

U.P. State Electricity Board, Lucknow

Vs

The Official Liquidator Lower Ganges Jamuna Electricity Distributing Co. Ltd.

Civil Appeal No. 1201 of 1967

(D. G. Palekar, A. Alagiriswami JJ)

01.05.1973

JUDGMENT

ALAGIRISWAMI, J. –

1. This is an appeal against the judgment of a Division Bench of the Allahabad High Court affirming on appeal the judgment of a learned Single Judge dealing with company matters. The appellant is the U.P. State Electricity Board and the respondent is the Official Liquidator of Lower Ganges Jamuna Electricity Distributing Co. Ltd. This company went into liquidation in 1937 and had been administered by the Official Liquidator till it was purchased by the appellant Board on June 1, 1961 for a sum of Rs. 7,92,256/- as mutually agreed. Thereafter disputes arose about certain reserves of the company and in the present appeal we are concerned only with what is called the Development Reserve. It was by the Finance Act of 1955 that a provision was made in the Income Tax Act for development rebate. In 1957 the Sixth Schedule of the Electricity (Supply) Act, 1948 was amended introducing a new Clause V-A which reads :

"(1) There shall be created a reserve to be called the Development Reserve to which shall be appropriated in respect of each accounting year a sum equal to the amount of income-tax and super-tax calculated at rates applicable during the assessment year for which the accounting year of the licensee is the previous year on the amount of development rebate to which the licensee is entitled for the accounting year under clause (vi)(b) of sub-section (2) of Section 10 of the Indian Income Tax Act 1922 :

Provided.....

(2) Any sum to be appropriated towards the Development Reserve in respect of any accounting year under sub-paragraph (1), may be appropriated in annual instalments spread over a period not exceeding five years from the commencement of that accounting year.

(3) The Development Reserve shall be available only for investment in the business of electricity supply of the undertaking.

(4) On the purchase of the undertaking, the Development Reserve shall be handed over to the purchaser and maintained as such Development Reserve :

Provided that where the undertaking is purchased by the Board or the State Government, the amount of the Reserve may be deducted from the price payable to

the licensee."

The Board insisted that a sum of Rs. 1,45,482 in the Development Reserve should be handed over to it or deducted from the purchase price. Though in the beginning there was a dispute about the actual amount in the Development Reserve it was finally agreed that the above sum was the correct figure.

2. The Official Liquidator contended that the Development Reserve had been used in addition to the assets of the Electricity Undertaking and, therefore, that amount could not be paid. On the purchase of an Electricity Undertaking by the Electricity Board the market value of the Undertaking at the time of the purchase is payable under Section 7-A of the Indian Electricity Act, 1910 and under sub-section (2) of that section the market value 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..... 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. As already noticed under Clause V-A of the Sixth Schedule to the Electricity (Supply) Act, 1948, on the purchase of an undertaking the Development Reserve shall be handed over to the purchaser. It is on this basis that the appellant Board insisted that a sum of Rs. 1,45,482/- should either be paid to it or should be deducted from the purchase price payable by it to the licensee. This contention having been overruled by the Courts below this appeal has been filed.

3. It appears to us that the decision of the Courts below was right. Under sub-clause (3) of Clause V-A of the Sixth Schedule to the Electricity (Supply) Act, 1948 the Development Reserve shall be available only for investment in the business of electricity supply of the undertaking. There is no prohibition against the Development Reserve being used for that purpose. There is no allegation that the Development Reserve in this case was used for any purpose other than in the business of electricity supply of the undertaking. There is no allegation of the money in the Development Reserve having been dissipated otherwise or misappropriated or anything of that sort. There is no allegation that any portion of the Development Reserve was spent on any item not permissible under either of the two Acts. There is no allegation that the Development Reserve is as a matter of fact available in the form of either cash or deposits in banks or in investment in Government bonds or in liquid cash. The whole of the Development Reserve has admittedly gone into the creation of assets which have enhanced the value of the undertaking and the appellant Board has had the benefit of all such additions, improvements and accretions to the assets of the Electricity Supply Undertaking as a consequence of the investment of the Development Reserve in the business of electricity supply of the undertaking. What is really asked for on behalf of the appellant Board is that the Official Liquidator should pay to it a notional sum representing what should have been in the Development Reserve and not that there is any amount available in the Development Reserve. The argument that the Development Reserve should be handed over is based upon sub-clause (4) of Clause V-A of the Sixth Schedule. The Development Reserve can be handed over to the purchaser only if it is available. A notional amount cannot be handed over. The Development Reserve has been converted into other assets which have passed on to the appellant Board. In that sense the appellant Board has had the benefit of the Development Reserve, though not in cash but in other assets representing the Development Reserve. The demand of the Board really amounts to saying that it must be paid twice over, once in the form of the assets created out of the Development Reserve, which it has already had, and again the same Development Reserve in cash as though it is still available in cash. There is no justification either in law or in equity for such a demand. We are not impressed by the argument on behalf of the appellant Board that compared to the language used in Clauses II, III and IV which deal with the Tariffs and Dividends Control Reserve should be the Contingencies Reserve, the language in Clause V-A regarding the Development Reserve is different and, therefore, the

Development Reserve should be handed over to it. The Division Bench has dealt in detail with the arguments regarding the distinction between the Development Reserve and the other reserves advanced before it and we find ourselves in agreement with those observations and consider it unnecessary to repeat them. We can see no such distinction which will lead to the conclusion that the accumulated Development Reserve should be paid over to the purchaser even where it has already been used up in the creation of tangible assets which have passed on to the purchaser. The principle is so clear that it does not lend itself to any argument whatsoever. Nor does Section 70 of the 1948 Act give us any guide in interpreting the relevant provision of law which will lead to the conclusion contended for the appellant. The provision regarding Development Reserve came into existence only in 1957 when the new Clause V-A was inserted in the Sixth Schedule by Act 101 of 1956 with effect from April 1, 1957. The language of that clause, therefore, is not the same as the language of Clauses II, III and IV which have been in the Act from the very beginning. But that by itself does not create any difficulty or problem in the interpretation of Clause V-A. We, therefore, find ourselves in agreement with the learned Judges of the High Court that as the Development Reserve is available for investment in the business of electricity supply of the undertaking and the entire sum therein has been utilised by investment in such business and there is no amount left in cash in the Development Reserve the Official Liquidator cannot be directed to pay any amount to the appellant Board as representing the Development Reserve.

4. The appeal is dismissed, the appellant will pay the respondent's costs.

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