

SUPREME COURT OF INDIA

Moradabad Water Supply Co. Ltd.

Vs.

Moradabad Municipal Board

(B.N. Kirpal, M.B. Shah and R.C. Lahoti JJ.)

03.02.2000

ORDER

B.N. KIRPAL, J.

1. This is an appeal by special leave against the judgment of the Allahabad High Court who had dismissed the writ petition of the appellant challenging the validity of the Ordinance which was issued on 12th June, 1975, followed by an Act, which had taken over the Moradabad Water Works which were being run by the appellant.

2. The licence for establishing and running the water works was granted to the appellant on 7th March, 1937. Over the years, money had been invested and fixed assets come into existence when on 12th June, 1975, as already noticed, the Ordinance was issued as a result of which the water works at Moradabad were taken over by the State Government. We are informed that there was only one other privately managed water works which was at Aligarh which was also taken over by the said Ordinance.

3. Amendment was made in the U.P. Municipalities Act and Section 224-C was inserted which contained provisions relating to payment of compensation where licence of a licensee is revoked.

4. In this appeal, the question of the validity of the Ordinance does not arise, inasmuch as the validity of the same has already been upheld by this Court. The only question which now arises for consideration is the amount of compensation which is payable to the appellant in respect of the fixed assets which were taken over by the State Government.

5. Sub-section (5) of Section 224-C pertains to the amount of compensation payable which reads as under:

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

(i) the book value of all completed works in beneficial use pertaining to the water works and taken over by the Board (excluding works paid for by the consumers), less depreciation calculated in accordance with the table appended to this Section;

(ii) the book value of 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 sums as may be decided upon by the Special Officer;

(iv) the book value of all other fixed assets in use on the said date and taken over, less depreciation calculated in accordance with the said table;

(v) the book value of all plants and equipments existing on the said 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 off in accordance with the said table;

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

(i) 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 into beneficial use, as shown in the books of the licensee;

(ii) the cost of supervision actually incurred, but not exceeding fifteen per cent of the amount referred to in paragraph (i);

Provided that before deciding the amount under this Sub-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 therefore.

This Sub-section has to be read with the Table of depreciation the relevant portion of which is as under:

There (this?) shall be deducted for each year in respect of fixed assets employed in the licensee's undertaking such an amount as would, if set aside annually throughout the period specified in the following table and accumulated at compound interest at four per cent per annum, produce at the end of the said period an amount equal to ninety per cent of the original cost of the asset after taking into account the sums already written off or set aside in the books of the licensee.

6. The columns contained in the said Table indicate the types of assets and the life span which is to be taken into consideration for the purposes of calculating the depreciation.

7. The said Section 224-C postulated a Special Officer being appointed for the purposes of calculating the amount of compensation payable according to the said Section. According to the learned Counsel for the appellant, one Mr. R.N. Mathur had been appointed as a Special Officer but no report submitted by him in relation to the compensation for the Moradabad Water Works is available. It was during the pendency of this appeal that on 26th July, 1988 a Special Officer was appointed who submitted his report on 15th September, 1988. In the meantime on 23rd February, 1987, on an application filed by the appellant, this Court directed the respondents to pay the admitted amount. This was followed by an order dated 25th March, 1988 when the respondents were directed to pay Rs. 3 lakhs, on account, to the appellant and the said amount was paid on 16th April, 1988.

8. In the aforesaid report of the Special Officer, the amount which was determined to be payable to the appellant was Rs. 2,65,419.50p. By order dated 10th December, 1996, the parties were given leave to file affidavits in support of their respective contentions with regard to the amount so determined. On 13th January, 1999, this Court noted that there was a dispute about the manner of calculation of the amount payable to the appellant under Section 224-C. The Court on 13th January, 1999 proposed to appoint an independent Chartered Accountant for the purposes of calculating the amount payable under the said provision. By order dated 15th January, 1999, M/s. K.M. Agarwal & Co. were appointed as Chartered Accountants to submit a report.

9. A report has now been submitted by M/s. K.M. Agarwal & Co. The Chartered Accountants have based the calculations on the basis of the audited balance sheets which were produced before them by the Company and applying the formula contained in the said Sub-section (5) of Section 224-C read with the Table determined, the book value of the assets in respect of which compensation was payable at a sum of Rs. 9,79,383/-.

10. We have heard the counsel for the parties at length with regard to the manner in which this sum has been determined.

11. As we read the said provision, it is clear that under Sub-section (5) the amount which is payable to the licensee in respect of all the items, except in case of stores, is to be the book value which means the original cost including such charges which may be incurred in respect thereof after deducting depreciation calculated in accordance with the Table appended to the Section. With regard to the stores, Sub-section (5)(iii) does not contemplate the deduction of any depreciation and, therefore, it is the original cost which has to be taken into consideration. When we come to the Table, we find that no rate as such is specified for the purposes of calculating the depreciation. The amount of depreciation has to be worked out according to the manner indicated in the said Table which provides that for each year, keeping in view the number of years which is to be taken as the life of the asset, the amount is to be set apart which along with compound interest at the rate of 4 per cent per annum is to produce at the end of the period an amount equal to 90 per cent of the original cost. This means that two elements have to be taken into consideration which, when taken together, would result in the amount of depreciation being 90 per cent of the total cost at the end of the life expectancy of that asset. What has, however, to be deducted is only the amount which is set apart and not the notional interest which is calculated at the rate of 4 per cent compound. The effect of this would be that the amount of depreciation which has to be calculated even at the end of the life span would not come to 90 per cent of the actual cost but would be less. That amount along with the notional interest must come to 90 per cent of the actual cost but the element of interest has not to be deducted for the purposes of determining the depreciation under Sub-section (5) of Section 224-C.

12. We find that M/s. K.M. Agarwal & Co. have calculated the depreciation in this manner and in accountancy parlance calculating interest in this manner is known as 'Depreciation Fund Method'. As has already been indicated, the amount arrived at as representing the depreciated value of the assets comes to Rs. 9,79,383/-.

13. It was submitted by Shri A.K. Goel, Additional Advocate General, UP. appearing for the respondents that the Chartered Accountants have not taken into consideration any sums written off or set aside as mentioned in the said Table. We are informed that the balance sheets of the Company,

on the basis of which the calculations have been made, and the other accounts which were produced do not indicate anything being written off or set aside and, therefore, no other sum was taken into consideration. We do not propose to take the task of examining the balance sheets ourselves in order to determine whether any sum had been written off or set aside. When the Chartered Accountants have been appointed by an order of this Court, then normally their report should be accepted unless it can be demonstrated that there is some gross mistake or an error which has been committed. We, therefore, accept the report of M/s. K.M. Agarwal & Co. and determine the value of the assets of which have been taken over and in respect of which compensation is payable of Rs. 9,79,383/-. This figure has to be modified slightly because there are some amounts which are realisable by the appellant from the Municipal Board and on the other hand there are certain amounts which are realisable by the Municipal Board from the appellant. The parties are agreed that after taking this into consideration; the value of the assets so arrived at has to be reduced by a figure of Rs. 48,012/-. This means that the total sum payable as representing the value of the fixed assets taken over would be Rs. 9,31,371/-.

14. The next question which arises for consideration is amount of interest which is payable to the appellant. In the proviso to Sub-section (2) of Section 224-C, it is stated that the licensee is to be paid on the amount determined interest at the Reserve Bank of India rate ruling on the said date plus one per cent for the period from the said date to the date of payment of the said amount. According to Annexure 10 which is a letter of the Allahabad Bank dated 19th September, 1988, it is stated that the Reserve Bank of India rate as on June, 1975 was 9 per cent. This would mean that the appellant would be entitled to get interest at the rate of 9% + 1%, i.e., at the rate of 10% on the said sum of Rs. 9,31,371/-with effect from 12.6.1975 till the date of payment. This interest has to be simple interest and not compound interest as contended by the learned Counsel for the appellant. It is to be seen that in the Act whenever compound interest was contemplated it was specifically so provided as in the case of the Table appended to Section 224-C. There the reference is, in calculating the amount of depreciation, to compound interest of 4 per cent. In Sub-section (2) of Section 224-C what is stated is only payment of interest and it is not stipulated therein that the interest should be compound interest.

15. We, therefore, direct that the respondents shall pay to the appellant the aforesaid amount of Rs. 9,31,371/- plus interest at the rate of 10%. This interest at the rate of 10% will be payable on the amount of Rs. 9,31,371/-uptill 16th April, 1988 and thereafter the interest will be payable on the principal amount of Rs. 6,31,371/- upto 7th November, 1989 when further sum of Rs. 44,047/- was paid. After 7th November, 1989, 10% interest will be payable on the reduced balance of Rs. 5,87,324/- till the date of payment. The payment should be made by the respondents to the appellant by 30th June, 2000.

16. While validity of Section 224-C is upheld, the appellant is held to be entitled to receive compensation in the manner indicated hereinabove. To this extent only, the appeal is allowed. No costs.