The Godhra Electricity Co. Ltd. and Another

Vs

The State of Gujarat and Another

Civil Appeal No. 2016 of 1973

(CJI A. N. Ray, K. K. Mathew JJ)

12.09.1974.

JUDGMENT

MATHEW, J. -

1. The appellants filed a writ petition before the High Court of Gujarat challenging the validity of a notice issued by the Gujarat State of Gujarat challenging the validity of a notice issued by the Gujarat State electricity Board, respondent No. 2, dated November 8, 1971, whereby respondent No. 2 purported to exercise the option of purchasing the electrical undertaking of appellant No. 1 under Section 6 of the India Electricity Act, 1910 (hereinafter referred to as 'the Act') and for a declaration that the provisions of Sections 6, 7 and 7A of the Act are ultra vires Articles 14, 19(1)(f)(g) and 31 of the Constitution. The High Court dismissed the petition and this appeal, by certificate, is against that judgment.

2. The Government of the Province of Bombay granted a licence by notification dated November 16, 1922, under Section 3 of the Act known as the 'Godhra Electric Licence, 1922' in favour of Lady Sulochana Chinubhai and Company, Ahmedabad. The licence was signed on November 17, 1922 and the notification granting it was published in the Bombay Government Gazette dated November 23, 1922. The licence was transferred to the first appellant-company viz., the Godhra Electricity Co. Ltd. The licence was for a period of 50 years initially from its commencement. The initial period of 50 years, according to the respondents, was to expire on the midnight intervening between the 15th and 16th November, 1972. The second respondent exercised the option to purchase the undertaking of the first appellant-company by a notice dated November 8, 1971, under Section 6(1) of the Act by calling upon the appellants to sell the undertaking to it one the midnight intervening between the 15th and 16th of November 1972. Thereafter, the government of Gujarat issued a notification under Rule 115(2) of the Defence of India Rules taking over the management of the under taking on November 18, 1973. On December 21, 1973, the State government handed over the undertaking to respondent No. 2.

3. Before we proceed further, it would be convenient at this stage to note the amendment made in the Act by Act 32 of 1959. A comparison of the original Section 7 with Sections 6, 7 and 7A shows that the changes made by Sections 6, 7 and 7A in the original Section 7 were six in number. They were : (1) the maximum length of the initial period to be specified in the licence for exercise of the option to purchase was originally fifty years whereas after the amendment, it was reduced to thirty years and the maximum length of subsequent periods was also reduced by the amendments from twenty years to ten years; (2) the notice of exercise of option was originally required to be of not less than two years but after the amendments, a notice of not less than one year would be sufficient for exercising the option; (3) the option to purchase under the old law vested in the Board but after

the amendments it was also conferred on the State Government and the local authority in case the Board did not elect to purchase; (4) the licensee could not be obliged under the old law to sell the undertaking to the purchaser except against payment of the purchase price but after the amendments, the licensee was bound to deliver the undertaking to the purchaser on the expiration of the relevant period pending the determination and payment of the purchase price; (5) there was a right of waiver of the option to purchase under the old law but as a result of the amendments that right was taken; and (6) the service lines constructed at the expense of the consumers were not required by the old law to be excluded in determining the purchase price but under the amended law they were required to be specifically excluded.

4. In this appeal, we are concerned with two contentions raised by the appellant. They are, that the date of the commencement of the licence was the date on which the notification granting the licence was published in the Bombay Gazette, viz., November 23, 1922 and not the date of the notification granting licence i.e. November 16, 1922, and, therefore, the 50 years' period did not expire on the midnight intervening between the 15th and 16th November, 1972 and so, the notice requiring the licence to sell the undertaking on the expiry of the period, namely, November 15, 1972 was bad; and that the provisions of sub-section (6) of Section 6 of the Act are invalid as they abridge the right guaranteed under Articles 19(1)(f) and 19(1)(g).

5. Section 6(1) of the Act provides that where a licence has been granted to any person, not being a local authority, the State Electricity Board shall;

> (a) in the case of licence granted before the commencement of the Indian Electricity (Amendment) Act 22 of 1959, on the expiration of such period as is specified in the licence, and
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> (b) in the case of a licence granted on or after the commencement of the said Act, on the expiration of such period not exceeding twenty years, and of every such subsequent period, not exceeding ten years, as shall be specified in this behalf in the licence;

have the option of purchasing the undertaking and such option shall be exercised by the State Electricity Board serving upon the licensee a notice in writing of not less than one year requiring the licensee to sell the undertaking to it at the expiry of the relevant period referred to in this sub-section.

6. The rulings of this Court make it clear that when the State or the State Electricity Board exercises its statutory option to purchase the undertaking of a licensee, it must in all respects conform strictly to the requirement of Section 6(1) and that the failure to conform to any one of them would render the exercise of the option ineffective (see Gujarat Electricity Board v. Shantilal R. Desai ((1969) 1 SCR 580 : AIR 1969 SC 239) and Gujarat Electricity Board v. Girdharilal Motilal ((1969) 1 SCR 589 : AIR 1969 SC 267)). Clause 11(a) of the licence states that the option to purchase given by Section 7 of the Act shall be exercisable first on the expiration of 50 years computed from the commencement of the licence. Accordingly, it was necessary that the notice in this case should have required the licensee to sell the undertaking at the expiry of the initial period of 50 years. As already stated, the notice specified the date of the expiry of the period as November 15, 1972. So, the question is, whether the period of 50 years expired on November 15, 1972 and, that will depend upon the answer to the question as to what is the date of the commencement of the licence. Clause 2(e) of the licence says :

The date of the notification by the Government of Bombay in the Bombay Government Gazette that this licence has been granted is in this licence referred to as "the commencement of this licence".

7. Rule 17 of the Indian Electricity Rules, 1922, provides for publication of the licence in the local Official Gazette to notify that it has been granted. Rule 18 states that the date of the notification under Rule 17 shall be deemed to be the date of the commencement of the licence. Clause 2(e) of the licence makes it clear that it is the date of the notification in the Gazette that the licence has been granted is the date of Commencement of this licence. As already stated, the date of the notification granting the licence was November 16, 1922. There can, therefore, be no doubt that the date of commencement of the licence was November 16, 1922.

8. But Counsel for the appellants as well as the intervener contended that it is impossible to imagine that a licence could be granted without the licensor signing the licence and as the licence bears the date November 17, 1922 and was signed only on that day, it could not be said that 'the licence has been granted' before November 16, 1922. The argument was that there could be no grant of a licence before it is signed by the licensor and when Clause 2(e) of the licence speaks of the date of "the notification . . . in the Bombay Government Gazette that this licence has been granted" in postulates that the licence has already been signed and granted and, therefore, the date of the notification granting the licence can never be November 16, 1922 when it is seen that the licence has been signed on November 17, 1922. We have already seen that Rule 18 provides that the date of the notification shall be deemed to be the date of commencement of the licence. We have to read Clause 2(e) of the licence in the light of the provisions of Rule 18. Therefore, there is nothing strange in making the date of the notification in the Gazette that the licence has been granted, though anterior in point of time to the date of signing the licence, as the date of commencement of the licence. In other words, Clause 2(e) of the licence will have to be read in harmony with Rule 18 and if so read, it will be found that the date of the notification is only deemed to be the date of the commencement of the licence.

9. The Additional Solicitor General also submitted that there is a distinction between the date of a notification and the date of the publication of the notification in the Gazette and that the parties themselves had this distinction in mind is clear from the provision by which the licence was subsequently amended. That amendment reads :

> . . . that the following amendment be made in the fourth annexure to the Godhra electric Licence, 1922, which was granted in Government notification No. 177, dated November 16, 1922, and published at pages 2652 to 2656 of Part I of the Bombay Government Gazette, dated November 23, 1922, viz., the clause mentioned below be inserted as Clause 5 to the said fourth annexure . . . .

10. The question whether subsequent 'interpreting statement' made by parties to a written instrument is admissible in evidence to construe the written instrument is not free from doubt. In Prenn v. Simmonds ((1971) 3 All ER 237), the House of Lords held that negotiations between parties previous to the formation of a contract are inadmissible to prove the intention of the parties in case of ambiguity in the terms of the contract. In James Miller and partners Ltd. v. Whitworth Street Estates (Manchester) Ltd.((1970) 1 All ER 796), the House of Lords held that subsequent conduct of the parties to a contract is not admissible to construe the contract. The decision was followed in the recent case of Schuler A. G. v. Wickman Ltd. (1973) 2 All ER 39 : (1973) 2 WLR 683) where Lord Reid said at pp. 45-46 :

I must add some observations about a matter which was fully argued before your Lordships. The majority of the Court of Appeal were influenced by a consideration of actings subsequent to the making of the contract. In my view, this was inconsistent with the decision of this House in James Miller and Partners Ltd. v. Whitworth Street Estates (Manchester) Ltd.

Lord Morris of Borthy-Cast said at pp. 52-53 :

But in a case such as the present I see no reason to doubt the applicability or the authority of what was said in James Miller and Partners Ltd. v. Whitworth Street Estates (Manchester) Ltd. If on the true construction of a contract a right is given to a party, that right is not diminished because during some period either the existence of the right or its full extent was not appreciated.

Lord Wilberforce has stated that subsequent actions ought not to have been taken into account, that extrinsic evidence is not admissible for the construction of a written contract, that the parties' intentions must be ascertained, on legal principles of construction, from the words they have used and that it is the one and the same principle which excludes evidence of statements or actions, during negotiations, at the time of the contract, or subsequent to the contract, any of which to the lay mind might at first sight seem to be proper to receive. Lord Simon said, after referring to the case of Whitworth Street Estates (supra) :

It is true that, on strict analysis, what was said by Lord Hodson, Viscount Dilhorne and Lord Wilberforce cannot be regarded as a vital step towards their conclusions; but, as I have already ventured to demonstrate, the point was directly in issue between the parties in Your Lordship's House. I am therefore firmly of the opinion that what was said should be regarded as settling the law on this point. I am reinforced in this opinion, because, in my view, Whitworth Street Estates was a correct decision on the point for reasons additional to those given in the speeches.

He then said :

Sir Edward Sugden's frequently quoted and epigrammatic dictum in Attorney General v. Drummond (1842, Dr.& War 353,n 368) : " . . . tell me what you have done under such a deed, and I will tell you what that deed means" really contains a logical flaw if you think that deed means. Moreover, Sir Edward Sugden was expressly dealing with 'ancient instruments'. I would add thirdly, that the practical difficulties involved in admitting subsequent conduct as an aid to interpretation are only marginally, if at all, less than are involved in admitting evidence of prior negotiations.

11. In the process of interpretation of the terms of a contract, the court can frequently get great assistance from the interpreting statements made by the parties themselves or from their conduct in rendering or in receiving performances under it. Parties can, by mutual agreement, make their own contracts; they can also by mutual agreement remake them. The process of practical interpretation and application, however, is not regarded by the parties as a remaking of the contract; nor do the courts so regard it. Instead, it is merely a further expression by the parties of the meaning that they give and have given to the terms of their contract previously made. There is no good reason why the courts should not give great weight to these further expressions by the parties, in view of the fact that they still have the same freedom of contract that they had originally. The American courts receive subsequent actings as admissible guides in interpretation. It is true that one party cannot build up his case by making an interpretation is his own favour. It is the concurrence therein that such a party can use against the other party. This concurrence may be evidence by the other party's express assent thereto, by his acting in accordance with it, by his receipt without objection of

performances that indicate it, or by saying nothing when he knows that the first party is acting on reliance upon the interpretation (see Corbin on Contracts, Vol. 3, pp. 249 & 254-256).

12. The rule that obtains in other jurisdictions is also the same :

In France construction of a contract is within the sole province of the judgment of fact who are entirely free to use whatever material seems relevant to them . . . . The rule is the same in Germany where since 1888 it is established that even statements made by one of the contracting parties to a third person about the content of the contractual intentions are admissible guides to interpretation . . . . In Italy, Article 1362(2) provides in impressively succinct language . . . . The Vienna convention on the law of Treaties of 1969 (which to a large extent merely codifies earlier international practice) enjoins the interpreter of a treaty to take into account "any subsequent practice in the application of the treaty which established the agreement of the parties regarding its interpretation" : Article 31(3)(b) [SCC Notes by P. A. Mann on L Schuler A. G. v. Wickman Machine Tool Sales Ltd., (1973) 2 W.L.R. 683, Law Quarterly Review, Vol. 89, pp. 464-465].

The real reason against taking into account the subsequent conduct of the parties is the rule which excluded extrinsic evidence in the construction of written contract.

13. In Watcham v. East Africa Protectorate ((1919) AC 533) the question arose as to whether the land intended to be conveyed was that described by the boundaries in the certificate issued by the Government or the area marked on the plan, which disagreed. The parties had always treated the latter as the true area conveyed. It was held by the Privy Council that evidence of user by be given in order to show the sense in which the parties construed the language employed, and that this rule applies to both modern and ancient documents and whether the ambiguity be patent or latent.

14. As regards Watcham's case (supra), this is what Lord Reid said in Schuler A. G. v. Wickman Ltd. (supra) :

It was decided in Watcham v. Attorney General of East Africa Protectorate that in deciding the scope of an ambiguous title to land it was proper to have regard to subsequent actings and there are other authorities for that view. There may be special reasons for construing a title to land in light of subsequent possession had under it but I find it unnecessary to consider that question. Otherwise I find no substantial support in the authorities for any general principle permitting subsequent actings of the parties to a contract to be used as throwing light on its meaning. I would therefore reserve my opinion with regard to Watcham's case but repeat my view expressed in Whitworth with regard to the general principle.

15. In Deo v. Rias ((1832) 8 Bing 178, 186), Tindal, C. J. said :

We are to look at the words of the instrument and to the acts of the parties to ascertain what their intention was; if the words of the instrument be ambiguous, we may call in the aid of the act done under it as a clue to the intention of the parties.

And in Chapman v. Bluck ((1838) 4 Bing NC 187, 195), Park, J. said :

The intention of the parties may be collected from the language of the instrument and may be elucidated by the conduct they have pursued.

Odgers observes (See Odgers' Construction of Deeds and Statues, 5th ed. by Dworkin, p. 83) :

In the case of an ambiguity, judicial notice will be taken of the way in which the parties themselves have interpreted their rights and duties under the document.

16. We are not certain that if evidence of subsequent acting under a document is admissible, it might have the result that a contract would mean one thing on the day it is signed but by reason of subsequent event it would mean something a month or year later. Subsequent 'interpreting' statements might not always change the meaning of a word or a phrase. A word or a phrase is not always crystal clear. When both parties subsequently say that by the word or phrase which, in the context, is ambiguous, they meant this, it only supplies a glossary as to the meaning of the word or phrase. After all, the inquiry is as to what the intention of the parties was from the language used. And, why is it that parties cannot clear the latent ambiguity in the language by a subsequent interpreting statement ? If the meaning of the word or phrase or sentence is clear, extrinsic evidence is not admissible. It is only when there is latent ambiguity that extrinsic evidence in the shape of interpreting statement is which both parties have concurred should be admissible. The parties themselves might not have been clear as to the meaning of the word or phrase when they entered into the contract. Unanticipated situation might arise or come into the contemplation of the parties subsequently which would sharpen their focus and any statement by them which would illuminate the darkness arising out of the ambiguity of the language should not be shut out. In the case of an ambiguous instrument, there is no reason why subsequent interpreting statement should be inadmissible.

The question involved is this : Is the fact that the parties to a document, and particularly to a contract, have interpreted its terms in a particular way and have been in the habit of acting on the document in accordance with that interpretation, any admissible guide to the construction of the document ? In the case of an unambiguous document, the answer is 'No'. (See Odgers' Construction of Deeds and Statutes, 5th edn. by G. Dworkin, pp. 118-119).

But, as we said, in the case of an ambiguous one, the answer must be 'yes'. In Lamb v. Goring Brick Co.((1932) 1 KB 710, 721), a selling agency contract contained the words "the price shall be mutually agreed". Documents showing the mode adopted for ascertaining the price were put in evidence without objection. In the Court of Appeal Greer, L.J. said :

In my opinion, it is not necessary to consider how this contract was acted on in practice. If there had been an ambiguity and the intention of the parties had been in question at the trial, I think it might have been held that the parties had placed their own construction on the contract and, having acted upon a certain view, had thereby agreed to accept it as the true view of its meaning.

17. In Balkishan v. Legge (97 IA 58 : ILR 27 All 149 : 2 Bom LR 523) the Privy Council said that in deciding the question whether a particular deed is a mortgage by conditional sale or an out and out sale, oral evidence of the intention is inadmissible under Section 92 of the Evidence Act for construing the deed nor can evidence of an agreement at variance with the terms of the deed be admitted, but the case must be decided on a consideration of the contents of the document with such extrinsic evidence of other circumstances as may show in what manner the language of the document is related to existing facts. We do not think it necessary to consider or decide in this case the exact reach of that decision. Nor is it necessary to advert to the various decisions of the High Courts where the ratio of that case has been interpreted. It is enough to say that there is nothing in that decision which would prevent a court from looking into the subsequent conduct or actings of parties to find out the meaning of the terms of a document when there is latent ambiguity.

18. In these circumstances, we do not think we will be justified in not following the decision of this Court in Abdulla Ahmed v. Animendra Kissen Mitter (1950 SCR 30, 46 : AIR 1950 SC 15), where this Court said that extrinsic evidence to determine the effect of an instrument is permissible where there remains a doubt as to its true meaning and that evidence of the acts done under it is a guide to the intention of the parties, particularly, when acts are done shortly after the date of the instrument.

19. The point then for consideration is whether Section 6 (6) of the Act is violative of the Fundamental Right under Articles 19(1)(f) and 19(1)(g). Section 6(6) reads :

Where a notice exercising the option of purchasing the undertaking has been served upon the licensee under this section, the licensee shall deliver the undertaking to the State Electricity Board, the State Government or the local authority, as the case may be, on the expiration of the relevant period referred to in sub-section (1) pending the determination and payment of the purchase price.

20. The appellants submitted that the provisions of Section 6(6) which postpones the payment of the purchase price till after the determination of the quantum of the purchase price by the arbitrator is an unreasonable restriction upon the Fundamental Right of citizens to carry on business under Article 19(1) (g) and also violative of their Fundamental Right under Article 19(1)(g). They submitted that before the amendment in 1959 to the Act, the State Electricity Board was bound to pay the purchase price before they could take delivery of the undertaking but that under Section 6(6), it was not necessary that the purchase price should be paid before the undertaking is delivered to the State Electricity Board, and that that is unreasonable.

21. The learned Additional Solicitor General, on the other hand, submitted that the appellants had no right to carry on the business when the Board chose to exercise the option to purchase the undertaking at the expiry of the period. The argument was that when a valid notice to exercise the option to purchase the undertaking has been served on the licensee, the licensee thereafter has no right to carry on the business of supplying electricity and, therefore, there is no question of sub-section (6) of Section 6 abridging the Fundamental Right of the appellants under Article 19 (1)(g). He also submitted that the obligation to pay interest on the purchase price from the date of the delivery of the undertaking up to the date of its payment is implicit in Section 7A or, at any rate, the arbitrator functioning under that section is bound, under the common law of the land to award interest for the period during which the arbitration proceedings were pending.

22. An arbitrator appointed under the section to determine the quantum of the purchase price can pass an award only in accordance with the terms of Section 7A. Section 7A provides that where an undertaking of a licensee is sold, the purchase price of the undertaking shall be the market value of the undertaking at the time of the purchase or, where the undertaking has been delivered before purchase under sub-section (3) of Section 5, at the time of the delivery of the undertaking and if there is any difference or dispute regarding such purchase price, the same shall be determined by the arbitrator. There is, therefore, no provision which enables the arbitrator to award any interest on the market value of the undertaking at the time of the purchase merely because the market value is determined on a subsequent date.

23. There can be no doubt about the correctness of the general rule under which a purchaser who takes possession is charged with interest on his purchase money from that time until it is paid. This rule has been applied to compulsory purchases (See Satinder Singh v. Amrao Singh,(1961) 3 SCR 676 : AIR 1961 SC 908). But the question is whether the arbitrator has power under the Act to award interest on the purchase price. In Toronto City Corporation v. Toronto Railway Corporation

(1925 AC 177, 193-194), the Privy Council held that the general rule under while a purchaser who takes possession is charged with interest on his purchase money from that time until it is paid was well established, and had on many ocasions been applied to compulsory purchases but the duty of the arbitrators in that case was not to determine all the rights of the company, but only to ascertain the actual value of the certain property at a certain time and that it was a truism to say that such value could not include interest upon it and that the liability for interest lay outside of the arbitration for its enforcement. In M. P. Electricity Board v. Central India Electric Supply Co. (AIR 1972 MP 47 : 1972 MPLJ 192 : 1972 Jab LJ 41), the Madhya Pradesh High Court and in Upper Jamuna Valley electricity Supply Co. Ltd. v. Municipal Corporation of Delhi ((1973) 75 Punj LR (Delhi Section) 95 decided on April 3, 1972, the Delhi High Court, took the view that the arbitrator functioning under the Act has no jurisdiction to award interest on the purchase price.

24. The position, therefore, is that although the State Electricity Board in Liable to pay interest under the general law for the period during which the licensee has not been paid the purchase price, the arbitrator, functioning as he does under the provisions of Section 7A of the Act cannot award any interest on the market value of the undertaking as determined by him. The licensee's claim for interest can be enforced only in a suit. The fact that the claim for interest can be enforced in a suit by the licensee would not mitigate the unreasonableness of the provision which authorises the Board to take delivery of the undertaking without payment of the purchase price.

25. In support of the contention that when once the notice exercising the option the purchase the undertaking has been served, the licensee has no further right to carry on the business, the learned Additional Solicitor General placed reliance on the decision of this Court in Kalyan Singh v. State of U. P. ((1962) Supp 2 SCR 76 : AIR 1962 SC 1183) where this Court said that if a scheme has become final under Section 68D(3) of the Motor Vehicles Act, it has the effect of extinguishing all the rights of an operator to ply his stage-carriage under the permit.

26. A licensee cannot be told that he has no right to carry on the business unless a valid purchase is made at the expiry of the period. If the licensee cannot be required to sell the undertaking without payment of the purchase price at the time of delivery of the undertaking or without a provision in law for payment of interest on the purchase price during the period when payment is withheld, there would be no valid termination of the licence. It is unreasonable to require a licensee to deliver the undertaking without payment to him of the purchase price or, if the payment is deferred, without compensating him by way of interest for the period during which the payment has been withheld. The fact that an arbitrator is seized of the question of the determination of the purchase price and that he is bound to make the award within a specified time in law would not mean that the licensee need not be compensated for the delay in payment of the purchase price. The proviso to Section 7(ii) makes it clear that when an undertaking is sold or delivered to the Electricity Board or the State, the licence shall cease to have any further operation. When the proviso talks of sale and delivery, it means a valid sale or a valid delivery. Admittedly, the undertaking belonged to the licensee and if delivery of the undertaking is to be taken by the State Electricity Board, the purchase price must be paid before the delivery or, there must be a provision for payment of interest on the purchase price for the period during which payment is withheld. Otherwise, the licence will not cease to have operation and the licensee will be entitled to carry on the business.

27. If the arbitrator could have awarded the interest for the period between the date of delivery of the undertaking and the payment of the purchase price, probably it could have been said that the provision for delivery without payment of the purchase price would not be unreasonable. But, to deprive the licensee of his undertaking without payment of the purchase price and then ask him or it

to go to a court to enforce the liability for interest for the period for which the purchase price has been withheld is unreasonable. We hold that Section 6(6) violates the Fundamental Right under Articles 19(1)(g) and 19(1)(f) of the second appellant.

28. The undertaking, no doubt, belonged to the first appellant, a corporation. Not being a citizen, it has no Fundamental Right under Article 19. The second appellant is a share-holder and the Managing Director of the Company. If his right to carry on the business through the agency of the Company is taken away or abridged, or, his right to a divisible share in future of the property of the Company is diminished or abridged in taking delivery of the undertaking without payment of the purchase price, there is no reason why he should be disabled from challenging the validity of the sub-section.

29. In R. C. Cooper v. Union of India ((1970) 3 SCR 530, 556 : 1 SCC 248,273) this Court said : (SCC p. 273, para 12)

Jurisdiction of the Court to grant relief cannot be denied, when by State action the rights of the individual shareholder are impaired, if that action impairs the rights of the Company as well. The test in determining whether the shareholder's right is impaired is not formal, it is essentially qualitative : if the State action impairs the right of the shareholders as well as of the Company, the Court will not, concentrating merely upon the technical operation of the action, deny itself jurisdiction to grant relief.

30. The second appellant contends that the value of his investment in the Company is substantially reduced by the illegal delivery of the undertaking to the Board; that his right to carry on the business of supplying electricity through the agency of the Company is abridged and that he, along with the other shareholders are left with the burden of the debts of the undertaking.

31. In Bennett Coleman & Co. v. Union of India ((1973) 2 SCR 757, 773 : (1972) 2 SCC 788, 806), one of us. Ray, J. as he then was, speaking for the majority said : (SCC p. 806 para 22)

As a result of the Bank Nationalisation case, it follows that the Court finds out whether the legislative measure directly touches the Company of which the petitioner is a shareholder. A shareholder is entitled to protection of Article 19. That individual right is not lost by reason of the fact that he is a shareholder of the Company. The Bank Nationalisation case has established the view that the Fundamental Rights of shareholders as citizens are not lost when they associate to form a company. When their Fundamental Rights as shareholders are impaired by State action their rights as shareholders are protected. The reason is that the shareholders' rights are equally and necessarily affected if the rights of the company are affected.

32. We think the second appellant is entitled to challenge the validity of the sub-section on the ground that it abridged his Fundamental Right under Articles 19(1)(g) and 19(1)(f).

33. In the result we hold that there was no valid purchase of the undertaking and that taking delivery of the undertaking was unlawful. The State Electricity Board is directed to re-deliver the undertaking to the licensee. We set aside the judgment under appeal and allow the appeal to the extent indicated but, in the circumstances, without any order as to costs.

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