (i), accumulated after the date of application of the provisions of the Sixth Schedule to the licensee;

(iv) arrears, if any, in respect of equated instalments referred to in clause (ii).

XI. Arrears of depreciation calculated in accordance with paragraph VI may be written off by equated payments over the remainder of the prescribed period and the amount so set aside in the books of the undertaking may be taken into account in any year as a special appropriation for purposes of assessing the clear profit.

XII. Where contributions are made by consumers towards the cost of construction of service lines constructed after the date on which this Act comes into force only the net cost of such service lines after deducting such contributions shall be included in the cost of fixed assets for the purposes of arriving at the capital base :

Provided that for the purposes of depreciation under paragraph VI, the total original cost of construction of the service lines shall be taken into account."

It is, of course, true that as mentioned in paragraph XII of the Sixth Schedules while considering the question of total capital base which includes the assets consisting of service lines for installation of which contributions are made by consumer towards the construction of such service lines, the net cost of such service lines after deducting such contributions has to be included in the costs of such fixed assets. It is also true that, however, for computing the depreciation as per paragraph VI on such assets, wherein consumers have contributed towards their acquisition, the total original cost of construction of the service lines had to be taken into account. The Special Officer has applied paragraph XII while deducting the depreciation from the book value of all completed works which are acquired from the licensee as per Section 7-A(2) (i). In our view the said approach of the Special Officer is *ex facie* unjustified. The reasons are obvious. Paragraph XII of the Sixth Schedule to the Supply Act deals with a special type of asset, namely, service lines which are installed by the licensee wherein the consumers have contributed towards the cost of construction of such service lines. For this type of assets, in computing the capital base of the licensee, the contribution by the consumers has to be excluded but for computing depreciation under paragraph VI for such assets, namely, the service lines, the total original cost of construction of service lines has to be taken into account which may include the cost of construction of service lines incurred by the licensee as well as the other part of the component of the cost of construction of service lines which has come from the pockets of the consumers. But entire paragraph XII deals with only one type of assets, namely, service lines construction cost of which is wholly or partially borne by the consumers. Paragraph VI of Schedule VI, however, is general in nature and covers all types of fixed assets and the method of computation of depreciation on these fixed assets. It is axiomatic that fixed assets employed in the business of electricity supply may consist of those assets which are wholly acquired at the cost of the licensee and may also include assets like service lines which may partly be acquired and installed at the cost of the licensee and partly out of contribution of the consumers who would be interested in getting electrical supply at their own premises and for that purpose they may be willing and may be made to pay contribution towards extension of service lines to their premises. Therefore, reference to service lines in paragraph XII of Schedule VI is with a view to finding out as to how depreciation has to be computed for such a special type of asset, namely service lines wherein consumers have also contributed towards their installation. Consequently on a conjoint reading of paragraph VI and paragraph XII of Sixth Schedule the depreciation on such service lines installed by drawing upon the contributions from the consumers is required to include the total original cost of construction of such service lines and that would necessarily include the component of the amount of cost contributed by the consumers. However that has nothing to do with the computation of depreciation on the assets which are acquired by the acquiring authority under Section 6-A read with Section 7-A(2)(i). It is now well settled that service lines whose installation had been paid for by the consumers are not to be compensated for and they vest in

the acquiring authority under Section 6-A read with Section 7-A free of cost of payment of compensation to the licensee. The logic underlying this settled legal position is that as the licensee had not spent from his pocket for installing such an asset, he was not required to be compensated for that part of the asset which was paid for by consumers. A mere look at Section 7-A(2)(i) shows that the gross amount payable to such licensee for acquiring his assets amongst others has to consist of an amount of the book value of all completed works in the beneficial use pertaining to the undertaking. While computing such book value of acquired assets the works paid for by the consumers have to be ignored and omitted from consideration. Therefore, the amount of book value computed as per Section 7-A(2)(i) will consist of only those works which are for beneficial use of the undertaking which was installed and acquired by the licensee at its own cost. Having computed this amount the next question survives about deducting the depreciation on such acquired assets. That would naturally imply deduction of depreciation on such assets from the amount so computed being the book value of the completed works installed and acquired at the cost of the licensee. If these are the assets whose book value has to be computed as per Section 7-A(2)(i) the question of deduction from that amount would necessarily imply deduction of depreciation on these very assets. In other words the field is clearly earmarked both for computation of the book value of the concerned assets as also for deduction of depreciation on such assets as enjoined by the second part of Section 7-A(2)(i) itself. It is axiomatic that before any depreciation is deducted from the computed book value of an asset it should be for the same asset whose book value has been ascertained and from that value depreciation is to be deducted. It cannot be that for computing the book value of licensee's assets only self-financed assets are to be taken into consideration and not the works paid for by the consumers but while deducting from this very amount of book value the depreciation is to be deducted qua not only the assets whose book value is computed but also qua the assets belonging to somebody else like the consumers who have paid for the works. This would on the face of it be very anomalous and unfair. It is also pertinent to note that from the book value of the assets which were financed by the licensee as computed as per Section 7-A(2)(i) when a question arises about deducting the depreciation, only the calculation of such depreciation on the concerned asset is to be done in accordance with Sixth Schedule because the words advisedly used by the Legislature in Section 7-A(2)(i) in this connection are less depreciation calculated in accordance with the Sixth Schedule read with the Seventh Schedule. Therefore, only the method of calculation of depreciation has to be applied by way of reference to the Sixth Schedule. But the type of asset for which depreciation has to be computed is not to be gathered from the Sixth Schedule. It has to be gathered from the very first part of Section 7-A(2)(i), namely, only self-financed fixed assets whose book value is to be computed by the Special Officer for payment to the licensee and from that amount depreciation is to be deducted which would necessarily mean depreciation on the very same asset which has undergone the book valuation as per Section 7-A(2)(i). If for calculating the book value of such assets the works

paid for by the consumers are to be excluded they necessarily cannot be included for the purpose of ascertaining deductible depreciation on such assets. Consequently reference to paragraph XII Schedule VI would be totally out of picture and redundant so far as the scheme of Section 7-A sub-section (2)(i) is concerned. It may be that the licensee might have obtained benefit of such depreciation on consumer paid assets under Income Tax Act or any other statutory provision but that is totally irrelevant for deciding the question whether the deduction of depreciation on the concerned assets whose book value is to be computed as per Section 7-A(2)(i), paragraph XII of Sixth Schedule could at all be pressed in service. It is, therefore, not possible to agree with the submission of learned senior counsel for the respondents and also the learned counsel who appeared for the State of U.P. that for the purpose of deducting the depreciation the assets which are not included in computing the book value as per Section 7-A(2)(i), namely, the consumer-financed assets also could be taken into consideration. In our view the Special Officer was patently in error when he computed the depreciation on the assets under Section 7-A(2)(i) by adding the amount of depreciation on the service lines which were paid for by the consumers. Reference to paragraph XII of Sixth Schedule in this connection was wrongly made and the said paragraph was wrongly pressed in service by the Special Officer. In this connection it has also to be kept in view that the amount of Rs.2,48,718/- being the depreciation amount on the works constructed at the cost of consumers was not disputed by the Board and the only contention of the Board before Special Officer was that as per paragraph XII of Sixth Schedule the said amount of depreciation was also to be deducted from the book value of the assets acquired by the Board under Section 6-A read with Section 7-A. As the reliance placed on paragraph XII of Sixth Schedule by the Special Officer is found by us to be unjustified and as the amount of depreciation deducted from the book value on this score is undisputedly Rs.2,48,718.81 this amount of depreciation deducted from the book value on this score is undisputedly Rs.2,48,718.81 this amount must be treated to have been wrongly deducted from the book value by way of depreciation on consumer-financed assets, namely, service lines.

The above view expressed by their Lordships of the Apex Court in *Pilibhit Electric Supply Co. (P) Ltd. (supra)* was followed by this Court in *Saharanpur Electric Supply Company Ltd.* and another *vs. State of U. P. & others* reported in 2006 (6) ADJ 670 and also in the case of *M/s Farrukhabad Electric Supply Co. Ltd. Power House Fatehgarh and others vs. U. P. State Electricity Board Shakti Bhawan, Lucknow and others* (Civil Misc. Writ Petition No. 146 of 1978 decided on 23.05.2008).

In the instant case, the Special Officer (Electricity) has duly considered the rival submissions of the petitioner (U. P. State Electricity Board) and the Ex-Licensee, M/s Agra Electric Supply Undertakings and has held that the provisions of Section 7-A(2) (i) requires the exclusion of all works constructed at the cost of local bodies for street lighting and the work paid for by the consumers while

determining the book value of all completed works in beneficial use pertaining to the undertaking taken over by the Board, irrespective of the period when they were constructed. The Special Officer after going through the details of the arguments submitted by the Ex-Licensee and the Petitioner/Board and considering the provisions of the Act has held that the book value of all the completed works in beneficial use pertaining to the undertaking taken over by the SEB (excluding works constructed at the cost of local bodies for street lighting and works paid for by consumers less the amount of depreciation calculated in accordance with the 6th Schedule read with the 7th Schedule to the Electricity (Supply) Act, 1948 is to be taken. The Special Officer (Electricity) has determined the amount of depreciation on works constructed at the cost of local bodies for street lighting and works paid for by the consumers as Rs. 20,98,226/- and has accordingly deducted the same from the total depreciation on all completed works pertaining to the undertaking and taken over by the Board i.e. Rs. 1,59,88,944/-.

Having gone through the reasoning of the Special Officer (Electricity) while dealing with the issue of depreciation and disallowing the claim of the Petitioner/Board on account of depreciation on works constructed at the cost of Local Bodies for street lighting and works paid for by the consumers amounting to Rs. 20,98,226/- we find that the same is in consonance with the ratio of the law laid down by the Apex Court in *Pilibhit Electric Supply Co. (Pvt.) Ltd.*, and another (supra) followed by this Court in *Saharanpur Electric Supply Company Ltd.*, (supra) and in the case of *M/s Farrukhabad Electric Supply Co. Ltd.*, (supra) and calls for no interference by this Court.

B. Stores and Spare Parts

Sri C. B. Yadav, learned Senior Counsel assisted by Sri Baleshwar Chaturvedi, learned counsel next contended that the Special Officer (Electricity) while rendering the Award dated 12.07.1982 committed manifest error in allowing the value of Stores and Spare Parts taken over amounting to Rs. 83,243/-. Sri C. B. Yadav, learned Senior Counsel submits that once the calculation has been made on the basis of Book Value which excludes stores and spare parts along with Plant and Machinery, the finding that spare parts have to be paid for separately is misconceived and the award of the Special Officer (Electricity) is vitiated on this score.

The parties are at common ground that 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 sums is to be decided by the Special Officer (Electricity) as per Section 7-A (2) (iii) of the India Electricity Act, 1910 (as amended). The Special Officer (Electricity) in his Award has elaborately dealt with the issue and arrived at a conclusion that the cost of spare part as appearing in List (C) was prepared by the Board after physical verification of stores. Some of the items appearing in the Bills produced by the Ex-licensee have been duly accounted for in the Stores Account. There is no such record produced by the Board by which it can be

established that remaining items of the Bills produced by the Ex-Licensee have not been debited to the Stores Account or to prove that cost of these items have been debited to Capital Account. Sri Yadav has been unable to impress upon us that the conclusion drawn by the Special Officer (Electricity) is factually incorrect or in violation of the Section 7-A (2) (iii) of the Indian Electricity Act, 1910. The findings returned by the Special Officer (Electricity), in this regard calls for no interference.

C. Amount, if any, already paid in advance

Sri C. B. Yadav, learned Senior Counsel in furtherance of the challenge to the Award dated 12.07.1982 submits that the Special Officer (Electricity) grossly erred in disallowing deductions of Rs. 2,50,000/- paid by the Board to the Ex-Licensee in advance out of collections made from consumers. It is not in dispute that the amount of Rs. 2,50,000/- is reflective of the revenue realised by the Board on behalf of the Ex-Licensee. Sri Yadav has argued that the said sum was included in the total sum of Rs. 34,10,54,072/- as per the calculation at Page 63 of the Award. Admittedly, the amount is not an advance received from the Board by the Ex-Licensee and the Special Officer (Electricity) has rightly arrived at the conclusion that it was not advance from the Board but the amount collected by the Board on behalf of the Ex-Licensee and, therefore, outside the ambit of Section 7-A (5) (a) of the Act. The submissions of Sri C. B. Yadav, do not merit considerations and is hereby rejected.

D. Claim on Account of Railway Siding Charges

Sri C. B. Yadav, learned Senior Counsel appearing for the petitioner has fairly submitted that he does not wish to press this issue. Since, the issue is not being pressed on behalf of the petitioner, we refrain from conveying our observations. As a result, the findings/conclusion of the Special Officer (Electricity) on the issue is upheld.

E. Initial Payment received from Bulk Supply Consumers

Sri C. B. Yadav, learned Senior Counsel for the petitioner submits that an amount of Rs. 13,22,996.80 as advance from 38 Bulk Supply Consumers with the agreement that the same would be refunded by adjustment in 240 instalments upto the date of the take over had been taken but only a sum of Rs. 4,47,603.21 was adjusted by the Ex-Licensee, thus leaving a balance of Rs. 8,75,393.59 to be refunded to the consumers. This claim was disallowed by the Special Officer by returning a finding that the Ex-Licensee had credited this amount towards the consumers contribution towards service line. The consumers contribution towards service lines formed a separate head of deduction already allowed, this amount of 8,75,393.59 could not be allowed again and the award of the Special Officer (Electricity) suffers from patent illegality in this regard as this amount was liable to be deducted from the amount payable to the Ex-Licensee.

Prima-facie, we find the submissions of Sri C. B. Yadav, learned Senior Counsel

to be attractive but, however, on the perusal of the record we find that the amount of Rs. 8,75,393.50 is referable to 38 consumers to whom the Board has been refunding in monthly instalments. It is verified from the records of the Ex-Licensee that the amount received as advance from Bulk Consumers have been credited to consumer contribution account and adjustment for amount refunded in instalments has also been made in the accounts. The entire amount of consumer contribution has already been excluded from the book value of assets. The Special Officer (Electricity) has returned a finding that no amount is to be deducted separately on this account. The Special Officer has recorded findings of fact in this regard which calls for no interference.

F. Employees Claims amounting to Rs. 14,50,980.35 in respect of Gratuity, Overtime, Unavailed Leave, Supreme Court Award etc.

Sri C. B. Yadav, learned Senior Counsel for the petitioner submits that the Special Officer (Electricity) while rendering the Award dated 12.07.1982 disallowed a sum of Rs. 10,95,431.50 towards gratuity in respect of workers, a sum of Rs. 2,29,538/- towards gratuity in respect of Agreemental Staff, a sum of Rs. 48,622.67 towards Agreemental Staff refused/unavailed leave, a sum of Rs. 38,000/- towards Railway fare activities, a sum of Rs. 36,173.68 towards Supreme Court Awards and a sum of Rs. 3,250.50 towards claim of overtime pertaining to Ex-Licensee period totalling Rs.14,50,980.35.

Sri Yadav vehemently submits that the amount towards gratuity has been disallowed on the ground that no gratuity was due for payment to the taken over employee on the date of their take over. It is argued that the gratuity is payable to an employee on the termination of his employment after he has rendered continuous service of not less than 5 years, on his superannuation, retirement or resignation, death or disablement due to accident at the rate of 15 days wages based on the rate of wages last drawn by the employee concerned. The onus lies on the employer. It is argued that the Ex-Licensee was liable to pay gratuity at the rate of wages that were being drawn by the employee taken over by the Board on the date of vesting/taking over. It is argued that the share of the Ex-Licensee towards gratuity of the employees up to the date of taken over was the liability of the Ex-Licensee and even though was a differed liability the same was owed to the Board and as such was not liable to be disallowed. Likewise it is argued that the Special Officer (Electricity) manifestly erred in law in disallowing the claim of the Board towards agreemental/staff refused/unavailed leave on the ground that no such amount was actually paid by the Board and could not be included under Section 7-A(5)(c) of the Act.

In Saduruddin Vs. Union of India reported in AIR 1981 SC 1257 the Apex Court has held that an employee shall be entitled to gratuity from the Transferee undertaking if there is continuity of service.

In Anand Behari Vs. RSRTC reported in 1991(1) SCC 731 the Apex Court held that when services are transferred to a new entity without break, gratuity must

include the entire period of past service.

In our opinion, gratuity is a one time lump-sum payment made by an employer to an employee as a token of appreciation for long and meritorious service, usually payable on retirement, resignation (after qualifying service), death or disablement. It is not a periodic payment such as salary or pension. In the case at hand, we find that no material was placed before the Special Officer (Electricity) to establish the fact that amount towards gratuity was due or paid. The situation for payment of gratuity as has been stated earlier would arise only on the retirement, resignation, death or disablement.

We have carefully gone through the reasoning of the Special Officer (Electricity) in disallowing the claim of the Board in respect of the above-mentioned heads and find that the reasoning adopted is in consonance with the law and calls for no interference by this Court. The Special Officer (Electricity) has recorded categorical findings that neither any amount of gratuity was due for payment to the taken over employees of the Ex-Licensee on the date taking over of the undertaking nor the amount was paid over to the employees/officers and further that there is no provision for proportionate deduction of gratuity under the payment of gratuity Act and hence the claim is not covered under Section 7-A(5) (C) of the Indian Electricity Act, 1910. Likewise, the Special Officer (Electricity) has recorded finding of fact taking into consideration the decision of the Apex Court rendered in Civil Appeals No. 1567 of 1968, 585-1026 and 1027-1032 of 1969, to the effect that no amount on account of unavailed/refused leave and travel facility has been paid by the Board to the taken over employees and consequently, the same cannot be considered under Section 7-A(5)(C) of the Indian Electricity Act, 1910 (as applicable to the State of U. P.).

G. Disallowing Deductions of Amount of Development Reserves

Lastly, Sri C. B. Yadav, learned Senior Counsel submits that the Special Officer (Electricity) committed manifest error of law in deductions towards development reserves amounting to Rs. 19,95,398/-. It is argued that the Special Officer (Electricity) has wrongly disallowed the claim of the Petitioner/Board towards Development Reserve under Section 7-A(5)(h) of the Indian Electricity Act, 1910 (as amended and applicable to U. P.) inasmuch as clause V(A) provides that where the undertaking is purchased by the Board or the State Government, the amount of Development Reserve may be deducted from the price payable to the licensee. Sub-section 5(h) of Section 7-A of the Act also provides that the unpaid amount of the Development Reserve at the instance of the Licensee to the purchaser shall be a deduction on the gross amount payable. It is further argued that the accounts of the Ex-Licensee upto the date of vesting showed a Development Reserve of Rs. 19,95,398 and since the said sum was not paid by the Ex-Licensee to the Board (Purchaser) the Board was entitled to deduct the said amount from the gross amount payable to the Ex-Licensee. It is further argued that the Special Officer (Electricity) misconstruing and miss-interpreting the decision of Apex Court dated 01.05.1973 rendered in Civil Appeal No. 1201

of 1967 has disallowed the claim of the petitioner has resulted in double benefit to the Ex-Licensee to the tune of Rs. 19,95,398/-

From the perusal of the Award of the Special Officer (Electricity) rendered on 12.07.1982, we find that the Special Officer after due consideration of the respective arguments of the Board and the Ex-Licensee has returned a finding as under:-

"After going through the details of the arguments submitted by the Board and the ex-licensee, and the provisions of the Act, I hold that the amount of Development Reserve to be deducted under Sec. 7-A(5)(h) of the Indian Electricity Act, 1910 (as amended for its application to Uttar Pradesh) is the amount remaining in balance with the licensee and no deduction is to be made in respect of the amount utilised in the business of Electricity Supply Undertaking. A statement showing the utilisation of Development Reserve in the business of the undertaking submitted by the ex-licensee was checked from the accounts of the ex-licensee and a statement showing year-wise position after including the amount of consumers security deposit was prepared and it is observed that the ex-licensee had been utilising the amount of Development Reserve in the creation of capital assets of their undertaking and there was no amount remaining in balance on the date of take over of the undertaking. Therefore, no amount is deductible on account of Development Reserve from the gross amount payable to the ex-licensee. Thus, a sum of Rs. 17,44,369/- as per details given is deductible under Sec.7-A(5)(h) of the Indian Electricity Act, 1910 (as amended) from the gross amount payable to the ex-licensee.

(1) Tariffs & Development Control Reserve Nil

(2) Contingencies Reserve Rs. 17,44,369/-

(3) Development Reserve Nil

Total Rs. 17,44,369/-

(Rupees Seventeen Lacs Forty Four Thousand Three Hundred Sixty Nine only).

The issue as regards Development reserve was dealt with by the Apex Court in Tinsukhia Electric Supply Co. Ltd., versus State of Assam reported in AIR 1990 SC 123, 1989 (3) SCC 709. Their Lordships of the Apex Court read the statutory provisions in the manner that if any part of the reserve is invested in "Fixed Assets" and the reserves in the form of "Fixed Assets" are taken over pursuant to the acquisition what remains to be accounted for by the licensee is only the amount remains balance in the concerned accounts. Meaning thereby, in case the amount under the "Development Reserve" having already been invested in the form of fixed assets that is already transferred to the Board and in case the amount is not invested and remained with the Ex-Licensee, the same has to be transferred by it.

Further, the Apex Court in U. P. State Electricity Board versus Upper Jamuna Valley Electric Supply Co. Ltd., reported in AIR 2000 SC 2736 has observed that the "Development Reserve" is available for investment in the business of electricity supply of the undertaking.

The Special Officer (Electricity) has recorded categorical finding of fact that the ex-licensee had been utilizing the amount of Development Reserve in the creation of Capital Assets of their undertaking and there was no amount remaining in balance on the date of take over of the undertaking.

In our view, the Special Officer (Electricity) has rightly rejected the claim of the petitioner and disallowed the deductions of the amount of Development Reserve. The conclusion of the Special Officer (Electricity) is in consonance with the law laid down by the Apex Court. We thus do not find any error in the view taken by the Special Officer (Electricity) and the findings recorded is accordingly sustained.

In view of the above, the limited challenge to the Award dated 12.07.1982 rendered by the Special Officer (Electricity) appointed under Section 7-A(6) of the Indian Electricity Act, 1910 (as amended and applicable to the State of U. P.) determining the purchase price payable to the Ex-Licensee, M/s Agra Electricity Supply Company Ltd., fails. The writ petition is devoid of merits and is, accordingly, dismissed. Consign to records.

Before parting, we deem it appropriate to bring on record the statement of fact made at the Bar that the principal amount under the Award dated 12.07.1982 had been deposited by the petitioner on 17.09.1991 before the Calcutta High Court in Liquidation proceedings and the same was also released to the Ex-Licensee, M/s Agra Electricity Supply Company Ltd. (Respondent No. 2) against the bank guarantee. However, the interest on the said amount remains to be paid. Since, we have upheld the award without making any modifications to the same, we direct the petitioner to pay the amount of interest due thereon, as provided under the Indian Electricity Act, 1910 within a period of 6 months from the date of production of a certified copy of the order before the authority concerned.

There shall, however, be no order as to costs.