

The U.P. Rajya Vidyut Utpadan Nigam Ltd. (Acquisition and Transfer of Undertaking) Act, 1992

UTTAR PRADESH

India

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Act 12 of 1992

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The U.P. Rajya Vidyut Utpadan Nigam Ltd. (Acquisition and Transfer of Undertaking) Act, 1992U.P. Act No. 12 of 1992Statement of Objects and Reasons. - The Uttar Pradesh Rajya Vidyut Utpadan Nigam Ltd., a wholly-owned electric generating company of the State Government, had set up an undertaking named Feroz Gandhi Unchahar Thermal Power Project in district Rae Bareli with a total approved capacity of generating 840 MW of electricity. Due to financial constraints the said undertaking could not be able to operate continuously at its optimum capacity, resulting in loss in generation of electricity. The said Nigam or the State Government was not in a position to provide additional funds necessary to achieve the optimum production. With a view to continuing and augmenting the generation of electricity and to bringing the undertaking into full operation and to commencing activities regarding its extension project it was in the public interest decided to acquire the said undertaking and to transfer it subsequently to the National Thermal Power Corporation Ltd.² Since the State Legislature was not in session and immediate legislative action in the matter was necessary the Uttar Pradesh Rajya Vidyut Utpadan Nigam Ltd. (Acquisition and Transfer of Undertaking) Ordinance, 1992 (U.P. Ordinance No. 4 of 1992) was promulgated by the Governor on February 6, 1992. This Bill is introduced to replace the aforesaid Ordinance. [Dated 20th March, 1992] Received the assent of the President of India on March 20, 1992, and published in the U.P. Gazette (Extraordinary), Part 1 (ka), dated 20th March, 1992. An Act to provide for the acquisition and transfer of the right, title and interest of the Uttar Pradesh Rajya Vidyut Utpadan Nigam Ltd.. in relation to the undertaking known as Feroz Gandhi Unchahar Thermal Power Project in district Rae Bareli in the interest of national power development and to commence activities regarding the extension project and to provide for matters connected therewith and incidental thereto. Whereas the Uttar Pradesh Rajya Vidyut Utpadan Nigam Ltd., a wholly owned electric generating company of the State Government, set up an undertaking, namely, Feroz Gandhi Unchahar Thermal Power Project with a total approved capacity of generating 840 MW of electricity; And, whereas the said undertaking has not been able, due to financial constraint, to operate continuously at its optimum

capacity, resulting in loss in generation of electricity; And, whereas the said Nigam or the State Government is not in a position to provide additional funds necessary to achieve the optimum production; And, whereas with a view to continuing and augmenting the generation of the electricity and to bringing the said undertaking into full operation and to commencing activities regarding its extension project, it is necessary in the public interest to acquire the said undertaking and to transfer it to the National Thermal Power Corporation Ltd.; Now, therefore, it is hereby enacted in the Forty-third Year of the Republic of India as follows :-

Chapter I

Preliminary

1. Short title and commencement.

(1) This Act may be called the Uttar Pradesh Rajya Vidyut Utpadan Nigam Ltd. (Acquisition and Transfer of Undertaking) Act, 1992. (2) Sections 2 to 16 shall be deemed to have come into force on February 13, 1992 and the remaining provisions shall come into force at once.

2. Definitions.

- In this Act, - (a) "appointed day" means the date of commencement of this Act; (b) "Board" means the Uttar Pradesh State Electricity Board constituted under the Electricity (Supply) Act, 1948; (c) "Commissioner" means the Commissioner appointed under Section 12; (d) "Corporation" means the National Thermal Power Corporation Ltd., a Government company within the meaning of the Companies Act, 1956, and having its registered office at New Delhi; (e) "Nigam" means the Uttar Pradesh Rajya Vidyut Utpadan Nigam Ltd., a Government company within the meaning of the Companies Act, 1956, and having its registered office at Lucknow; (f) "Undertaking" means the Feroz Gandhi Unchahar Thermal Power Project of the Nigam situated at Unchahar in district Rae Bareilly; (g) words and expression used but not defined in this Act and defined in the Companies Act, 1956 shall have the meanings respectively assigned to them in that Act.

Chapter II

Acquisition and Transfer of Undertaking of the Nigam

3. Transfer to and vesting in the State Government of the Undertaking.

- On the appointed day, the undertaking and the right, title and interest of the Nigam in relation to the undertaking, shall, by virtue of this Act, stand transferred to, and shall vest, in the State Government.

4. General effect of vesting.

(1)The Undertaking shall be deemed to include, all properties and assets, rights, leaseholds, powers, authorities and privileges and all property movable and immovable including lands, buildings, offices, stores, plants, machinery and equipment, installations, instruments, office furniture, stationery and office equipments, vehicles, staff quarters, workers' colonies together with amenities and installations pertaining thereto, and other rights and interests in, or arising out of such properties and assets as were immediately before the appointed day in the ownership, possession, power and control of the Nigam in relation to the Undertaking, whether within or outside the State of Uttar Pradesh, and all books of accounts, registers and other documents of whatever nature relating thereto, but not to include cash in hand, cash at bank, investments, book debts (other than outstanding advances for procurement of materials for the undertaking) or rights, liabilities and obligations respecting any other contract.(2)If on the appointed day, any suit, appeal or other proceedings of whatever nature in relation to any property or assets which has vested in the State Government under Section 3, instituted or preferred by or against the Nigam in relation to the undertaking, is pending, the same shall not abate, be discontinued or be, in any way, prejudicially affected by reason of the transfer of the Undertaking or of anything contained in this Act, but the suit, appeal or other proceeding may be continued, prosecuted or enforced by or against the State Government or where the Undertaking vests in the Corporation under Section 5, by or against the Corporation.

5. Vesting of the undertaking in the Corporation.

- The Undertaking vested in the State Government under Section 3 shall, on such date as may be notified by the State Government in this behalf, vest in the Corporation and thereafter the Corporation shall become the owner of the Undertaking :Provided that no such notification shall be made unless a resolution passed by the Corporation for the purpose is communicated to the State Government.

6. State Government or the Corporation not to be liable for prior liabilities.

(1)Except as provided in sub-section (2) no liability of the Nigam in relation to the undertaking incurred prior to the appointed day and no award, decree or order of any court, tribunal or other authority in relation to the undertaking, passed after the appointed day, in respect of any matter, claim or dispute which arose before that day, shall be enforceable against the State Government or the Corporation.(2)The liability of the Nigam to the Central Electricity Authority to the tune of approximately two crore rupees on account of consultancy and to the Power Finance Corporation to the tune of approximately four crore rupees on account of construction of the undertaking shall, on vesting of the Undertaking in the State Government under Section 3, be of the State Government and on its vesting in the Corporation under Section 5, of the Corporation :Provided that such liability of the Corporation in aforesaid accounts shall, in no case exceed two crore rupees and four crore rupees respectively,

Chapter III

Payment of Amounts

7. Payment of amount by the State Government.

- For the transfer to, and vesting in, the State Government under Section 3, of the Undertaking and the right, title and interest of the Nigam in relation to the Undertaking, there shall be given by the State Government to the Nigam such amount as may be determined in the manner specified in Chapter IV.

8. Payment of amount by Corporation.

(1) For the transfer to, and vesting in the Corporation under Section 5, of the Undertaking and the right, title and interest of the State Government in relation to the Undertaking, there shall be paid by the Corporation to the State Government, such amount and in such manner, as is specified in the Schedule. (2) The State Government may after consultation with the corporation, by notification, make suitable changes in the amount and the manner of payment specified in the Schedule, and on publication of the notification in the Gazette, the Schedule shall stand amended accordingly.

Chapter IV

Delivery of Possession

9. Duty of persons to account for assets etc. in their possession.

(1) Any person who has, on the appointed day, in his possession or under his control, any assets, books, documents or other papers relating to the Undertaking which vested in the State Government or the corporation under this Act, shall be liable to account for the said assets, books, documents and other papers to the State Government, or as the case may be, to the Corporation and shall deliver them up to the State Government or the Corporation or to such person or persons as the State Government or the Corporation may specify in this behalf. (2) The State Government, or as the case may be, the Corporation, may take or cause to be taken all necessary steps for securing possession of the Undertaking which has vested in the State Government or the Corporation under this Act. (3) The Nigam shall, within such period as the State Government may allow in this behalf, furnish to the State Government a complete inventory of all its properties and assets, as on the appointed day, pertaining to the Undertaking which has vested in the State Government under Section 3 and for this purposes the State Government or the Corporation shall afford to the Nigam all reasonable facilities.

Chapter V

Provisions Relating to Employees of the Nigam

10. Absorption of employees.

(1) Subject to the provisions of sub-section (2) every person who has been immediately before the appointed day, a regular employee of the Nigam, - (a) shall on and from the appointed day, be deemed to be on deputation with the State Government on the same terms and conditions, (b) on the vesting of the Undertaking in the Corporation under Section 5, shall become an employee of the Corporation on and from the date of such vesting, and shall hold office or service under the Corporation, on the same terms and conditions and with the same rights and privileges as to retirement benefits and other matters as would have been applicable to him immediately before such vesting, till his employment under the Corporation, is duly terminated or until his remuneration and other conditions of service are duly altered by the Corporation, not to his disadvantage. (2) A person referred to in sub-section (1) may, within three months from the date of vesting of the Undertaking in the Corporation, communicate to the Corporation his option not to be absorbed in the service of the Corporation failing which he shall be deemed to have opted for absorption in the service of the Corporation. (3) The services of an employee who opts against absorption shall stand terminated and he shall without prejudice to his claim to any leave, pension, provident fund or gratuity which he would have been entitled to, be entitled to, receive as compensation from the Corporation, an amount equal to - (a) three months salary, if he was a permanent employee, (b) one month's salary, if he was a temporary employee. Explanation. - For the purposes of this sub-section, the term 'salary' includes dearness allowance, personal pay and special pay, if any. (4) Any person who was serving the Nigam on deputation from the Board or any other organisation immediately before the vesting of the Undertaking in the State Government, shall on such vesting be deemed to be on deputation with the State Government on the same terms and conditions until he is reverted to his parent organisation. (5) Any person who was serving the State Government on deputation under the provisions of sub-section (4) immediately before the vesting of the Undertaking in the Corporation, shall on such vesting be deemed to be on deputation with the Corporation on the same terms and conditions until he is reverted to his parent organisation or absorbed in the service of the Corporation. (6) Notwithstanding anything contained in the Industrial Disputes Act, 1947, or in any other law for the time being in force, the transfer of the services of any employee of the Nigam to the Corporation shall not entitle him to any compensation under this Act or under any other law for the time being in force and no such claim shall be entertained by any court, tribunal or other authority.

11. Provident fund and other funds.

- Where the Nigam has established a provident fund or any other fund, for the benefit of the persons employed by it, the moneys relatable to the employees whose services are transferred, by or under this Act, to the Corporation, standing on the appointed day, to the credit of such fund shall on the date of vesting of the Undertaking in the corporation stand transferred to the Corporation.

Chapter VI

Determination of Payment by State Government

12. Appointment of Commissioner.

(1)The State Government shall for the purposes of determining the amount payable to the Nigam for acquisition of the Undertaking by the State Government and for its disbursement, appoint, by notification, a Commissioner/of payments.(2)The State Government may appoint such other persons as it thinks fit to assist the Commissioner.

13. Determination of amount.

(1)The Commissioner shall, so far as may be within six months from the date of notification under Section 12, determine the amount payable by the State Government to the Nigam for acquisition of the Undertaking.(2)In determining such amount, the Commissioner shall take into consideration the value of all assets and properties, pertaining to the Undertaking as have vested in the State Government under Section 3, and such other matters as may be relevant for the purpose.(3)The amount so determined shall be intimated by the Commissioner to the State Government, whereupon the State Government shall, after deducting the amount owed to it by the Nigam (except the contribution to share capital of the Nigam) make the balance amount available to the Nigam.

Chapter VII

Miscellaneous

14. Protection of action taken in good faith.

- No suit, prosecution or other legal proceedings shall lie against the State Government, or any person for anything, which is in good faith, done or intended to be done in pursuance of this Act or the rules made thereunder.

15. Power to make rules.

- The State Government may, by notification, make rules for carrying out the purposes of this Act.

16. Power to remove difficulties.

(1)If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by a notified order make such provisions, not affecting the substance of this Act, as appears to it to be necessary or expedient for removing the difficulty.(2)No order under sub-section (1) shall be made after the expiration of the period of two years from the commencement of this Act.(3)Every order made under sub-section (1) shall be laid, as soon as may be before both the Houses of the State Legislature and the provisions of sub-section (1) of Section 23-A of the Uttar Pradesh General Clauses Act, 1904 shall apply as they apply in respect of rules made by the State Government under any Uttar Pradesh Act.

17. Repeal and saving.

(1)The Uttar Pradesh Rajya Vidyut Utpadan Nigam Ltd. (Acquisition and Transfer of Undertaking) Ordinance, 1992 (U.P. Ordinance No. 4. of 1992) is hereby repealed.(2)Notwithstanding such repeal, anything done or any action taken under the Ordinance referred to in sub-section (1), shall be deemed to have been done or taken under this Act, as if the provisions of this Act were in force at all material times.

Schedule

(See Sections 6 and 8)

The amount payable by the Corporation as referred to in		
1.	Section 8 shall be nine hundred and twenty-five crores rupees.	
2.	Such amount shall be paid in the following manner, namely-	
(a)	payment to Central Electricity Authority to clear in full its dues against the Nigam on account of consultancy.	Rupees in crores, estimated approximately 2.00
(b)	payment to Power Finance Corporation Ltd. to clear in full its dues against the Nigam on account of construction of the Undertaking.	4.00
(c)	by adjustment of the outstanding dues of the Corporation against the Board on account of sale of electricity as on November 30, 1991.	647.70
(d)	by adjustment of the dues of the Corporation against the Board on account of sale of electricity from December 1, 1991 to March 31, 1992 over and above the Letter of Credit payments.	200.00
(e)	balance by adjustment towards the outstanding dues of the Corporation against the Board on account of surcharge (as on November 30, 1991) which is to the tune of	71.30

approximately 241.43 crore rupees.

925.00