M/s. West Ramnad Electric Distribution Co. Ltd.

Vs

State of Madras

Civil Appeals Nos. 512 and 513 of 1960

(P. B. Gajendragadkar, K. N. Wanchoo, K. Subha Rao, N. Rajgopala Ayyangar, J. C. Shah JJ)

02.05.1962

JUDGMENT

GAJENDRAGADKAR, J. –

The principal question which arises in these two appeals is related to the validity of s. 24 of the Madras Electricity supply Undertakings (Acquisition) Act, 1954 (XXXIX of 1954) (hereinafter called the Act). That question arises in this way. The appellant, the West Ramnad Electric Distribution Co. Ltd., Rajapalayam, was incorporated in 1935 to carry on, within the State of Madras and elsewhere, the business of an electric light and power company, to construct, lay down and establish and carry on all necessary installations, to generate, accumulate, distribute and supply electricity under a licence granted under the Indian Electricity Act of 1910. On the 24th January, 1950 the Madras Legislature passed an Act (XLIII of 1949) for the acquisition of undertaking supplying electricity in the Province of Madras. Under the said Act, the Government was empowered to acquire any electrical undertaking on payment of compensation according to the relevant provisions of the said Act. In pursuance of the provisions of s. 4(1) of the said Act, the respondent, State of Madras, passed on Order C.O. Ms. No. 2059 on the 17th May, 1951, declaring that the appellant undertaking shall vest in the respondent from the 21st September, 1951. Thereafter, the respondent appointed the Chief Electrical Inspector as the Acquisition Officer, and on the appointed day, the said Officer took over possession of the appellant and all its assets, records and account-books. The appellant then appointed the liquidator as its Accredited Representative for the purposes of the Act in order to claim compensation under the Act. The respondent then paid over to the appellant Rs. 6 lakhs of the 24th October, 1952 and Rs. 2,34,387-1-0 on the 5th July, 1953, as compensation. According to the appellant, Rs. 98,879-15-0 still remained to be paid to it by way of compensation under the Act, where as the respondent suggested that only Rs. 6000/- was the balance due to the appellant. That is how the appellant undertaking went into possession of the respondent and the appellant was paid partial compensation.

It appears that owners of some of the electrical undertakings in Madras which had been taken over by the respondent in accordance with the provisions of s. 4(1) of the 1940 Act, filed writ petitions in the High Court of Madras impugning the validity of the said Act. These writ petitions however, failed and by its judgment in Narasaraopeta Electric Corporation Ltd. v. State of Madras [(1951) 11 M.L.J. 277] the Madras High Court upheld the validity of the impugned Act in so far as it related to the licensees other than municipalities. The said licenses then moved this Court and their appeal succeeded. By its decision in the Rajamundry Electric Supply Corporation Ltd. v. The State of Andhra [(1954) S.C.R. 779] this Court held that the impugned Act of 1949 was ultra vires. This decision was based on the ground that the Act was beyond the legislative competence of the Madras Legislature inasmuch as there was no entry in any of the three Lists of the Seventh Schedule of the

Government of India Act, 1935 relating to compulsory acquisition of any commercial or industrial undertaking. This Court observed that although s. 299(2) of the said Constitution Act contemplated a law authorising compulsory acquisition for public purposes of a commercial or industrial undertaking, a corresponding entry had not been included in any of the three Lists and so, the Madras Legislature was not competent to pass the impugned Act. This decision was pronounced on the 10th February, 1954.

Meanwhile, the Constitution came into force on the 26th January, 1950, and the position of the legislative competence of the Madras Legislature in respect of the compulsory acquisition of commercial or industrial undertakings for public purposes has been materially altered. Entry 36 in List II of the Seventh Schedule to the Constitution refers to acquisition or requisitioning of property, except for the purposes of the Union, subject to the provisions of entry 42 of List III, whereas entry 42 of List III deals with the principles on which compensation for property acquired or requisitioned for the purposes of the Union or of a State or for any other public purposes is to be determined, and the form and the manner in which such compensation is to be given. That is how the two entries read at the relevant time.

After the decision of this Court was pronounced in the case of Rajamundry Electric Supply Corpn. Ltd. [(1954) S.C.R. 779] the Madras Legislature passed the Act and it received the assent of the President on the 9th October, 1954, and was published in the Government Gazette on the 13th October, 1954. The Act incorporated the main provisions of the earlier Act of 1949 and purported to validate action taken under the said earlier Act. After the Act was passed, the respondent issued a new Government Order No. 4388 on the 14th December, 1954, appointed the Chief Electrical Inspector to be the Acquisition Officer of the appellant concern for purposes of the Act. As a result of this order, the appellant undertaking which had been taken over by the respondent on the 21st September, 1951, continued to be in the possession of the respondent. It is under these circumstances that the appellant filed its writ petition No. 326 of 1955 on the 26th April, 1955.

In its writ petition, the appellant alleged that to the extent to which the Act purports to validate acts done under the earlier Act of 1949, it is ultra vires, ineffectual and inoperative. It was further urged that the three bases of compensation as laip down by the Act are inconsistent with the requirements of Art. 31 of the Constitution and so, the operative provisions of the Act are unconstitutional. On these grounds, the appellant prayed for a writ of Certiorari or any other appropriate writ, or order or direction calling for the records relating to G.O. Ms. No. 2052 issued on the 17th May 1951 and quashing the same. Later, the appellant filed another writ petition No. 107 of 1956 on the 31st January, 1956, and it added a prayer that a writ of Mandamus or any other writ, or order, or direction should be issued directing the respondent to restore possession of the appellant undertaking with all its assets along with masne profits from 21st September, 1951 or pay the market value of the said undertaking as on 21st September, 1951 and interest thereon @ 6 per cent. per annum, and to direct payment of costs and pass such other orders as may be appropriate and just in the circumstances of the case.

The claim thus made by the appellant was denied by the respondent. The respondent's case was that the Act is valid and s. 24 which operates retrospectively has validly and effectively validated actions taken under the earlier Act, with the result that the possession of the appellant undertaking which was taken on the 21st September, 1951, must be deemed to have been taken under the provisions of the Act and so the claim made by the appellant either for a writ of certiorari or mandamus could not be granted. It was also urged that it would not be open to the appellant to claim possession of the undertaking or to ask for mesne profits in writ proceedings.

Mr. Justice Rajagopalan who heard the two writ petitions, rejected the contentions raised by the appellant and dismissed the said petitions. He held that having regard to the fact that the appellant had accepted compensation under the earlier Act, no real relief could be granted to it even if its contention that s. 34 of the Act was invalid in uphold. In other words, the learned Judge took the view that even if the challenge made by the appellant to the validity of s. 24 was found to be justified, in the present writ proceedings he would not be prepared to grant it the relief either of possession or of mesne profits. Even so, the learned Judge proceeded to examine the several points urged by the appellant in support of its contention that s. 24 was invalid, and rejected them. In his opinion, the Act was valid and s. 24 being retrospective in operation, validated the actions taken by the respondent under the earlier Act. The argument that the compensation awardable under the Act was inconsistent with Art. 31(1) and 31(2) was not accepted, inter alia, on the ground that so material had been placed before the Court on which the appellant's plea could be sustained. The learned Judge has also recorded his conclusions on some other points urged before him, but it is unnecessary to refer to them. After this decision was pronounced, the appellant moved the learned Judge for a certificate under Art. 132(1) of the Constitution and it is with the certificate thus granted to it under the said Article that the present appeals have been brought to this Court.

The first point which Mr. Nambiar has raised before us on behalf of the appellant is that s. 34 which purports to validate action taken under the earlier Act is, in law, ineffective to sustain the order issued by the respondent on the 17th May, 1951. It would be recalled that by this order, the respondent obtained possession of the appellant undertaking for the first time under the relevant provisions of the earlier Act. The argument is that there is no specific or express provision in the Act which makes the Act retrospective and so, s. 24 even if it is valid, is infective for the purpose of sustaining the impugned order by which possession of the appellant concern was obtained by the respondent. The impugned order had recited that the appellant concern shall vest in the Government on the 21st September, 1951, and it directed that under s. 4(2) of the earlier Act the said order shall be published in the Gazette. Under the said order a further direction had been issued appointing the Chief Electrical Inspector to the respondent to be the Acquisition Officer, and the appellant was requested to take action for the appointment of an accredited representative in accordance with s. 8 of the earlier Act and to submit the inventories and all particulars required under s. 17 of the said Act. Mr. Nambiar contends that this order amounts to a notification which must be held to be a law under Art. 13 of the Constitution. For the purpose of the present appeals, we will assume that the said order is notification amounts to a law under Art. 13. Mr. Nambiar further contends that this notification was invalid for two reasons; it was invalid because it has been issued under the Provisions of an Act which was void as being beyond the legislative competence of the Madras Legislature, and it was void for the additional reason that before it was issued, the Constitution of India had come into force and it offended against the provisions of Art. 31 of the Constitution, and so, Art. 13(2) applied. Section 24 of the Act, no doubt, purported or attempted to validate this notification, but the said attempt has failed because the Act being prospective, s. 24 cannot have retrospective operation. That, in substance, is the first contention raised before us.

Before dealing with this argument, it would be necessary to examine the broad features of the Act and understand its general scheme. The Act was passed because the Madras Legislature thought it expedient to provide for the acquisition of under takings other than those belonging to and under the control of the State Electricity Board constituted under section 5 of the Electricity (Supply) Act, 1948 in the State of Madras engaged in the business of supplying electricity to the public. It is with that object that appropriate provisions have been made by the Act to provide for the acquisition of undertakings and to lay down the principles for paying compensation for them. It is quite clear that the scheme of the Act was to bring within the purview of its material provisions undertakings in

respect of which no action had been taken under the earlier act and those in respect of which action had been so taken. In fact, as we will presently point out, several provisions made by the Act clearly referred to both types of undertakings and leave no room for doubt that both types of undertakings are intended to be governed by it. The definition of an 'accredited representative' prescribed by s. 2(b) shows that the accredited representative means the representative appointed or deemed to have been appointed under s. 7. Similarly, s. 2(j) which defines a licensee provides that in relation to an undertaking taken over or an undertaking which has vested in the Government under s. 4, it shall be the person who was the licensee at the time when the undertaking was taken over or vested is the Government as the case may be, or his successor-in-interest. Section 2(e) defines an undertaking taken over as meaning an undertaking taken over by the Government after the 1st January, 1951 and before the commencement of this Act. The 'vesting date' under s. 2(m) means in relation to an undertaking, the date fixed under s. 4(1) as the date on which the undertaking shall vest in the Government or in the case of an undertaking taken over, the date on which it was taken over. These definitions thus clearly point out that the Act was intended to apply to undertakings of which possession would be taken after the Act was passed as well as undertakings of which possession had already been taken under the relevant provisions of the earlier Act.

Section 3 which deals with the application of the Act, provides that it shall apply to all undertaking of licensees including : (a) undertakings in respect of which notice for compulsory purchase has been served under s. 7 of the Electricity Act, such undertakings not having been taken over before the commencement of this Act; and (b) undertakings taken over. Similarly, section 4 which gives powers to the respondent to take over any undertaking clearly says that power can be exercised in respect of any undertaking which had already not been taken over. In dealing with the appointment of sole representative, s. 7, sub-ss. (3), and (5) bring out the same distinction between undertakings already taken over and those which had yet to be taken over. The same distinction is equally clearly brought out in s. 10(3), 11 sub-s. (2), (5) and (11), and s. 14(3). It is thus clear that the Act, in terms, is intended to apply to undertakings of which possession had already been taken, and that obviously means that its material and operative provisions are retrospective. Actions taken under the provisions of the earlier Act are deemed to have been taken under the provisions of the Act and possession taken under the said earlier provisions is deemed to have been taken under the relevant provisions of the Act. This retrospective operation of the material provisions of the Act is thus writ large in all the relevant provisions and is an essential part of the scheme of the Act. Therefore, Mr. Nambiar is not right when he assumes that the rest of the Act is intended to be prospective and so, section 24 should be construed in the light of the said prospective character of the Act. On the contrary, in construing s. 24, we have to bear in mind the fact that the Act is retrospective in operation and is intended to bring within the scope of its material provisions undertakings of which possession had already been taken.

Let us then construe s. 24 and decide whether it serves to validate the impugned notification issued by the respondent on the 21st September, 1951.

Section 24 reads thus :-

> "Orders made, decisions or directions given, notifications issued, proceedings taken and acts of things done, in relation to any undertaking taken ever, if they would have been validly made, given, issued, taken or done, had the Madras Electricity Supply Undertakings (Acquisition) Act, 1949 (Madras Act XLIII of 1949), and the rules made thereunder been in force on the date on which the said orders, decisions or directions, notifications, proceeding, acts or things, were made, given, issued, taken

> or done are hereby declared to have been validly made, given, issued, taken or done, as the case may be, except to the extent to which the said orders, decisions, directions, notifications, proceedings, acts or things are repugnant to the provisions of this Acts."

The first part of the section deals, inter alia, with notifications which have been validly issued under the relevant provisions of the earlier Act and it means that if the earlier Act had been valid are the relevant time; it ought to appear that the notifications in question could have been and had in fact been made properly under the said Act. In other words, before any notification can claim the benefit of s. 24, it must be shown that it was issued properly under the relevant provisions of the earlier Act, assuming that the said provisions were themselves valid and in force at that time. The second part of the section provides that the notifications covered by the first part are declared by this Act to have been validly issued; the expression "hereby declared" clearly means "declared by this Act" and that shows that the notifications covered by the first part would be treated as issued under the relevant provisions of the Act and would be treated as validly issued under the said provisions. The third part of the section provides that the statutory declaration about the validly of the issue of the notification would be subject to this exception that the said notification should not be inconsistent with or repugnant to the provisions of the Act. In other words, the effect of this section is that if a notification had been issued properly under the provisions of the earlier Act and its validity could not have been impeached if the said provisions were themselves valid, it would be deemed to have been validly issued under the provisions of the Act, provided, of course, it is not inconsistent with the other provisions of the Act. The section is not very happily worded, but on its fair and reasonable construction, there can be no doubt about its meaning or effect. It is a saving and validating provision and it clearly intends to validate actions taken under the relevant provisions of the earlier Act which was invalid from the start. The fact that s. 24 does not use the usual phraseology that the notifications issued under the earlier Act shall be deemed to have been issued under the Act, does not alter the position that the second part of the section has and is intended to have the same effect.

No doubt, Mr. Nambiar suggested that s. 24 does not seem to validate actions taken under the earlier Act on the basis that the earlier Act was void and honest and in support of this argument, he relies on the fact that the notification following under the first part of s. 24 are referred to as validly made and the earlier Act and the rules made thereunder are assumed to have been in force on the date on which the said notification was issued. He also relies on the provisions or s. 25 which purports to repeal the said Act and that, no doubt, gives room for the argument that the Legislature did not recognise that the said Act was nonest and dead right up from the Start. It is not easy to understand the genesis of s. 25 and the purpose which it is intended to achieve. The only explanation given by Mr. Ganpati Aiyer on behalf of respondent is that since the earlier Act was in fact on the statute book, the legislature may have thought that for the sake of form, it may have to be repealed formally and so, s. 25 was enacted. But even if the enactment of the said section be held to be superfluous or unnecessary, that cannot assist the appellant in the construction of s. 24. We have no doubt that s. 24 was intended to validate actions taken under the earlier Act and on its fair and reasonable construction, it must be held that the intention has been carried out by the legislature by enacting the said section. Therefore, the argument that s. 24 even if valid, cannot effectively validate the impugned notification, cannot succeed.

Mr. Nambiar then contends that the impugned notification is invalid and inoperative because it contravenes Art. 31(1) of the Constitution. Article 31(1) provides that no person shall be deprived of his property save by authority of law. It is urged that this provision postulates the existence of an

antecedent law, before a citizen is deprived of his property. The notification was issued on the assumption that there was an antecedent law, viz., the earlier Act of 1949; but since the said Act was nonest, the notification is not supported by the authority of any pre-existing law and so, it must be held to be invalid and ineffective. In our opinion, this argument is not well-founded. If the Act is retrospective in operation and s. 24 has been enacted for the purpose of retrospectively validating actions taken under the provisions of the earlier Act, it must follow by the very retrospective operation of the relevant provisions that at the time when the impugned notification was issued, these provisions were in existence. That is the plain and obvious effect of the retrospective operation of the statute. Therefore in considering whether Art. 31(1) has been complied with or not, we must assume that before the notification was issued, the relevant provisions of the Act were in existence and so, Art. 31(1) must be held to have been complied with in that sense.

In this connection, it would be relevant to refer to the provisions of Art. 20(1), because the said provisions illustrate the point that where the Constitution desired to prevent the retrospective operations of any law, it has adopted suitable Phraseology to carry out that object. Art. 30(1) provides that no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. By using the expression "law in force" in both the parts of Art. 20(1) the Constitution has clearly indicated that even if a criminal law was enacted by any legislature retrospectively, its retrospective operations would be controlled by Art. 30(1). A law in force at the time postulates actual factual existence of the law at the relevant time and that excludes the retrospective application of any subsequent law. Art. 31(1), on the other hand, does not use the expression "law in force at the time". It merely says "by authority of law", and so if subsequent law passed by the legislature is retrospective in its operation would satisfy the requirement of Art. 31(1) and would validate the impugned notification in the present case. Therefore, we are not satisfied that Mr. Nambiar is right in contending that the impugned notification is invalid for the reason that at the time when it was issued there was no law by whose authority it could be sustained.

That takes us to the larger issue raised by Mr. Nambiar in the present appeals. He contends that the power of the legislature to make laws retrospective cannot validly be exercised so as to care the contravention of fundamental rights retrospectively. His contention is that the earlier Act of 1949 being dead and non-existent, the impugned notification contravened Art. 31(1) and this contravention of a fundamental right cannot be cured by the legislature by passing a subsequent law and making it retrospective. In support of this argument, he has relied on the decision of this Court in Deep Chand v. The State of Uttar Pradesh [(1959) Supp. 2 S.C.R. 8]. In that case, one of the questions which arose for decision was whether the doctrine of aclipse applied to a law which was found to be invalied for the reason that it contravened the fundamental rights, and the majority decision held that it did not apply to such a law. In deeling with a question as to the applicability of the doctrine of eclipse, a distinction was drawn between a law which was void either for want of legislative power at the time when it was passed, or because it contravened fundamental rights on the one hand, and the law which was valid when it was passed put subsequently became invalid because of supervening circumstances on the other. In the latter case, the law was valid when it was passed and became invalid because a cloud was cast on its validity by supervening circumstances. That being so, if the constitutional amendment subsequently made removes the cloud, the validity of the law is revived. That is the effect of application of the doctrine of eclipse; but there can be no scope for the application of the said doctrine to a law which is void and nonest either for want of legislative competence or because it contravenes fundamental rights. That, in substance, is the effect of the majority decision in Deep Chand's case. In the present appeals it is not disputed that the

earlier Act of 1949 was dead and void from the start, and that no doubt, is consistent with the majority decision in Deep Chand's case. But the question as to whether the legislature can retrospectively validate actions taken under a void law did not arise for consideration in Deep Chand's case. The only point which was decided was that the removal of the cloud by a subsequent constitutional amendment will not automatically revive a law which was void from the start, but that obviously is not case before us. What we are called upon to decide is the present appeals is whether or not it is competent to the legislature to pass a law retrospectively to validate actions taken under a void Act, and in deciding this question, Deep Chand's case would not afford ue any assistance.

Mr. Nambiar did not dispute the position that in enacting laws in respect of topics covered by appropriate entries in the relevant Lists of the 7th Schedule to the Constitution, the legislatures would be competent to make the provisions of the laws passed by them retrospective. He, However, seeks to import a limitation on this legislative power where the contravention of fundamental rights is involved. No authority has been cited in support of the plea that the legislative power of the legislature is subject to any such limitation even where the contravention of fundamental rights is involved. On principle, it is difficult to appreciate how such a limitation on the legislative power can be effectively pleaded. If a law is invalid for the reason that it has been passed by a legislature without legislative competence, and action is taken under its provisions, the said action can be validated by a subsequent law passed by the same legislature after it is clothed with the necessary legislative power. This position is not disputed. If the legislature can by retrospective legislation cure the invalidity in actions taken in pursuance of laws which were void for want of legislative competence and can validate such action by appropriate provisions, it is difficult to see why the same power cannot be equally effectively exercised by the legislature in validating actions taken under law which are void for the reason that they contravened fundamental rights. As has been pointed out by the majority decision in Deep Chand's case, the infirmity proceeding from lack of legislative competence as well as the infirmity proceeding from lack of legislative competence as well as the infirmity proceeding from the contravention of fundamental rights lead to the same result and that is that the offending legislation is void and honest. That being so, if the legislature can validate actions taken under one class of void legislation, there is no reason why it cannot exercise its legislative power to validate actions taken under the other class of void legislation. We are, therefore, not prepared to accept Mr. Nambiar's contention that where the contravention of fundamental rights is concerned, the legislature cannot pass a law retrospectively validate actions taken under a law which was void because it contravened fundamental rights.

In this connection, it may be useful to refer to some decisions which deal with the legislature's power to pass retrospective laws. In the United Provinces v. Mst. Atiqabegum [(1940) F.C.R. 110, 136] Gwyer C.J. observed that "the validation of doubtful executive acts is not so unusual or extraordinary a thing that little surprise would be felt if Parliament had overlooked it, and it would take a great deal to persuade me that the legislative power for the purpose has been denied to every Legislature, including the Central or Federal legislature, in India." It is true, "he added," that 'validation of executive orders or any entry even remotedly analogous to it is not to be found in any of the three lists; but I am clear that legislation for that purpose must necessarily be regarded as subsidiary or ancillary to the power of legislating on the particular subjects in respect of which the executive orders may have been issued." The same principle was stated by Speans C.J. in Piare Dusadh v. The King Emperor. [(1944) F.C.R. 61, 105]

This question has been considered by this Court in several decisions to some of which we will now briefly refer. In the Union of India v. Madan Gopal Kabra [(1954) S.C.R. 541, 554], this Court has occasion to consider the validity of certain amendments made in the Income Tax Act by section 3 of

the Finance Act (XXV of 1950). These amendments had the effect of applying retrospectively the charging sections of the Taxing Act and their validity was impeached. In rejecting the argument that the levy authorised to be imposed by the amendments was ultra vires, Patanjali Sastri, C.J., observed that "while it is true that the Constitution has no retrospective operation, except where a different intention clearly appears, it is not correct to say that in bringing into existence new Legislatures and conferring on them certain powers of legislation, the Constitution operated retrospectively. The legislative powers conferred upon Parliament under Articles 245 and 246 read with List I of the Seventh Schedule could obviously be exercised only after the constitution came into force and no retrospective operation of the Constitution is involved in the conferment of these powers. But it is a different thing to say that Parliament in exercising the powers thus acquired is precluded from making a retrospective law," and so, the conclusion was that Parliament was content to make a law imposing a tax on the income of any year prior to the commencement of the Constitution.

In M.P.V. Sundararamier & Co. v. The State of Andhra Pradesh [(1958) S.C.R. 1022] the validity of the Sales Tax laws Validation Act, 1956 (7 of 1956) was questioned and the majority of the Court held that the said Act was in substance one lifting the ban on taxation of inter-State sales and within the authority conferred on the Parliament under Art. 286(2) and further that under that provision, it was competent to the Parliament to enact a law with retrospective operation. This conclusion also proceeded on the basis that the Power of a legislature to pass a law included a power to pass it retrospectively, and so, the argument that the impugned Act was ban on the ground that it was retrospective in operation was rejected. The same principle has been again enunciated by this Court in M/s. J.K. Jute Mills Co. Ltd. v. State of Uttar Pradesh [(1962) 2 S.C.R. 1]. It has been held in this case that the power of the legislature to enact a reference to a topic entrusted to it is unqualified, subject only to any limitation imposed by the Constitution in the exercise of such a power, and that it would be competent for the Legislature to enact a law which is either prospective or retrospective, vide also Mt. Jadao Bahuji v. The Municipal Committee, Khandwa [(1962) 1 S.C.R. 633], Jadab Singh and The Himanchal Pradesh Administration [(1960) 3 S.C.R. 755] and Raghubar Dayal Jai Prakash v. The Union of India [(1962) 3 S.C.R. 547]. Therefore, there is no doubt about the competence of the Legislature to enact a law and make it retrospective in operation in regard to topics included within the relevant Schedules of the Constitution. Our conclusion, therefore, is that the appellant's contention that it was beyond the competence of the Madras Legislature to make the Act retrospective so as to validate the impugned notification, cannot be accepted.

That takes us to the last argument raised by Mr. Nambiar before us. He contends that section 5 of the Act which provides for the payment of compensation to the licensees whose undertakings are taken over, is invalid because it is inconsistent with Art. 31(2). It is common ground that the provisions of Art. 31(2) with which we are concerned in the present appeals are those as they stood before the 4th Constitutional Amendment came into force. Art. 31(2) then provided, inter alia, that no property shall be compulsorily acquired save for the public purpose and save by authority of law which provides for compensation for the property so acquired and either fixes the amount of the compensation or specifies the principles on which, and the manner in which, the compensation is to be determined and given. In support of his argument, Mr. Nambiar has relied on the decision of this Court in the State of West Bengal v. Mrs. Bala Banerjee [(1954) S.C.R. 558]. In dealing with the question about the scope and effect of the provisions of Art. 31(2) in so far as they referred to the payment of compensation, this Court observed that though entry 42 of List III conferred on the Legislature the discretionary power of laying down the principles which should govern the determination of the amount to be given to the owner of the property acquired, Art. 31(2) required that such principles must ensure that what is determined as payable must be 'compensation', that is, a

just equivalent of what the owner has been deprived of. That is why in considering the validity of any statute is the light of Art. 31(2) it would be open to the Court to enquire whether all the elements which make up the true value of the property acquired have been taken into account in lying down the principles for determining compensation. It appears that section 8 of the West Bengal Land Development and Planning Act, 1948 (XXI of 1948) which was impugned in that case limited the amount of compensation so as to not to exceed the market value of the land on December, 31, 1946, no matter when the land was acquired. This part of s. 8 was struck down as invalid because it was hold that in fixing the market value on December 31, 1946, as the ceiling on compensation, the legislature had patently ignored the fact that prices of lands had considerably risen after the said date and that tended to show that the compensation awardable under the said provision could not be said to be just equivalent of what the owner would be deprived of. Mr. Nambiar, therefore, contends that since section 5 does not authorise the payment of compensation which can be treated as just equivalent of the property which would be taken over under its provisions, it must be struck down as inconsistent with Art. 31(2). It may be conceded that the 4th Constitution amendment which substantially changed the provisions of Art. 31(2) would be inapplicable in the present case, and that the High Court was in error in making a contrary assumption.

In support of this argument, Mr. Nambiar has also referred us to section 7A of the Indian Electricity Act 1910 (No. 9 of 1910) as it then stood. Section 7A(2) of the said Act lays down that in purchasing undertakings under s. 7A(1), the value of such lands, buildings, works, materials, and plant shall be deemed to be their market value at the time of purchase, due regard being had to the nature and condition for the time being of such lands, buildings, 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. The proviso to s. 7A lays down that to the value determined under sub-s. (2) shall be added such percentage, if any, not exceeding twenty per centum of that value as may be specified in the licence on account of compulsory purchase. Mr. Nambiar suggests that the provisions made in s. 7A(2) and the proviso to s. 7A of this Act give a fair picture of what could be regarded as a reasonable compensation that should be paid to the undertakings before they are acquired.

Before dealing with this argument, it is necessary to examine the scheme of s. 5 which provides for the compensation to be paid to the licensees. Section 5 provides that the compensation payable to a licensee on whom an order has been served under s. 4 or whose undertaking has been taken over before the commencement of the act, shall be determined under any one of the Bases A, B and C specified by the section as may be chosen under s. 8. Then follow detailed provisions about the three Bases A, B and C. Under Basis A, the compensation payable shall be an amount equal to twenty times the average not annual profit of the undertaking during a period of five consecutive account years immediately preceding the vesting date. The explanation makes it clear that the net annual profit shall be determined in the manner laid down in Part A or Part B, as the case may be, of Sch. 1. It is also clear that this basis shall not apply to an undertaking which has not been supplying electricity for five consecutive account years immediately preceding the vesting date.

Under Basis B, the compensation payable shall be the aggregate value of all the shares constituting the share capital of the undertaking, reckoned as indicated in (a), (b), (c) and (d) thereof. These respective clauses have reference to the dates on or before which the shares of the undertaking have been issued, for instance, cl. (a) provides that in the case of shares issued on or before the 31st March, 1946, the value of each share shall be reckoned at its average value as arrived at from the quotations for the shares as given in the official list of the Madras share Market on the 15th day of

each month and where such market was closed on that day, the quotations on the next working day, during the period of there years commencing on the 1st April, 1946, and ending on the 31st March, 1949. Under clause (b) it is provided that in the case of shares issued on or before the 31st in the case of shares issued on or before the 31st March, 1946, if clause (a) does not apply but there have been bonafide transfers in each of the different classes of shares in every one of the three years aforesaid, and such transfers have been duly registered in the appropriate books of the licensee, the value of each share of each such class shall be reckoned at one-third of the aggregate of its three annual average values for the three years, the average value for each year being determined from the transactions in that year. It is not necessary to set out clauses (c) and (d). The explanation to this Basis provides that it shall not apply unless clause (a) or clause (b) is applicable.

Under Basis C, the compensation payable shall be the aggregate value of the amounts specified in cls. (i) to (viii). These clauses refer respectively to the book value of all completed works in beneficial use pertaining to the undertaking and handed over to the Government less depreciation as specified; the book value of all works in progress : the book value of all other fixed assets; the book value of all plant and equipment; the book value of all intangible assets to the extent such value has not been written off in the books of the licensee; the amount due from consumers as specified in cl. (vii); and any amount paid actually by the licensee in respect of every contract referred to in s. 6(2)(a)(iii). Where basis C is applied, an additional sum by way of solatium is required to be paid as specified in cls. (a) and (b) to cl. (ix). The explanation to Basis C explains how the book value of any fixed assets has to be ascertained. That, in broad outlines, is the nature of the three Bases prescribed by section 5 for assessing the compensation to be paid to a licensee.

It is true that in none of the three bases does the Legislature refer to the market value of the undertaking, but that itself cannot justify the argument that what is intended to be paid by way of compensation must necessarily mean much less than the market value. The failure of the legislature to refer to the fair market value cannot, in our opinion, be regarded as conclusive or even presumptive evidence of the fact that what is intended to be paid under section 5 does not amount to a just equivalent of the undertaking taken over. After all, in considering the question as to whether compensation payable under one or the other of the Bases amounts to just equivalent. We must try to assess what would be payable under the said basis.

On this point, the real difficulty in the way of the appellant is that it has produced no material before the Court on which its plea can be sustained. As the High Court has pointed out, in the absence of any satisfactory material it would be difficult for the Court to come to any definite conclusion on the question as to whether just equivalent is provided for by s. 5 or not. Mr. Nambiar, no doubt, attempted to suggest that in the Madras High Court oral evidence is not allowed to be adduced on questions of fact in writ proceedings. That may be so; but it is quite clear that the affidavit made by the appellant in support of its petition could have easily set forth all relevant facts showing that the compensation payable under s. 5 was so inadequate that it could not be regarded as a just equivalent of the property acquired. In the absence of any material, we do not see how we can asses the validity of Mr. Nambiar's contention that section 5 contravenes Art. 31(2) of the Constitution. It is true that in its petition, the appellant made a general allegation that the market value of its assets at the relevant time would be Rs. 16,49,350/-, but no satisfactory material was placed in the form of proper affidavits made by competent persons to show how this market value was determined. In fact, the appellant did not state before the High Court and was unable to state even before this Court what Principles should have been laid down by the legislature in determining a just equivalent for the undertaking taken over by the respondent. The general argument that s. 5 does not provide for the payment of market value cannot, in the absence of material, help the appellant at all in

challenging the validity of section 5.

In this connection, it must be borne in mind that 8 of the Act leaves it to the opinion of the licensee to intimate to the Government in writing which basis of compensation it wants too be adopted, and so, it is not as if the choice of the basis is left to the Government in every case. Take, for instance, Basis A; the compensation payable under this Basis is an amount equal too twenty times the average net annual profit of the undertaking during a period of five consecutive account years preceding the vesting date. Now, in determining the fairness or otherwise of the compensation awardable under basis A, it cannot be ignored that what is acquired is an undertaking which a going commercial concern and so, it would, prima facie, be inappropriate to attempt to determine its value safely or mainly by reference to the buildings it owns or the machinery it works. It would also be relevant to remember that undertakings of this kind cannot claim a general market in the sense in which lands can claim it. That being so, if the legislature thought that giving the undertaking twenty times the average not annual profit would amount to a just equivalent, prima facie it would be difficult to hold that the basis adopted by the legislature is such as could be held to be inconsistent with Art. 31(2). The Basis B may or may not be satisfactory, but Basis C may prima facie be satisfactory in respect of new undertaking and in any case, the option in most cases would be with the undertaking itself. Therefore, in the absence of any material, we are unable to hold that on looking at the scheme adopted by s. 5 by itself, the appellant's argument that what is offered by way of compensation is not a just equivalent, can be accepted. It may be that in some oases basis B may work hardship and conceivably even basis A or basis C may not be as satisfactory as it should be; but when a party challenges the validity of a statutory provision like s. 5, it is necessary that the party must adduce satisfactory and sufficient material before the Court on which it wants the Court to hold that the compensation which would be paid under everyone of the three Bases under the impugned statutory provision does not amount to a just equivalent. Looking merely at the scheme of the section itself, it is impossible to arrive at such a conclusion. That is the view taken by the Madras High Court and we see no reason to differ from it. Therefore, the challenge to the validity of the Act on the ground that its important provisions contained in section 5 offend against Art. 31(2) must be rejected. That being out view, we must held that the High Court was right in rejecting both the writ petitions filed by the appellant. On that view, it is unnecessary to consider whether appellant would have been entitled to get the relief of possession or mesne profits which it purported to claim by its two petitions.

The appeals accordingly fail and are dismissed with costs. One set of hearing fees.

Appeals dismissed.

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