

Madhya Pradesh Electricity Board

Vs.

Central India Electric Supply Co. Ltd.

Misc. (First) Appeal Nos.181 of 1969, and 34 of 1970, Decided on 14.9.1971, from order of N.C. Dwivedi, Dist. J., Jabalpur (A.P. Sen and K.K. Dube, JJ.)

16.09.1969. 14.09.1971

JUDGMENT

A. P. Sen, J.

1. This order will dispose of (*The Central India Electric Supply Co., Ltd. v. Madhya Pradesh Electricity Board*).¹

These are appeals under Section 39(1)(iii) of the Arbitration Act, 1940, directed against an order of the District Judge, Jabalpur, making an award the rule of the Court subject to a variation in the date from which the interest is to run.

2. The Central India Electric Supply Co. Ltd., held a license for the supply of electric energy for the Bilaspur region w.e.f. 1st May, 1934. On the expiry of the licence, the Madhya Pradesh Electricity Board purchased the undertaking under Section 6 of the Electricity Act, 1910. There was a dispute between the parties as regards the purchase price and, therefore, the dispute was referred to arbitration under Section 7A(1) of the Act.

3. Sri B.P. Sinha, former Chief Justice of India, was the Umpire in the arbitration under Section 7-A(1) of the Indian Electricity Act, 1910.

4. By an award dated 7th October, 1968, the Umpire determined the purchase price at Rs. 15 (Fifteen) lacs, and allowed interest thereon at 6% per annum from 5th May, 1966 till the date of payment of the amount in full. The relevant portion of the award reads as follows:

"The Board contended for the prices of the components purchased in large bulk. On the other hand, the claimant claimed the price payable for a retail purchase

as and when the components became necessary to be acquired or changed or replaced. It is not, therefore, difficult to explain the disparity in the figure of Rs. 24 lakhs, 65 thousand odd claimed as the replacement value on the one hand, and Rs. 15 lakhs, 4 thousand odd as the replacement value contended for by the Board. The matter has to be determined more by the rough and ready method than by a accurately scientific assessment. In my judgment, the round figure of Rs. 20 lakhs will be a proper replacement value if the things had to be purchased in the open market in May 1964. From this amount has to be deducted the amount of depreciation as also the amount of consumers contributions which, admittedly amounts to Rs. 8 lakhs 69 thousands odd. On these two items of deduction, namely depreciation and consumers' contributions, I would knock off the round figure of Rs. 8 lakhs. The market price thus I would fix at Rs. 12 lakhs. To this has to be added Rs. 2 lakhs 40 thousand by way of solatium at the rate of 20% in order to arrive at the purchase price. It remains to be considered the claim for 15% of the market price for planning, designing and execution of the whole Undertaking. There is no doubt that planning and designing an electrical undertaking requires expert advice and guidance and the claimant must have incurred expenses on those accounts. As regards execution of the whole scheme, that item is included in ascertaining the replacement value. I would, therefore, disallow that part of the claim but in respect of the claim for planning and designing, I would allow 5% on the market price of Rupees 12 lakhs. Thus, Rs. 60,000/- has to be added to make the total amount of purchase price which is fixed at Rs. 15 lakhs in round figures."

"In my opinion, the counsel for the Board is quite correct in his contention that the proviso to Section 5(3) of the Act does not, in terms, apply to the present case which is one of compulsory purchase after the lapse of the original period of the license. Hence the claim for interest from the date of the delivery of the Undertaking to the Board is not well-founded. But that does not dispose of the whole controversy. In my opinion, the claimant company is entitled to a reasonable rate of interest from the date, not of delivery of the Undertaking to the Board, but from a later date when the purchase price should have been determined with due diligence on both sides. If both the parties had been diligent in pursuing the arbitration proceedings, the matter should have finished in two years' time, Hence. I will allow interest, by way of equitable consideration, at the rate of 6% per annum from the 5th of May, 1966 until the date of payment of the full amount-----." The District Judge has made the award

the rule of the Court subject to a variation in the date from which the interest is to run. He has held that the Umpire had no right to award interest on equitable considerations from 5th May, 1966 till the date of payment of the amount in full and deleted that direction from the award under Section 15(b) of the Arbitration Act, and has instead ordered payment of interest from the date of the award till the date of realization at 6%.

5. Broadly stated, the questions involved in these appeals are:

(1) Whether the Umpire exceeded his authority in awarding Rs. 60,000/-, at 5% of the market price of Rs. 12 (Twelve) lacs, on account of planning and designing?

(2) Whether any interest was payable under the Electricity Act on the purchase price? If not, whether the Umpire had a right to award interest on equitable considerations from 5th May, 1966 till the date of payment of the amount in full?

(3) Whether the Umpire rightly directed the Board to bear its own costs and pay half the costs of the other side, or, in the circumstances, he should have directed that the costs shall be in proportion to success and failure?

(4) If the Umpire had no jurisdiction to award interest under the Electricity Act or otherwise, whether the District Judge could grant interest from the date of the award or should he have awarded interest from the date of the decree, as per Sec, 29 of the Arbitration Act?

(5) Whether the Court has to, while making an award under Section 7-A(1) of the Electricity Act a rule of the Court, pass only a declaratory decree or a decree for money?

6. Point No.1:- The principles of compensation on statutory acquisition of undertakings are well settled. It is well established that the reconstruction cost, less depreciation, is a correct method of valuing a public utility where the value of the franchise is excluded from consideration. See *Edinburgh Street Tramways Co. v. Edinburgh Corporation*,² *Melbourne Tramway and Omnibus Co. Ltd. v. Tramway Board*,³ *Toronto City Corpn. v. Toronto Rly. Corporation*,⁴ and *International Rly. Co. v. Niagara Parks Commission*, 1937-3 *All England Reporter* 181. In 1894 AC 456 (supra), their Lordships of the House of Lords stated that the basis of valuation is the value of the tramway as successfully constructed and in complete working condition,

after deducting a proper sum for depreciation, but without taking into account rights of user. So also, in 1937 3 All England Reporter 181 (supra), where electric railway was acquired, upon expiry of the term for which the franchise was granted, their Lordships of the Privy Council held that there was no justification for assessing the compensation at "scrap value". It was fundamental that it was a railway complete with equipment, machinery and other works, which the company was bound to hand over to the commissioners on the expiry of the term and for which it was to be duly compensated. According to their Lordships, a proper basis of the compensation was the cost of reconstruction, less depreciation.

7. We are of the view that the Umpire has not acted on the wrong basis. He has, in fact, adhered to the principle of assessing compensation on the basis of reconstruction cost, less depreciation. In the present case, the undertaking had become practically valueless as a going concern, and it was suggested that the compensation, therefore, should be scrap or break-up value of the undertaking. Under the terms of the licence, the licensee was given the exclusive right to construct and operate an electrical undertaking for a period of 30 years but was bound on the expiry of that term to hand it over to the Board if it elected to purchase the same. The basis of valuation was, therefore, the value of the undertaking as successfully constructed and in complete working order, after deducting a proper sum for depreciation, but without taking into account rights of user. While determining the market price of the undertaking at Rs. 12 (Twelve) lacs, the Umpire rightly allowed 5% thereof on account of cost of planning and designing, observing as follows:

"There is no doubt that planning and designing an electrical undertaking requires expert advice and guidance and the claimant must have incurred expenses on those accounts. As regards execution of the whole scheme, that item is included in ascertaining the replacement value".

Therefore, it follows that the cost of planning and designing has been treated by the Umpire as forming part of the purchase price. That part of the award cannot, therefore, be deleted under Section 15(b) of the Arbitration Act as constituting an error apparent on the face of the record.

8. Point No.2:- While holding that no interest can be awarded under the provisions of the Electricity Act, 1910 the Umpire has nonetheless allowed interest at 6 per cent per

annum "on equitable considerations", from 5th May 1966 till the date of payment of the amount in full, on the ground that the delay in determining the purchase price would not have occurred, if the parties had prosecuted the proceedings with due diligence. The Umpire states as follows:

"In my opinion, the counsel for the Board is quite correct in his contention that the proviso to Section 5(3) of the Act does not, in terms, apply to the present case which is one of compulsory purchase after the lapse of the original period of the license. Hence the claim for interest from the date of the delivery of the Undertaking to the Board is not well-founded. But that does not dispose of the whole controversy. In my opinion, the claimant company is entitled to a reasonable rate of interest from the date, of delivery of the Undertaking to the Board, but from a later date when the purchase price should have been determined with due diligence on both sides. If both the parties had been diligent in pursuing the arbitration proceedings, the matter should have finished in two years' time. Hence. I will allow interest, by way of equitable consideration, at the rate of 6 per cent, per annum from the 5th of May, 1966 until the date of payment of the full amount."

9. Where a franchise for a public utility is granted to private undertakers for a limited period, coupled with an obligation to transfer the undertaking to a public authority at the end of the period, there is no compensation for the loss of profit, since any profits they had a right to receive have on the terms of the agreement come to an end. In 1925 AC 177 (Supra), their Lordships of the Privy Council, while recognizing "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" held that the arbitrators whose duty was "to ascertain the actual value of certain property at a certain time", had no power to include interest in their assessment of value Viscount Cave, while delivering the opinion of their Lordships, stated as follows:

"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 is well established, and has on many occasions been applied to compulsory purchases; and their Lordships are not aware of any circumstances which would prevent that principle from applying in the present case. But the duty of the arbitrators in this case was not to determine all the rights of the company, out only to

ascertain the actual value of certain property at a certain time; and it is a truism to say that such value cannot include interest upon it."

So also, in 1932 3 All England Reporter 181 (Supra), Lord Macmillan, in delivering the opinion of their Lordships stated:

"It is a familiar feature, common to all cases in which a franchise for a public utility is granted to private undertakers for a limited period, coupled with an obligation to transfer the undertaking to a public authority at the conclusion of the period, that the undertakers must look to reap the reward of their enterprise in the profit which they may make during the currency of their franchise, and on its expiry shall receive only the value of the structure which they have created, without any compensation either for the profits or the losses which they may have made or sustained while in the enjoyment of their franchise. This is plainly just, for, with the termination of the franchise, the power to make profits or the liability to incur losses simultaneously terminates. The promoters have had their chance to make what they can out of their undertaking in the knowledge that it was of limited duration and that they must part with it at a fixed date. To compensate them on the basis of the profits which they have made and are surrendering would be to assume that they had a right to go on making profits although ex hypothesis the franchise which gave them that right had come to an end."

10. The Electricity Act, 1910 has been enacted while bearing this principle in mind. There is a distinction between the method of valuation on the purchase of an undertaking on revocation of the license and that to be adopted on the purchase of an undertaking on the expiry of the license. When the license of an undertaking is revoked under Section 5, the licensee is entitled to a statutory payment of interest under the proviso to Section 5(3) of the Act at the Reserve Bank rate ruling at the time of delivery of the undertaking plus one per centum, on the purchase price of the undertaking for the period from the date of delivery of the undertaking to the date of payment of the purchase price. That interest is allowed, in case of revocation of a license, for the loss of profits. But on the purchase of an undertaking on the expiry of the license, the right to operate the undertaking disappears and, therefore, the statute does not provide for payment of interest. The Umpire had, therefore, no right to allow interest on the amount of compensation awarded and to include it in his award,

whether under the Electricity Act or on equitable considerations. That part of the award has, therefore, been rightly deleted under Section 15(b) of the Arbitration Act by the learned District Judge.

11. Point No.3:- The award of costs of the arbitration was a matter within the discretion of the Umpire-While saddling the costs on the Board, the Umpire has stated as under:

"It remains to consider the question of posts of the arbitration proceedings before the arbitrators and before me. As success between the parties is divided, I direct that the Board pay half the costs of the claimant and bear its own costs before me and before the arbitrators. I assess the costs before me at Rs. 10.000/- on each side and at Rs. 15.000/- on each side before the arbitrators where the hearing was much more prolonged. The arbitrators fees I fix at Rs. 6.000/-each."

Under Rule 8 of Schedule I of the Arbitration Act, the costs of the reference and award shall be in the discretion of the Umpire who may direct to, and by whom, and in what manner, such costs or any part thereof shall be paid, and may tax or settle the amount of costs to be so paid or any part thereof. Ordinarily, the expenses incurred by the parties of the whole enquiry before the arbitrators and thereafter before the Umpire, are costs of reference. The licensee had substantially succeeded before the Umpire and, therefore, there was nothing wrong in the Umpire directing the Board to bear its own costs and pay half the costs of the other side. Even if it is assumed that success and failure was divided, the Umpire had the jurisdiction to ask the successful party to pay the costs in exercise of his discretion. Accordingly, we maintain that part of the award.

12. Point No.4:- Under Section 29 of the Arbitration Act, the District Judge had no jurisdiction to award interest at 6 per cent per annum on Rs. 12 (Twelve) lacs from the date of the award. Section 29 of the Act is exhaustive of the whole law upon the subject of "interest on awards". Since Section 29 enables the Court to award interest on the principal sum adjudged by an award from the date of the decree onwards, it must be held that it carries with it the negative import that it shall not be permissible to the Court to award interest on the principal sum adjudged by an award for any period prior to the date of the passing of the decree.[See: *State of West Bengal v. Subodh Gopal Bose*, ⁵ *Gujarat University v. Krishna Ranganath*. ⁶ and *State of West*

Bengal v. Union of India,⁷ The decree passed by the District Judge must accordingly be modified, and we direct that interest at 6 per cent, per annum on Rupees 12 (Twelve) lacs shall be payable from the date of the decree and not from the date of the award.

13. Point No.5:- There is no warrant for the submission that the Court can only pass a decree declaring the sum adjudged by the award; and not a decree for payment of that sum. The reference under Section 7-A(1) of the Electricity Act being a statutory one, it was subject to Section 46 of the Arbitration Act which makes the provisions of the Act, except Sections 6(1), 7, 12, 36 and 37, applicable to such reference. The award of the Umpire was, therefore, subject to the provisions of Section 17 of the Arbitration Act, and, therefore, the District Judge had the power to make the award the rule of the Court. Under Section 17 of the Act, the Court has to pronounce judgment according to the award, and upon the judgment so pronounced, a decree shall follow. There is no reason why a decree, in terms of the award under Section 7-A(1) of the Electricity Act, should only be a declaratory one. The adoption of such course would defeat the whole object of the Act in providing for a speedy remedy. Such a relief, if the decree be only declaratory of the amount of purchase price adjudged by the Umpire, would be wholly illusory. We are, therefore, inclined to think that the Court has the power to pass a decree for the payment of money.

14. With regard to the pre-existing liabilities of the licensee. Section 7 of the Electricity Act directs that upon a compulsory purchase of the undertaking, the Board shall take it free of all encumbrances, I, e., any debt, mortgage or similar obligation of the licensee or attaching to the undertaking. Such debt, mortgage or similar obligation attaches to the purchase money in substitution for the undertaking. If the Board has any kind of claim against the licensee, it is free to pursue its remedy elsewhere. But there is no provision made in Section 7 of the Electricity Act that any debt due to the Board shall be deducted from the purchase price determined under Section 7-A(4) of the Act.

15. Then, there is the question whether the Board is entitled to deduct from the purchase price the three funds which the licensee was required to maintain under the 6th Schedule of the Electricity (Supply) Act, 1948 (i) the Tariffs and Dividends Control Reserve; (ii) the Contingencies Reserve and (iii) the Development Reserve. Under the provisos to Clauses II (3), V (2) and VA-(4) of the 6th Schedule, on the

purchase of the undertaking by the Board, these funds have to be handed over by the licensee to the Board and maintained as such. Though the provisos were inserted by the Electricity (Supply) Amendment Act, 1966, which was not retrospective in operation and were not in force on the 1st May, 1964, the date of vesting of the undertaking in the Board, yet the provisos would still operate as they were in existence on the date of the award. There is, however, a controversy between the parties whether the requirements of the 6th Schedule have been met by the licensee. The case of the licensee is that whatever amounts were standing to the credit of these funds have already been handed over to the Board and there now remains nothing with the licensee, while the Board disputes this position. The dispute as regards these funds has been referred to the District Judge and the matter is still pending. In the circumstances, we would refrain from making any direction for the deduction of amounts, if any, standing to the credit of (i) the Tariffs and Dividends Control Reserve; (ii) the Contingencies Reserve and (in) the Development Reserve on the date of vesting.

16. The result, therefore, is that the appeal of the Board is partly allowed and the decree passed by the District Judge stands modified to the extent that interest at 6 per cent, per annum on Rs. 12 (Twelve) lacs shall be payable from the date of the decree and not from the date of the award, while the appeal of the licensee fails and is dismissed. Costs of both the appeals shall be borne by the parties as incurred.

Appeal partly allowed.

Cases Referred.

1. Misc. (First) Appeal No. 34 of 1970
2. 1894 AC 456
3. 1919 AC 667
4. 1925 AC 177
5. AIR 1954 SC 92
6. AIR 1963 SC 703
7. AIR 1963 SC 1241