SUPREME COURT OF INDIA

Pilibhit Electric Supply Co.(P) Ltd.

Vs.

Special Officer (Electricity)

(N Singh and S Majmudar JJ.)

09.10.1996

JUDGMENT

S.B. MAJMUDAR, J.

The appellant Electric Supply Co. has brought in challenge the judgment and award dated 31st March 1980 rendered by Special Officer under Section 7-A as substituted in the Indian Electricity Act, 1910 (hereinafter referred to as 'the Act') by U.P. Act 14 of 1976. The appellant, original licensee, under the Act had sought appropriate compensation under the aforesaid provision from the Special Officer entrusted with the task of determining the purchase price of the appellant's Undertaking acquired under Section 6-A as inserted by the very same Act of the U.P. Legislature. This appeal by grant of special leave under Article 136 of the Constitution of India was pressed at the time of final hearing by their learned senior counsel Shri Salve and learned counsel Shri Gupta on the following grounds:

1. In the impugned award the Special Officer had erroneously excluded supervision charges actually incurred by the appellant from the book value of the assets as defined by the Explanation to Section 7-A(2).

2. The Special Officer had erroneously deducted from the book value of the assets of the appellant an amount of Rs.2,48,718/- being the purported depreciation on works paid for by the consumers.

3. The Special Officer had erroneously deducted an amount of Rs.2,67,622/- pertaining to variations in the energy bill raised by the Board which were seriously disputed by the appellant. In the aforesaid item ultimately the claim was reduced to Rs.60.603.78.

4. The Special Officer had erroneously deducted from the amount payable to the appellant an amount of Rs. 92,727/- on account of the purported balance in the Consumer Rebate Reserve Account and an amount of Rs.46,826/- on account of the purported balance in the Tariffs and Dividends Control Reserve Account. So far as this item of claim is concerned ultimately the learned counsel for the appellant confined the claim to the total amount of Rs.76,423/- being the purported inflated balance in the Tariffs and Dividends Control Reserve Account and Rs.38,211/- being such balance in the Consumer Rebate Reserve Account.

In the special Leave petitions originally two additional claims were also put forward as item no.2 consisting of Rs.35.483/-and item no.5 consisting of Rs.1,15,111/- but at the time of hearing of this appeal these two claims were not pressed. We are, therefore, concerned with the aforesaid four claims surviving for consideration.

Backdrop facts

Before we deal with these claims. It will be necessary to note a few relevant background facts. The appellant- licensee was functioning under the provisions of the Indian Electricity Act, 1910 having licence to generate electrical energy for being supplied to consumers in Pilibhit town of Uttar Pradesh. It was a purchaser of the licensee rights from the earlier licensee named M/s Champion Electrical Engineering works. The said license had got its licence form 1935. On 1st April 1954 M/s Champion Electrical Engineering Works transferred to the appellant its licence to generate electricity in Pilibhit town. Thus the appellant became a transfere-licensee and held Pilibhit Electric Licence, 1935 from first April 1954. The said licence was revoked as per the provisions of clause (3) of U.P. Ordinance 1937 of 1975 in exercise if the powers vested in the U.P State under Section 6-A of the Indian Electricity Act, 1910 as inserted in the aforesaid Act by the said Ordinance Pursuant to the said revocation of the appellant's licence and acquisition of its assets, the U.P. State Electricity Board took over the electrical under taking of the appellant at 00.00 Hrs. On 1st December 1975. On such acquisition of the assets of the appellant and the taking over of the electrical undertaking of the appellant by the U.P. State Electricity Board and as the Undertaking of the appellant-licensee stood statutorily acquired for the purpose of State Electricity Board under Section 6-A of the Act, the question arose regarding determination of appropriate compensation to be paid to the erstwhile Licensee for acquisition of its assets under the Act. The determination of the amount was to be made under Section 7- A as substituted by the U.P. Amending Act. That task was statutorily assigned to a Special Officer. The Special Officer after hearing the appellants representative on diverse claims put forward under the said provision for determination of appropriate amount of compensation passed the impugned award 31st March 1980.

The aforesaid award is brought in challenge by the appellant ex-licensee by filing this appeal in quest of additional compensation. At this stage it may be stated that direct writ petitions under Article 32 of the Constitution of India Challenging the constitutional validity of section 7-A of the parent Act were pending in this Court since 1972. Consequently the appellant challenged the impugned award directly in this Court after obtaining special leave as stated above. A constitution Bench of this Court in the case of Tinsukjia Electric Supply Co. Ltd. v. state of Assam and Ors. 1989 (2) SCR 544 upheld three vires of the said provision. Consequently this appeal survived for consideration of the payment of proper compensation to the appellant ex-licensee whose licence was also revoked and whose undertaking got acquired under the said Section 7-A as substituted in the state of U.P by Amending Act 14 of 1976.

Statutory background Before adverting to the aforesaid four claims for compensation it will be necessary to note the relevant statutory provisions. The Indian Electricity Act, 1910 deals with supply of energy and licences 1) connection therewith. As per section 3 of the said Act the state Government said on application made in the prescribed form and on payment of the prescribed fees, if any grant after consulting the state Electricity Board, Licence to any person to supply energy in any specified area, and also to lay down or place electric supply-lines for the conveyance and transmission of energy 'State Electricity Board' as defined by Section 2(11) of the Act, in relation

too any state means the state Electricity Board, if any, constituted for the state under Section 5 of the Electricity (Supply) Act, 1948 (54 of 1948), and includes any Board which function in that state under sections 6 and 7 of the said Act. The appellant was the transferee-licensee functioning under the said Act and was entrusted with the right to generate electricity through its undertaking functioning at Pilibhit in U.P. State. It is this undertaking of the appellant which came to be acquired under Section 6-A of the Act as inserted by Section 3 of the U.P. Act 14 of 1976. Said Section 6-A dealing with 'Revocation of licences and acquisition of undertaking' along with its relevant sub-sections reads as under:

"6-A Revocation of licences and acquisition of undertaking.-(1) In this section 'appointed day' means in relation to licensees other than local authorities, December 1, 1975 and in relation to local authorities being licensees, such date as may be specified by the State Government by notification in that behalf, and different dates may be specified for different such undertakings.

(2) Notwithstanding anything contained in Sections 4, 4-A, 5 and 6, the licence of every undertaking, unless revoked before the commencement of the Indian Electricity (Uttar Pradesh Second Amendment) Ordinance, 1975, shall stand revoked with effect form the appointed day.

(3) On revocation of the licence under sub-section (2), the following provisions shall have effect, namely:-

(a) every undertaking the licence in respect of which stands revoked shall by virtue of this section stand and be deemed to have stood transferred to and vest and be deemed to have vested in the State Electricity Board, hereinafter in this section called "the Board" free from any debt, Mortgage or similar obligation of the licensee attaching to the undertaking:

Provided that any such debt, mortgage or similar obligation shall attach to the amount payable for the undertaking as mentioned in clause (h):

(b)... ... ...

(c)... ... ...

(d)... ... ...

(e)... .. ...

(f)... ... ...

(g)... ... ...

(h) the Board shall pay to the licensee an amount determined in accordance with the provisions of Section 7-A:

Provided that the licensee shall be in addition to the said, be entitled to interest thereon at the Reserve Bank rate ruling at the appointed day plus one per centum for the period from the appointed day to the date of payment of the said amount."

It is not in dispute between the parties that pursuant to the said provisions the appellant's undertaking stood statutorily acquired by the respondent- Bard with effect from the appointed day, that is, 1.12.1975. So far as form the question of compensation to be paid to the appellant- licensee for the aforesaid acquisition of its undertaking is concerned, Section 7-A is required to be noted. The relevant provisions of the said Section 7-A in the light of which the controversy in the present case will have to be resolved read as under:

"7-A. Determination of amount.-(1) Where an undertaking of a licensee had been purchased by the Stare Electricity Board in consequence of revocation of his licence under sub-section (20 of Section 4 or is sold under sub-section 5 or is purchased under Section 6 or acquired under Section 6-A the amount payable therefore shall determined as hereinafter provided.

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

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

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

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

(iv) the book value of all other fixed assets in use on the date of vesting under Section 6-A or Section 7, hereinafter referred to as the vesting date, and taken over, less depreciation calculated in accordance with the said Schedules:

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

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

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

(ii) the cost of supervision actually incurred, but not exceeding fifteen percent of the amount referred to in paragraph(1):

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

therefor.

(3)... ... ...

(4)... ... ...

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

(a) the amount, if any, already paid in advance:

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

(c)... ... ...

(d)... ... ...

(e)... ... ...

(f)... ... ...

(g).. ... ...

(h) the amounts remaining in Tariffs and Dividends Control Reserve, Contingencies Reserve and the Development Reserve, insofar as such amounts have not been paid over by the licensee to the purchaser.

(i)... ... ...

(6) The State Government shall appoint, by order in writing , a person having adequate knowledge and experience in matter relating to accounts, to be Special Officer to assess the net amount payable under this section to the licensee, after making the deductions mentioned in this section. (7) (a) The Special Officer may call for the assistance of such officers and staff of the State Government or the State Electricity Board or the licensee as he may dem it in assessing the net amount payable.

(b) The Special Officer shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908. (Act V of 1908) when trying a suit, in respect of the following matters-

(i) enforcing the attendance of any person and examining him on oath:

(ii) compelling the production of documents; and

(iii) issued commissions for the examination of witnesses. The Special Officer shall also have such further powers as may be specified by the State Government by notification in the Gazette."

The other relevant statutory provisions which are required to be noted are found in Electricity Supply Act, 1948. [hereinafter referred to as the Supply Act'] which is an Act to provide for the

rationalisation of the production and supply of electricity, and generally for taking measures conducive to electrical development. U.P. State Electricity Board is constituted under Section 5 of the Supply Act. The State Electricity Board is enjoined by Section 18 of the Supply Act to arrange in co-ordination with the Generating Company or Generating companies, if any operating in the State for the supply of the electricity that may be required within the state and for the transmission and distribution of the same, in the most efficient and economical manner. As per Section 2 sub-section(6) of the Supply Act 'licensee' means a person licensed. Section 57 of the Supply Act deals with 'licensee's charges to consumers' and it provides that the provisions of the Sixth Schedule shall be deemed to be incorporated in the licence of every licensee, not being a local authority and the licensee is required to comply with the provisions of the said schedule. The Sixth Schedule to the Supply Act as it stood on the appointed day when the appellant's undertaking was acquired will be referred to by us at an appropriate stage while we will consider the aforesaid four claims for additional compensation as put forward by the learned senior counsel for the appellant . In the background of the aforesaid statutory provisions we now proceed to consider the four claims for additional compensation pressed for our consideration. Claim No. 1

This claim is based on Section 7-A sub-section (2) Explanation (ii) extracted earlier. The appellant contends that as per the aforesaid provision the gross amount of compensation payable to the appellant-licensee has to be the aggregate value of the amount specified in section 7-A (2) and which would include book value of all completed works in beneficial use pertaining to the undertaking and taken over by the state Government as in the present case. As per the Explanation the book value of any fixed asset means its original costs and shall also comprise of the cost of supervision actually incurred but not exceeding the amount referred to in paragraph (i) of the said Explanation. The appellant submits that it had incurred form year to year larges amounts of supervision charges paid to the staff engaged for having supervision over these fixed assets and the said claim was wrongly disallowed by the Special Officer, even though the appellant was entitled to at least 15%/ of the cost of supervision actually incurred by the appellant as permissible under Explanation (ii) to section 7-A(2). A look at the relevant part of the Award on this aspect shows that according to the appellant the salary and wages paid to the officers and supervisory staff of the undertaking were debited to the Revenue Account and the cost of the assets amounting to Rs.25,58,581/- as shown in the audited Balance Sheet was required to be raised by Rs.3,82,737/- being the supervision charges at the rate of 15%/ of the total supervision charges actually incurred for supervising and maintaining these assets. This claim was rejected by the Special Officer on two counts:(i) that as per the provisions of the Sixth Schedule to the Supply Act these supervision charges had to be capitalised by the appellant forum year to year when they were incurred and as that was not done these supervision charges could not be awarded: and (ii) in any case there was no clear evidence led by the appellant in respect of the said claim. Learned senior counsel appearing for the appellant vehemently submitted that both these reasons given by the Special Officer were erroneous. In that connection it was submitted that Section 7-A sub-section (20 Explanation (ii) nowhere laid down that the costs of supervision actually incurred should be capitalised the licensee form year to year. Reference to the Sixth Schedule to the Supply Act showed that 'original cost' of the asset was defined as per paragraph XVII clause (6) to mean in respect of any asset the cost of the assets to the licensee to which a proper addition on account of supervision cost not exceeding 15/ of the cost of referred to in sub-para (a) was to be made. That this original cost of the asset was meant to be calculated in connection with the operation of the Sixth Schedule which operated of its own even independently of the acquisition proceeding and prior thereto and had a direct linkage with paragraph I of the Sixth Schedule as applicable at the relevant time which clearly laid down that notwithstanding anything containing in the Indian Electricity Act, 1910 and the provisions in the

licence of a licensee, the licensee shall so adjust by enhancing or reducing them that his clear profit in any year of account shall not, as far as possible, exceed the amount of reasonable return and that for deciding whether the rates of electricity charged by the licensee resulted in his clear profit in any year if account exceeding the amount of reasonable return or not. The concept of clear profit has to be kept in view of ascertaining the lightly of tariff charges. That the concept of reasonable return is defined in sub-para (9) of paragraph XVII of Sixth Schedule. It encompassed in respect of any year of account, the sum of the amounts mentioned in clauses (a) to (e) thereof. For finding out whether clear profit in a given accounting year exceeded reasonable return as laid down in paragraph I of Sixth Schedule reasonable return had to be calculated for the year. For determining reasonable return capital base has to be ascertained as required by clause XVII(9) (a). For finding out the capital base, original cost of fixed assets was required to be computed as per clause XVII (i) (a) and for that purpose original cost was to be ascertained as per clauses XVII(6) (a) and (c). Thus definition of original cost of fixed assets for the purpose I of Sixth Schedule had an entirely different purpose to achieve and had nothing to do with Explanation (ii) to Section 7-A (2) of the Act. We find considerable force in this contention. The aspect of original cost which may include proper addition on account of supervision not exceeding 15/ of the cost referred to in sub-para (a) of clause (b) of definition paragraph XVII of the Sixth Schedule had nothing to do with the computation of proper compensation payable to the licensee as per Section 7-A sub-section (2) Explanation (ii). It is also pertinent to note that the scheme of compensation reflected by the aforesaid provisions indicated that cost of supervision actually incurred up to the ceiling of 15/ of the amount referred to in paragraph (i) of the Explanation to Section 7-A (2) had to be straightway added to the book value of fixed assets which was to be paid for by the acquiring authority. On the other hand the provision of computation of original cost as found in paragraph XVII clause (6) of the Sixth Schedule referred to 'proper addition on account of supervision' which left a discretion regarding computation of the amount of supervision and the said provision did not contain phraseology like 'cost of supervision actually incurred' as found in the aforesaid Explanation to Section 7-A(2). It was, therefore, rightly contended that concept of capitalization of the cost of supervision for computing the original cost of the asset for the purpose of paragraph of the Sixth Schedule had nothing to do with the cost of supervision actually incurred which had to be considered as an addition to the book value of the acquired fixed assets for computing compensation under Section 7-A sub-section (2).

Learned senior counsel Shri Sen for the respondent vehemently submitted that the cost of supervision mentioned in the Explanation to Section 7-A (2) has necessarily a linkage with the Sixth Schedule and Section 57 of the Supply Act as the Sixth Schedule becomes a part and parcel of the very licence issued to the licensee and that is why the Special Officer was justified in insisting that in absence of capitalization of costs of supervision from year to year by the appellant the claim was not maintainable for addition of supervision charges. It is not possible to accept the aforesaid contention of the learned senior counsel Shri Sen. In our view the provisions of Sixth Schedule to the Supply Act are general provisions which were enacted to lay down guidelines for fixation of licensee's charges to consumers as provided in Section 57 of the Supply Act and also for supplying guidelines to the Rating Committee under Section 57-A and for that purpose various paragraphs of Schedule 6 have been enacted and are made a part and parcel of the terms and conditions of the licence. But so far as the question of compensation is concerned, Section 7-A of the Act represents a complete circle. When we turn to the Explanation to Section 7-A(2) for computing the book value of any fixed asset, it original cost has to comprise of two ingredients the purchase paid by the licensee for the asset and secondly 15 % addition to the said purchase price by way of cost of supervision actually incurred on such an asset. It is almost analogous to solatium to be paid for

acquisition of land under Land Acquisition Act. No question of capitalization of such supervision charges from year to year is contemplated by the said Explanation. All that is required to be shown by the licensee is whether it had actually incurred the supervision costs in connection with the staff engaged for supervision the concerned fixed assets which were sought to be acquired form the licensee. Consequently the first ground put forward by the Special Officer for rejecting this claim cannot be sustained. However, learned senior counsel for the respondents was on a firmer ground when he submitted that even on the second ground also the Special Officer was justified in rejecting the claim. The special Officer had taken the view that there was no clear evidence led by the appellant to sustain this claim on merits. A mere look at the explanation (ii) to section 7-A(2) shows that before claiming permissible supervision costs not exceeding 15% of the purchase price of the asset it has to be shown by the appellant that it had actually incurred supervision costs by engaging staff for supervising these fixed assets. In this connection learned senior counsel for the appellant submitted that all the relevant documents were in the custody of the Board which could have been easily called for by the Special Officer for his scrutiny. Even that apart the balance sheets which were available on the record of the Special Officer showed that the appellant had bifurcated various casts incurred on the staff and one of the specified items was the cost of the specified items was the cost of supervisory staff incurred by the appellant during the year. A mere look at a specimen of one such balance sheet shown to us indicated that a lump sum figure was shown in the balance sheet as the amount spent on supervisory staff. It is difficult to appreciate how this lump sum amount could be treated as the cost of supervision actually incurred by the appellant by way of meeting the wages of the staff engaged for supervising the concerned fixed assets which were subject-matter of acquisition. It is easy to visualise that supervisory staff may be engaged by the licensee not only for supervising the fixed assets but also the office staff. Even that apart there would be a watchman kept for supervising not only the factory premises consisting of the relevant fixed assets but also for supervising the cash room, compound and other properties of the licensee. Unless clear evidence was available on record pointing to the actual amount of cost incurred by the licensee form year to year for meeting the wage bill of supervisory staff which was entrusted with the sole duty of supervising over the concerned fixed assets which ultimately vested in the State and Electricity Board, it could not be said that the appellant had made out a case for grant of costs of supervision actually incurred by it in maintaining these fixed assets and that it had satisfied the requirements of the Explanation (ii) to Section 7-A(2). Therefore the second ground on which the Special Officer rejected the claim cannot be found fault with. Consequently the first claim for additional compensation is found to be devoid of any substance and is, therefore, rejected. That takes us to the consideration of claim No.2. Claim No.2

So far as this claim is concerned that appellant contended that as per Section 7-A(i) the book value of all completed works in beneficial use pertaining to the undertaking and taken over by the State Government or local authority, as the case may be, had to be computed but that computation must exclude the words constructed at the cost of the works paid for by the consumers. Thus the works for which payment emanated from the consumers were not to be taken into consideration while computing the book value of the completed works which were taken over from the licensee by the acquiring authority. Having computed the same, the question of deduction from the said computation would fall for consideration as per Section 7-A(2)(i) which provided that from this total amount of book value of the assets so computed depreciation calculated in accordance with the Sixth and Seventh Schedules to the Electricity (Supply) Act, 1948 had to be deducted. That would necessarily mean depreciation on the computed book value of the acquired assets which have entered the computation of the book value as per the first part of Section 7-A(2)(i). What the Special Officer has done is that while computing the depreciation on fixed assets for deducting it

from the book value of all completed works as per Section 7A(2)(i) the depreciation claimed by the assessee on works paid for by the consumers has also been deducted. That this is contrary to the express language of Section 7-(2)(i). On the other hand learned senior counsel for the respondents submitted that when the legislature has clearly provided for deduction of depreciation from the book value of all completed works as per the Sixth Schedule read with the Seventh Schedule as applicable in 1975 when the appellant's undertaking was acquired would also be relevant. The entire paragraph XII of the Sixth Schedule along with the proviso had to be kept in view and was rightly kept in view.

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 cast 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 i 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 whole had 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 fro 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. Before parting with the discussion on this claim we may mention one impermissible exercise undertaken by the Special Officer. At page 40 of the impugned Award it has been mentioned that the Special Officer having found that as the matter was of considerable judicial importance it was considered prudent to take legal advice from Legal Remembrance to U.P. Government and as the legal Remembrance opined that clauses XI and XII of the Sixth Schedule to the Electricity (Supply) Act would seem to provide an answer to the question raised they had to be

kept in view and that Special Officer agreed with the said opinion of the Legal Remembrance. It has to be kept in view that the Special Officer exercising quasi-judicial functions under Section 7- A of the Act who has the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 when trying a suit, in respect of the matters enumerated in Section 7-A sub-section 7(7)(b) could not have called for such an opinion of Legal Remembrance and even though Section 7-A clause (7)(a) permits the Special Officer to have the assistance of such officers and staff of the State Government or the State Electricity Board or the licensee as he may deem fit in assessing the net amount payable, it had to be done in presence of the licensee and an opportunity should have been given to the licensee to meet such an opinion. As that has not been done in the present case such an exercise on the part of the Special Officer and the reliance placed by him on the opinion of the Legal Remembrance obtained behind the back of the licensee must be treated to be totally an incompetent and uncalled for exercise and such an opinion should have been completely ignored by the Special Officer. The second claim has, therefore, got to be accepted. We accordingly hold that the Special Officer has wrongly deducted from the book value of the assets as computed under Section 7-A(2)(i) an amount of Rs.2.48,718.81 and that amount is required to be added back to the book value of the assets which is to be made payable to the appellant-licensee by way of additional compensation. Claim No.3

So far as this claim is concerned, as noted earlier, the appellant ultimately confined the claim on this head to Rs.60,603,78. This claim refers to the electricity dues on the electricity supplied by the Board to the licensee during the period prior to the appointed day. The fuel escalation clause binding on the licensee entitled the Board to claim this amount. These amounts pertain to the period from October 1972 to November 1975. It is true that in connection with these amounts of claim various bills were issued by the Electricity Board to the appellant. At page 69 of the impugned Award the entire table has been extracted by the Special Officer. The said table shows that at serial nos. 1 to 8 different bills were issued by the Board to the appellant between 25th July 1974 and 12th November 1975. But there are last two bills dated 24th March 1976 and 2nd September 1976 which were obviously issued after the appointed day. It was, therefore, contended by the learned senior counsel for the appellant that for at least the amounts covered by these two bills which consisted of Rs. 51,286,70 and 9,317.08 respectively totalling to Rs.60,603,78 the appellant could not have been made responsible as the bills were issued after the take-over. Learned senior counsel for the respondent-Board on the other hand submitted that these two bills referred to the period prior to the take-over, namely, bill dated 24.3.1976 was for a period form October 1974 to November 1975 and bill dated 2.9.1976 was for October and November 1975. In this connection he invited our attention to Section 7-A(5)(b) which in terms provided that from the amount of compensation payable to the licensee the Special Officer was entitled to deduct the amount due to the State Electricity Board which was predecessor of the undertaking for energy supplied by the Board to the licensee before the vesting date. That as this energy was admittedly supplied to the licensee by the Board which was the predecessor of this undertaking before the vesting date, that is, 1.12.1975 the predecessor Board was entitled to deduct the said sum from the amount payable to the licensee for such acquisition and purchase as computed under Section 7-A(1) read with sub section (2). In our view the aforesaid contention of learned senior counsel for the respondent is well sustained on the statutory scheme of Section 7-A(5)(b). The Special Officer was certainly entitled to deduct from the amount payable to the licensee for the acquisition of his undertaking the amount due to the Board by way of supply of energy to the licensee. Even though the bill might have been issued after the acquisition and the appointed day as the bills referred to the period prior to the appointed day in connection with the electricity admittedly supplied by the Board to the licensee, the licensee was statutorily bound to reimburse the Board to the extent of these bills and that amount could be legitimately deducted from

the computed amount of compensation by the Special Officer as enjoined by Section 7-A sub-section (5)(b). Consequently learned senior counsel for the appellant was not justified in submitting that in such a case the Board should have been asked to file a separate suit and as such suit was not filed the Board could not have deducted this amount from the amount payable to the licensee under Section 7-A(2)(i). This claim, therefore, is found to have been rightly refused by the Special Officer and accordingly it stands rejected. That takes us to the consideration of the last claim.

Claim No.4

As noted earlier this claim now is confined to Rs.76,423/-. It consists of deduction of Rs.38,212/- by way of Tariffs & Dividends Control Reserve. This deduction is effected by the Special Officer as per Section 7-A sub- section (5)(h). A mere look at the said provision shows that from the amount of compensation payable to the purchaser to Special Officer can deduct the amounts remaining in Tariffs and Dividends Control Reserve. Contingencies Reserve and the Development Reserve, insofar as such amounts have not been paid over by the licensee to the purchaser. It is obvious that these are trust amounts in the hands of the licensee which are ultimately to be paid over to the consumers and at the time of acquisition of its undertaking the said Reserves have to be handed over to the purchaser, namely, the Board. But what is to be handed over to the Board by the licensee is the amount remaining in the Tariffs and Dividends Control Reserve. So far as the figures of the outstanding amounts in these reserves were concerned they were supplied by the licensee to the Special Officer. Accordingly an amount of Rs.8,615/- stood credited to the Tariffs and Dividends Control Reserve while an amount of Rs.54,560/- stood in the Consumer Rebate Reserve which was also part and parcel of Tariffs and Dividends Control Reserve. However by a very curious piece of reasoning the Special Officer artificially inflated the balances of these reserves and held that Tariffs and Dividends Control Reserve should be treated to be showing the balance of Rs.46,826/- instead of Rs.8,615/- while the Consumer Rebate Reserve balance should be inflated to Rs.97,727/- instead of Rs.54,560/-. The process by which this inflation was done for the purpose of deduction under Section 7-A(5)(h) also makes an interesting reading. The Special Officer agreed with the appellant that for the purpose of computing depreciation of assets financed by the appellant which had to be deducted from the book value of these assets as per Section 7-A(2)(i) extra depreciation charged by the licensee on these assets and which was effectively got considered by the Income Tax authorities could not be taken into consideration for the purpose of Section 7-A(2)(i) as such excess depreciation was not contemplated or covered by the Sixth or the Seventh Schedule. Having accepted this contention, the Special Officer reduced the figure of deductible depreciation on these self-financed assets under Section 7-A(2)(i) and to that extent the book value of the self-financed assets got inflated and that benefit became available to the appellant. But the Special Officer thereafter proceeded to hold that because the appellant had obtained this excess depreciation from the Income Tax authorities that would have got added to its revenue in the relevant years and this additional benefit would have got added to its reserves and, therefore, the amount of excess depreciation which was not deducted from the book value of the acquired assets as per Section 7-A(2)(i) had to be added back to the concerned Tariffs and Dividends Control Reserve and Consumer Rebate Reserve and that is how he ploughed back these extra depreciation amounts which could not be deducted under Section 7-A(5)(h). In our view on the clear language of Section 7-A(5)(h) such an exercise is not contemplated. While deducting the depreciation from the book value of the concerned assets as per Section 7-(2)(i) the amount of extra depreciation which is de hors the permissible scheme of the Sixth Schedule read with Seventh Schedule of the Supply Act has to be ignored. Once that is done Section 7-A(2)(i) gets completely exhausted and complied with. Upto that stage the Special Officer was with the appellant, but then he thought that this extra benefit of

additional depreciation which was already earned by the appellant from the Income Tax Department must be deducted from the purchase price as per Section 7-A(5)(h) by artificially inflating the balance of the concerned Reserves. So far as this exercise, undertaken by the Special Officer, is concerned it is not permissible on the express language of Section 7-A(5)(h). The said provision clearly indicates that whatever amounts have remained in the concerned Reserve Accounts with the licensee on the date of acquisition have to be paid over to the purchaser. Thus actual balances of these Reserves as reflected from the books of accounts of the licensee, had to be handed over to the Board. The said provision nowhere permits an exercise of artificially inflating the balances of these Reserves which are not reflected by the books of accounts of the licensee, on the supposition that these extra depreciations which the licensee must have earned from year to year on these assets and which is not covered by the Sixth or Seventh Schedule of the Supply Act must have swelled the revenues of the licensee under Income Tax Act and, therefore, must necessarily have gone to the concerned Reserve Accounts. Before that stage is reached it is just possible that the license might have utilized the extra depreciation earned according to the Income Tax Act provisions for swelling its own profits while might not have been diverted to Reserves but might have been utilized for other purposes including giving dividends to its shareholders or in purchasing other assets which would naturally get accounted for under Section 7-A(2)(i) itself. There are number of contingencies contemplated in the accounting practices followed by the licensee in connection with its business activities which might have utilized in diverse ways extra depreciation amounts earned by the licensee from Income Tax authorities. Therefore, it was not permissible for the Special Officer to conclude that necessarily these extra depreciations earned by the licensee must have been utilized for swelling the balances of the concerned Reserves and, therefore, the actual balances did not reflect the real balances. It is also to be kept in view that balances in these concerned Reserves would rise over number of years during which the licensee carries on its business and they are not necessarily confined to only one year or the last year when the acquisition takes place. They are a product of working of the concern over years and also get reflected by the accounting practices and the business practices resorted to and adopted by the licensee over years. Consequently there was no material with the Special Officer to come to a definite conclusion that the extra depreciations earned by the licensee over years from the Income Tax Department must have got channelised into these Reserves and, therefore, the apparent balances in these Reserves were not the real balances and had to be inflated accordingly with a view to seeing that what goes out from the deductible depreciation under Section 7-A(2)(i) must necessarily get deducted under Section 7-A(5)(h). In our view, therefore, the Special Officer was clearly in error in deducting the total amount of Rs. 76,423/- consisting of the artificially inflated balances in the aforesaid two Reserves from the amount of compensation payable to the licensee as per Section 7-A(5)(h). The fourth claim, therefore, is found to be well sustained and must be accepted by holding that the appellant was entitled to an additional compensation of Rs.76,423/- on this count.

In view of the aforesaid discussion on the main claims for additional compensation as canvassed before us it must be held that the appellant would be entitled to additional compensation on Claim no.2 amounting to Rs.2,48,718/- and Claim No.4 amounting to Rs.76,423/-. The total of these two figures works out to Rs.3,25,141/-. We are informed by the learned senior counsel for the appellant that even the awarded amount has still not been paid by the respondents. To recapitulate the award was passed as early as on 31st March 1980. As per Section 6-A sub-section (3)(h) of the Act, the Electricity Board is enjoined to pay the licensee an amount determined in accordance with the provisions of Section 7-A and as per the proviso to that Section the licensee shall in addition to the said amount, be entitled to interest thereon at the Reserve Bank rate ruling at the appointed day plus one per centum for the period from the appointed day to the date of payment of the said amount. As

even the awarded amount as per the Award of 31st March 1980 is still not paid to the appellant the Board has to be directed to pay up to the appellant the amount as awarded by the Special Officer by his Award with interest thereon at the relevant Reserve Bank rate ruling at the appointed day, that is, 1.12.1975 plus one percent for the period from the date of award to the date of actual payment to the appellant--licensee. In addition thereto the additional amount awarded by our present order, namely, Rs.3,25,141/- will also have to be paid by the respondent-Board to the appellant-licensee with interest thereon at the Reserve Bank rate also from the appointed date, that is, 1.12.1975 plus one percent interest on the said amount for the period from 1.12.1975 till the date of actual payment of this additional amount of Rs.3,25,141/-. All the aforesaid amounts with interest as directed hereinabove shall be paid by the respondent-Board to the appellant-licensee on or before 31st March 1997. The demand for additional amount as reflected by claims nos. 1 and 3 stand rejected. The appeal is accordingly allowed to the aforesaid extent. As cut of the four claims for additional compensation as pressed for in this appeal two are granted by us and two are rejected and as the success is equally shared by both the sides there will be no order as to costs

.