Bharat Hydro Power Corp. Ltd. & Ors vs State Of Assam & Anr on 7 January, 2004

Equivalent citations: AIR 2004 SUPREME COURT 3173, 2004 (2) SCC 553, 2004 AIR SCW 2308, 2004 (1) SCALE 211, 2004 (1) ACE 265, 2004 (1) SLT 973, (2004) 18 ALLINDCAS 129 (SC), (2004) 1 JT 63 (SC), 2004 (3) SRJ 120, (2004) 1 SUPREME 285, (2004) 1 SCALE 211, (2004) 14 INDLD 516

Bench: Ashok Bhan, S.B. Sinha

CASE NO.:
Appeal (civil) 6487-6488 of 1998

PETITIONER:
Bharat Hydro Power Corp. Ltd. & Ors.

RESPONDENT:
State of Assam & Anr.

DATE OF JUDGMENT: 07/01/2004

BENCH:
Ashok Bhan & S.B. Sinha.

JUDGMENT:

J U D G M E N T BHAN, J.

These appeals are directed against a common judgment passed by the Division Bench of the High Court of Gauhati wherein the Division Bench while setting aside the judgment of the learned Single Judge dated 19th July, 1997 has dismissed the writ petition filed by the appellants. The writ petition was filed by the appellants challenging the constitutional validity of the Bharat Hydro Power Corporation Limited (Acquisition and Transfer of Undertaking) Act, 1996 being Assam Act 1 of 1997 published in the Assam Gazette Extraordinary dated 6th January, 1997.

Facts:

In the year 1979, the Planning Commission of India sanctioned a proposal of the Assam State Electricity Board (hereinafter referred to as 'the Board') for construction of a Hydro Electric Power Station in the District of Karbi Anglong on the river Barapani at an estimated cost of Rs.36.36 crores. The project comprised construction of 51 meter high concrete dam on the river Barapani near Hatidubi for utilising flow of water from catchment area of 1178 Sq. km. The installed capacity of the project was 2 x 50 MW. The dam was to be completed in the year 1986, but due to the failure of the local contractor, the project could not be completed and the Board terminated the

contract and protracted litigation ensued.

In the year 1992, after termination of the contract as aforesaid, the project was entrusted to National Project Construction Corporation (in short 'NPCC'), but the similar fate followed and Board had to terminate their contract as well in December, 1992. In the mean time, cost of the project initially sanctioned at Rs. 36.36 crores rose to Rs. 189.90 crores. Out of the aforesaid estimate, the work completed was of about Rs.116 crores and the Board needed about Rs. 60 crores to complete the project excluding other liabilities. The Board could not generate the additional fund required for completing the project.

The Central Government in the year 1992-93 accepted the policy of privatisation even in the power sector. The State Government following the policy of privatisation of the Central Government decided to transfer the project to joint sector.

On 25th March, 1993, Memorandum of Undertaking (MOU) was signed between the Board, Government of Assam and M/s Subhash Project and Marketing Limited (SPML), appellant No.2 herein. According to the said MOU, SPML was to promote a new company to complete the project. In terms of the said MOU a new company under the name and style of M/s. Bharat Hydro Power Corporation Limited (hereinafter referred to as 'appellant No.1') came into existence in which the equity participation was as follows:

ASEB(the Board) - 11% SPML(appellant No.2) - 40% General Public - 49% On 8th April, 1993 the Deed of Assignment was executed between the Board and the appellant No.1, in terms of which all the assets and liabilities of the project were transferred to appellant No.1 w.e.f. 8.4.1993. In terms of the said Deed of Assignment appellant No.1 was to complete the project and start generation by June, 1995 which was subsequently extended to June, 1996. Disputes arose between the parties. According to Board as well as the State of Assam, the appellant No.1 after its incorporation failed to take charge of the project till 5th April, 1994. Even after taking over of the project, the appellant No.1 could not achieve any progress towards completion of the project due to serious lapses and negligence on its part. On the other hand, appellants Nos. 1 & 2 put the entire blame on the Board and the State Government for the delay in the progress of the project.

On 20th December, 1995, appellant No.1 filed a suit being TS No. 244/96 in the Court of the Assistant District Judge No.1, Guwahati for specific performance of the contract against the Board alleging that the Board was remiss in the performance of its obligation under the MOU and the Deed of Assignment. Board filed an application for stay of suit in view of arbitration clause. Appellant No.1 filed an application in the High Court under Sections 8 and 11 of the Arbitration and Conciliation Act, 1996 for appointment of Arbitrator to decide pending disputes between the parties. On 27th May, 1996, Board wrote to appellant No.1 that due to the failure of the appellant No.1

to complete the work within the extended period, the MOU was liable to be terminated and repudiated.

On 30th November, 1996 the State of Assam, keeping in view, the inordinate delay in the completion of the project and to safeguard the public interest by completing the project as early as possible in the context of acute power shortage in the State, promulgated Bharat Hydro Power Corporation Limited (Acquisition and Transfer of Undertaking) Ordinance, 1996 acquiring the undertaking of Karbi Langpi Project of appellant No.1. The Ordinance was subsequently replaced by Bharat Hydro Power Corporation Limited (Acquisition and Transfer of Undertaking) Act, 1996 (hereinafter referred to as 'the Act'). On 1st December, 1996, the State Government by Notification transferred to and vested the said project in the Board. After the said notification the possession of the project was handed over to the Board in the presence of the representatives of the both sides on 2nd December, 1996. On 5th December, 1996 Memorandum of handing over and taking over was signed. Thereafter writ petitions being CR 6/97 and CR 283/97 were filed in the High Court of Assam challenging the legality and validity of the Ordinance and the Act.

In the writ petitions the appellants challenged the constitutional validity of the Act being ultra vires and violative of Articles 14 and 19 (1)(g) of the Constitution of India and on the ground of being vague, unfair and arbitrary. It was prayed that the Act be struck down being unconstitutional and beyond the legislative powers of the State and/or is inoperative and void in law on the grounds mentioned in the writ petitions.

The Preamble of the Act reads as follows:

"ASSAM ACT NO.1 OF 1997 (Received the Assent of the Governor on 6th January, 1997) THE BHARAT HYDRO POWER CORPORATION LIMITED (ACQUISITION AND TRANSFER OF UNDERTAKING) ACT, AN ACT To provide for the acquisition, in the public interest, of the right, title and interest of the undertaking of the Bharat Hydro Power Corporation Limited and for matters connected therewith or incidental thereto.

WHEREAS the Bharat Hydro Power Corporation Ltd., having its registered office in the State of Assam, has been engaged for speedy execution and completion of the Karbi Langpi (Lower Barapani) Hydro Electric Project for ensuring supply of electricity in the State of Assam in view of the chronic shortages of power in the State;

Whereas it was agreed upon in the Memorandum of Understanding entered into between the Government of Assam, the Assam State Electricity Board and the M/s Subhas Project and Marketing Limited on 25th March, 1993 that the project would be completed and would be commissioned by the month of June, 1995;

And whereas the company failed in the sole object of speedy execution of the project within the specified time;

Whereas it is expedient in the public interest that the undertaking of the Bharat Hydro Power Corporation Limited should be acquired for the purpose of the enabling the State Government to efficiently supervise manage and execute the work expeditiously as to subserve the common good, in the context of the acute power shortage in the State."

In the impugned Act Section 4 provides for general effect of vesting. Section 5 provides that the State Government shall not be liable for past liabilities. Section 6 provides that notwithstanding anything contained in Sections 3 and 4, the State Government may, if it is satisfied that the Board is willing to comply, or has complied with such terms and conditions as that Government may think fit to impose, direct by notification, that the undertaking of the company and the right, title and interest of the company in relation to its undertaking which has vested in the Government, vest in the Board either on the date of the notification or on such earlier or later date as may be specified in the notification. The Board shall on and from the date of such vesting, be deemed to have become the owner in relation to such undertaking and all the rights and liabilities of the State Government in relation to such undertaking shall, on and from the date of such vesting, be deemed to have become the rights and liabilities, respectively of the Board. Section 7 provides for payment of compensation that may be fixed by the Commission considering the value of the assets of the company after observing proper financial formalities. Section 8 provides for the gross amount payable to the company. Section 9 provides that the State Government if it is satisfied that the appellant has on or before the appointed day, disposed of any fixed asset whether by way of sale, exchange, gift, lease or otherwise than in the normal course of events, with a view to benefit the company or some other person unduly and thereby causing loss to the State Government as the succeeding owner of the company, the State Government shall be entitled to deduct such amount from the amount payable to the Company under the Act. Section 10 provides for recovery of loss from the company. Section 11 provides for certain deductions to be made from the gross amount payable. Section 12 provides for payment of net amount. Section 13 provides for recovery of excess amount. Section 14 provides for constitution of Commission. Section 15 provides for the continuance in service of employees already working on the same terms and conditions as were applicable to them earlier. Section 16 provides for provident fund and other funds. Section 17 provides for making inventory of assets. Section 19 provides for penalty. Section 20 provides that no court shall take cognizance of an offence punishable under this Act except with the previous sanction of the State Government. Section 22 provides that no suit against the State Government or the Board shall lie for any act done by them in good faith or intended to be done in good faith in pursuance of the Act or the Rules made thereunder. Section 23 provides for bar of jurisdiction of the court to call in question any act done or purported to have been done under the Act or the Rules. Section 24

provides that no provision of the Indian Electricity Act, 1910, Electricity (Supply) Act, 1948 or any other Act for the time being in force and of any rule made under any of those Acts, shall, in so far as it is inconsistent with any of the provisions of the Act, have any effect. Section 26 provides for arbitration in case of any dispute arising in respect of the matters mentioned thereunder.

On completion of the pleadings, the writ petitions were placed for hearing before a learned Single Judge who after hearing the counsel for the parties, passed a detailed order striking down Sections 3, 4, 5, 6, 7, 7A, 15(2), 23 and 24 of the Act being repugnant to the Central Acts, i.e, the Indian Electricity Act, 1910 and the Electricity (Supply) Act, 1948. It was observed that because of the striking down of the various provisions, the impugned Act could not be given effect to. The entire Act was held to be unenforceable.

The Board and the State of Assam filed separate Writ Appeals Nos. 460 of 1997 and 464 of 1997 challenging the order of the learned Single Judge. The Division Bench by its impugned judgment has set aside the judgment of the learned Single Judge and held the Act and its provisions to be intra vires of the Constitution. Resultantly the writ appeals were accepted and writ petition filed by the appellants were ordered to be dismissed.

Before adverting to the submissions made before us we would broadly refer to a few fundamental principles regarding the competence of the respective legislatures to enact laws and as to which law would prevail in case of inconsistency between the laws made by the Parliament and the laws made by the State Legislature. The principles are being referred to in the context of the controversy involved in the present appeals.

India being a Union of States has Union Legislature (Parliament) and the State Legislatures for framing laws. Legislative fields in which the union or the State legislatures can frame laws are prescribed in the three lists contained in the Seventh Schedule to the Constitution of India Union List (List I); State List (List II); and Concurrent List (List III). Source of power for enacting laws relating to the three lists is to be found in Articles 245 and 246 of the Constitution of India. Article 245 provides that subject to the provisions of the Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State. Law made by the Parliament shall not be deemed to be invalid on the ground that it would have extra- territorial operation. Article 246 reads:

"246. Subject-matter of laws made by Parliament and by the Legislatures of States.-

(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List").

(2) Notwithstanding anything in clause (3), Parliament and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").

(3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the 'State List').

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List."

Without going into the finer aspects but broadly speaking it provides that Parliament has exclusive power to legislate with respect to matters in List I. The State Legislature has exclusive power to legislate in respect to matters in List II. Both Parliament and the State Legislature have power to make laws with respect to any of the matters enumerated in List III.

In a federal Constitution, in which there is a division of legislative powers between the Central and the Provincial Legislatures, controversies often arise as to whether one or the other legislature is not exceeding its legislative power, and encroaching on the other's constitutional legislative power. To resolve the dispute as to which law would prevail in a case where both the Union as well as the State Legislature have the competence to enact laws, Article 254 provides that if any provision of a law made by the Legislature of a State is repugnant to any provision of law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament shall prevail and the law made by the Legislature of the State shall to the extent of the repugnancy be void. Clause (2) provides that where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provisions repugnant to the provisions of an earlier law made by the Parliament or an existing law with respect to the matters, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State.

It is likely to happen from time to time that enactment though purporting to deal with a subject in one list touches also on a subject in another list and prima facie looks as if one legislature is impinging on the legislative field of the another Legislature. This may result in large number of statutes being declared unconstitutional because the legislature enacting law may appear to have legislated in a field reserved for the other legislature. To examine whether a legislation has impinged in the field of other legislatures, in fact or in substance, or is incidental, keeping in view the true nature of the enactment, the Courts have evolved the doctrine of "pith and substance" for the purpose of determining whether it is legislation with respect to matters in one list or the other. Where the question for determination is whether a particular law relates to a particular subject mentioned in one list or the other, the courts look into the substance of the enactment. Thus, if the

substance of enactment falls within Union List then the incidental encroachment by the enactment on the State List would not make it invalid. This principle came come to be established by the Privy Council when it determined appeals from Canada or Australia involving the question of legislative competence of the federation or the States in those countries. This doctrine came to be established in India and derives its genesis from the approach adopted by the Courts including the Privy Council in dealing with controversies arising in other federations. For applying the principle of "pith and substance" regard is to be had (i) to the enactment as a whole, (ii) to its main objects, and (iii) to the scope and effect of its provisions. For this see: Southern Pharmaceuticals & Chemicals Vs. State of Kerala, AIR 1981 SC 1863; State of Rajasthan Vs. G.Chawla, AIR 1959 SC 544; Thakur Amar Singh Vs. State of Rajasthan, 1955 (2) SCR 303, Delhi Cloth and General Mills C o. Ltd. Vs. Union of India AIR 1983 SC 937 and Vijay Kumar Sharma & Ors. Vs. State of Karnataka & Ors., AIR 1990 SC 2072. In the last mentioned case it was held:

> "Where a law passed by the State Legislature while being substantially within the scope of the entries in the State List entrenches upon any of the Entries in the Central List the constitutionality of the law may be upheld by invoking the doctrine of pith and substance if on an analysis of the provisions of the Act it appears that by and large the law falls within the four corners of the State List and entrenchment, if any, is purely incidental or inconsequential."

Another principle which needs to be stated here is that when the question is as to whether a provincial legislation is repugnant to the laws enacted by the Parliament the onus to showing its repugnancy and the extent to which it is repugnant would be on the party attacking its validity. There ought to be a presumption in favour of its validity and every effort should be made to reconcile them and construe both so as to avoid they being repugnant to each other. Repugnancy has to be there in fact and not based on a mere possibility. If the two enactments operate in different fields without encroaching upon each other then there would be no repugnancy. In Shyamakant Lal Vs. Rambhajan Singh & Ors., AIR 1939 FC 74, the Court held:

> "When the question is whether a provincial legislation is repugnant to an existing Indian Law, the onus of showing its repugnancy and the extent to which it is repugnant should be on the party attacking its validity. There ought to be a presumption in favour of its validity, and every effort should be made to reconcile them and construe both so as to avoid their being repugnant to each other; and care should be taken to see whether the two do not really operate in different fields without encroachment. Further repugnancy must exist in fact, and not depend merely on a possibility:
>
> Their Lordships can discover no adequate grounds for holding that there exists repugnancy between the two laws in districts of the province of Ontario where the prohibitions of the Canadian Act are not and may never be in force: (1896) AC 348 at pages 369-370."

It was conceded by the learned counsels appearing on both sides that this view has been accepted and reiterated by this Court in a number of judgments. It is not necessary to refer to all those cases which would be repetitive only. Though in the High Court (both before the learned Single Judge as well as Division Bench) and in the special leave petition number of points were taken/argued but before us the submissions were limited to three points to which reference would be made in the subsequent paragraphs.

Before adverting to the actual submissions made by the respective learned counsels, entries in the three lists relating to generation of power/electricity and acquisition may be noticed, which read:

> Entry 56 of List I: Regulation and development of inter-State rivers and river valleys to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.
>
> Entry 17 of List II: Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of entry 56 of List I. Entry 38 of List III: Electricity;

Entry 42 of List III: Acquisition and requisitioning of property.

It was conceded before us that Entry 56 List I would not be applicable.

Learned Single Judge held that the Act enacted by the Assam Legislature would fall under Entry 38 of List III. Since the Parliament had already enacted comprehensive laws regarding the generation and supply of electricity by enacting the Indian Electricity Act, 1910 (hereinafter referred to "Act of 1910") and the Electricity (Supply) Act, 1948 (hereinafter referred to "Act of 1948") covering the entire field, the field being occupied, the State Legislature did not have the competence to enact the laws under Entry 38 of List III. As the Act passed by the State Legislature related to a field which was already occupied by enactments of the Central Legislature, was not reserved for the assent of the President of India and assented to by him the same was void being repugnant to the Central legislation. Division Bench reversing the judgment of the learned Single Judge held that the Act passed by the Assam Legislature would fall under Entry 17 of List II and not under Entry 38 of List III and therefore would not be repugnant to the Central legislation. Another finding recorded by the Division Bench is that even if the Act is taken to be enacted under Entry 38 of List III, even, then there was no actual repugnancy as both the Acts did not operate in the same field. Since there was no repugnancy, it was not necessary to keep the Act for the assent of the President of India. Division Bench held the Act to be valid, intra vires and falling within the legislative competence of the State Legislature.

Mr. V.R. Reddy learned senior counsel for the appellants contended that "Electricity" for the purpose of legislation is enumerated in Entry 38 of the concurrent list. That electricity in broad term includes "generation of electricity from any source whether thermal, water, gas, wind or any other source". As far as generating company and licensee are concerned the Central Government has made specific provisions in the Act of 1910 and Act of 1948 for compulsory purchase of undertaking

and a detailed procedure has been prescribed under Sections 6, 7, 7A, 8, 9, 10 and 11 of the Act of 1910 and Sections 37 of the Act of 1948. The impugned Act and Acts of 1910 and 1948 passed by the Central Legislative operate in the same field as in both the sets of Acts there are provisions for compulsory purchase of undertakings producing electricity. The State Act transgresses the Central Acts and therefore repugnant to the Central Acts. In view of the provisions of Article 254 Central Acts would prevail as the State Act was neither kept reserved for the assent of the President of India nor assented to by the President of India. The State Act was bad in law and could not be enforced being ultra vires of the Constitution of India and beyond the Legislative competence of the State Legislature.

On the other hand, Mr. Vijay Hansaria, learned senior counsel appearing for the State of Assam as well as the Board contended that the impugned Act was not repugnant to the provisions of the Central Acts. According to him, impugned Act and the Central Acts in the instant case operate in two different fields without encroaching upon each others field in as much as the true nature and character of the impugned State Act is to acquire the undertaking, whereas both the Central Acts have made general provisions with regard to supply and use of electrical energy. It was vehemently contended that there was no violation of Sections 3, 4, 5, 6, 7 of 7A of the Act of 1910, by Sections 3 and 4 of the impugned Act as the appellants were not 'licensees' under the Act of 1910 and the State Government had the jurisdiction and power to acquire any property for public purposes making necessary provisions for payment of compensation. That the impugned Act has taken adequate care for payment of compensation after proper assessment by the Commission to be constituted by the authority. There is no direct conflict between the provisions of the Central Act and the State Act bringing a position where one cannot be obeyed without disobeying the other and the impugned Act and the Central Act both can stand together even though the State law may provide for certain additional/supplementary provisions. In substance the submission made is that in pith and substance the State Act is not repugnant to the Central Acts as the two sets of Acts operate in different fields.

Learned counsel appearing for the appellants placing reliance on a Constitution Bench decision of this Court in Deepchand Vs. State of U.P., AIR 1959 SC 648, contended that even in the absence of direct conflict, the State law would be inoperative as the Central Acts of 1910 and 1948 intended to be exhaustive Codes in the field of electricity and the State Legislature did not have the legislative competence to enact law in the field occupied by the Central Legislation. Law made by the State Legislature in the occupied field could not come into operation unless it was reserved for the assent of the President of India and assented by him in terms of Article 254 (2). It was observed in para 29:

> "Nicholas in his Australian Constitution, 2nd Edn. Page 303, refers to three tests of inconsistency or repugnancy:
>
> (1) There may be inconsistency in the actual terms of competing statutes;
>
> (2) Though there may be no direct conflict, a State Law may be inoperative because the Common Wealth Law, or the award of the Common Wealth Court, is intended to be a complete exhaustive Code; and (3) Even in the absence of intention, a conflict

> may arise when both State and Common Wealth seek to exercise their powers over the same subject matter.

This Court in Tika Ramji vs. State of Uttar Pradesh, 1956 SCR 393: [(S) AIR 1956 SC 676] accepted the said three rules, among others, as useful guides to test the question of repugnancy.

In Zaverbhai Amaidas vs. State of Bombay, 1955- 1 SCR 799: (AIR 1954 SC 752), this Court laid down a similar test. At page 807 (of SCR): (at p.

757 of AIR), it is stated:

> "The principle embodied in section 107 (2) and Article 254 (2) is that when there is legislation covering the same ground both by the centre and by the Province, both of them being competent to enact the same, the law of the Centre should prevail over that of the State."

Repugnancy between two statutes may thus be ascertained on the basis of the following three principles:

> (1) Whether there is direct conflict between the two provisions;
>
> (2) Whether Parliament intended to lay down an exhaustive code in respect of the subject matter replacing the Act of the State Legislature; and (3) Whether the law made by Parliament and the law made by the State Legislature occupy the same field."

This Court laid down three broad principles to find out whether there is any Repugnancy between the two statutes, i.e., whether there is a direct conflict between the two statutes, whether the two statutes occupied the same field and as to whether the Parliament intended to lay down an exhaustive code in respect of the subject matter.

In M.Karunanidhi Vs. Union of India, AIR 1979 SC 898, Fazal Ali, J. reviewed the authorities on repugnancy under Article 254 and held that the following propositions emerged from decided cases:

> "1. That in order to decide the question of repugnancy it must be shown that the two enactments contain inconsistent and irreconcilable provisions so that they cannot stand together or operate in the same field.
>
> 2. That there can be no repeal by implication unless the inconsistency appears on the face of the two statutes.
>
> 3. That where the two statutes occupy a particular field, but there is room or possibility of both the statutes operating in the same field without coming into collision with each other, no repugnancy results.

> 4. That where there is no inconsistency but a statute occupying the same field seeks to create distinct and separate offences, no question of repugnancy arises and both the statutes continue to operate in the same field."

Without entering into the controversy whether the State Act would fall under Entry 17 of List II or under Entry 38 of List III and assuming (but not holding that it falls under Entry 38 of List III) we examine as to whether there is any conflict between the provisions of the Central Act and the State Act. If there is no conflict at all the question of repugnancy would not arise.

The State Act has been enacted to take over the Bharat Hydro Power Corporation in public interest as it could not complete the project within time so that the State could efficiently supervise manage and execute the work expeditiously to subserve the common good, in the context of the acute power shortage in the State. The State after taking over the project had the power to hand it over to the Board for completing the project. Provision has been made to pay adequate compensation which is to be determined by a Commission constituted under the Act for payment of adequate compensation. Contention raised on behalf of the appellants is that Central Act makes specific provisions for compulsory purchase of undertaking and a detailed procedure has been prescribed and the State Act has created a parallel procedure for purchase of the undertaking thereby impinging on the Central Act and is therefore repugnant to the Central Act. We do not find any substance in this submission.

The Act of 1910 relates to the supply and use of electrical energy. Section 3 provides that the State Government may on an application made in the prescribed form and on payment of the prescribed fee (if any) grant a license to supply energy in any specified area and also to lay down or place electric supply lines for the conveyance and transmission of energy. Section 4 speaks of revocation or amendment of licenses under the specified conditions. Section 4A speaks of the amendment of licenses. Section 5 makes provisions where license of a licensee is revoked. Section 6 relates to purchase of undertakings. Section 6 of the Act of 1910 reads:

> "6. Purchase of undertakings.- (1) Where a license has been granted to any person, not being a local authority, the State Electricity Board shall,-
>
> (a) in the case of a license granted before the commencement of the Indian Electricity (Amendment) Act, 1959 (32 of 1959) on the expiration of each such period as is specified in the license; and
>
> (b) in the case of license granted on or after the commencement of the said Act, on the expiration of such period not exceeding thirty years and of every such subsequent period, not exceeding twenty years, as shall be specified in this behalf in the license, have the option of purchasing the undertaking and such option shall be exercised by the State Electricity Board serving upon the licensee a notice in writing of not less than one year requiring the licensee to sell the undertaking to it at the expiry of the relevant period referred to in this sub-

section.

(2) Where a State Electricity Board has not been constituted, or if constituted, does not elect to purchase the undertaking, the State Government shall have the like option to be exercised in the like manner of purchasing the undertaking.

(3) Where neither the State Electricity Board nor the State Government elects to purchase the undertaking, any local authority constituted for an area within which the whole of the area of supply is included shall have the like option to be exercised in the like manner of purchasing the undertaking.

(4) If the State Electricity Board intends to exercise the option of purchasing the undertaking under this section, it shall send an intimation in writing of such intention to the State Government at least eighteen months before the expiry of the relevant period referred to in sub-section (1) and if no such intimation as aforesaid is received by the State Government the State Electricity Board shall be deemed to have elected not to purchase the undertaking.

(5) If the State Government intends to exercise the option of purchasing the undertaking under this section, it shall send an intimation in writing of such intention to the local authority, if any, referred to in sub-section (3) at least fifteen months before the expiry of the relevant period referred to in sub-section (1) and if no such intimation as aforesaid is received by the local authority, the State government shall be deemed to have elected not to purchase the undertaking.

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

(7) Where an undertaking is purchased under this section, the purchaser shall pay to the licensee the purchase price determined in accordance with the provisions of sub-section (4) of section 7A."

Section 4 which provides for revocation or amendment of licenses, Section 4A which provides for amendment of licenses at the instance of the licensee or otherwise and Section 5 which enumerates the procedure to be followed where the Government revokes the license under Section 4 would not be attracted/applicable as the appellants are admittedly not licensees. These provisions would apply to licensees only. Section 6 is again applicable to licensees only. It is not applicable to sanction holders. It talks of pre-emptory right of the Board to purchase the undertaking on the expiry of the period mentioned in clauses (a) and (b) of Section 6 which can be done after serving upon the licensee a notice in writing of not less than one year requiring the licensee to sell the undertaking to it at the expiry of the period referred to in clauses (a) and (b) of Section 6. Section 6 (7) provides for payment of purchase price by the purchaser to the licensee determined in accordance with the provisions of Section 7A. Since the appellants have not been given a license and are not 'licensees', Section 6 would not apply. Under Section 6 there is an 'option' with the Board to purchase. The word 'option' leaves two courses open to the authority, i.e., either to purchase an undertaking or to

renew the license. Either of the two courses would not be available as the appellant No. 1 is not a licensee.

Section 7A which deals with the determination of purchase price again talks of where an undertaking of a licensee is purchased. Since the appellants are not the licensees they would not be covered under any of the provisions dealing with the sale or purchase of undertaking as provided under the Act of 1910. The benefit of Sections 7 and 7A shall also not be available because it speaks of an undertaking of a licensee. As the appellants are not covered by the provisions of the Act of 1910 the question of the State Act which seeks to take over the appellants' undertaking and make provisions for compensation would not be repugnant to any of the provisions of the Act of 1910. Submission made by the learned counsel for the appellants that the State Act creates procedure parallel to the existing procedure provided under Section 6 of the Act of 1910 or for determing the purchase price as provided under Section 7A cannot be accepted because the provisions of Chapter II (Sections 3 to 11) are not applicable to the appellants as they are not licensees.

Faced with this situation Mr.V.R. Reddy, learned senior counsel for the appellants, submitted that the appellants are deemed licensees under the provisions of Act of 1948. For this he has referred to Section 26A of the Act of 1948. Section 26A reads as:

> "26A. Applicability of the provisions of Act 9 of 1910 to Generating Company.- (1) Notwithstanding anything contained in sub- section (2), nothing in the Indian Electricity Act, 1910, shall be deemed to require a Generating Company to take out a licence under that Act, or to obtain sanction of the State Government for the purpose of carrying on any of its activities.
>
> (2) Subject to the provisions of this Act, Sections 12 to 19 (both inclusive) of the Indian Electricity Act, 1910 (9 of 1910) and clauses XIV to XVII (both inclusive) of the Schedule thereto, shall, as far as may be, apply in relation to a Generating Company as they apply in relation to a licensee under that Act (hereafter in this section referred to as the licensee) and in particular a Generating Company may, in connection with the performance of its duties, exercise-
>
> (a) all or any of the powers conferred on a licensee by sub-section (1) of Section 12 of the Indian Electricity Act, 1910, as if -
>
> (i) the reference therein to licensee were a reference to the Generating Company;
>
> (ii) the reference to the terms and conditions of licence were a reference to the provisions of this Act and to the articles of association of the Generating Company; and
>
> (iii) the reference to the area of supply were a reference to the area specified under sub-section (3) of section 15A in relation to the Generating Company;

(b) all or any of the powers conferred on a licensee by sub-section (1) of section 14 of the Indian Electricity Act, 1910 (9 of 1910), as if -

(i) the references therein to licensee were references to the Generating Company, and

(ii) the Generating Company had the powers of a licensee under the said Act.

(3) The provisions of section 30 of the Indian Electricity Act, 1910 (9 of 1910) shall not apply to the transmission or use of energy by a Generating Company.

(4) For the removal of doubts, it is hereby declared that sections 31 to 34 (both inclusive) of the Indian Electricity Act, 1910 (9 of 1910) shall apply to a Generating Company."

Section 26A provides that notwithstanding the provisions of Sub- Section (2) a generating company would not be required to take a licence under the Act of 1910 or to obtain sanction of the State Government for the purpose of carrying on any of its activities. Under sub-section (2) provisions of Sections 12 to 19 of the Act of 1910 are made applicable to a generating company as they apply to a licensee under the 1910 Act. It is to be noted that provisions of Sections 3 to 11 of 1910 Act have not been made applicable to the generating company.

"Generating Company" has been defined in Section 2(4A) of the 1948 Act to mean:

"'Generating Company' means a company registered under the Companies Act 1956 (1 of 1956) and which has among its objects the establishment operation and maintenance of generating stations"

"Licensee" has been defined under this Act in Section 2(6) as under:

" "licensee" means a person license under Part II of the Indian Electricity Act, 1910 (9 of 1910) to supply energy or a person who has obtained sanction under Section 28 of that Act to engage in the business of supplying energy but the provisions of Section 26, or 26A of this Act notwithstanding, does not include the Board or a Generating Company."

A combined reading of Sections 2(4A) and 2(6) makes it clear that even if the appellant No. 1 is taken to be a generating company (which is not necessary to be determined in this case) it would not be a 'licensee' because the generating company has been specifically excluded from being a licensee notwithstanding the provisions of Sections 26 or 26A of the 1948 Act. As pointed out earlier only Sections 12 to 19 of the Act of 1910 have been made applicable to a generating company. Sections 3 to 11 of Act of 1910 do not apply to a generating company.

Section 37 of Act of 1948 provides for purchase of generating stations or undertakings or main transmission lines by the Board. This Section would also not apply to the present case. The

legislature in its wisdom made only certain provisions of Act of 1910 applicable to a generating company in Section 26A. Contention that the impugned Act is in violation of provisions of Act of 1910 or the Act of 1948 has no basis to stand on.

The impugned Act and the Central Acts in the instant case operate in two different fields without encroaching upon each other's field in as much as the true nature and character of the impugned State Act is to acquire the undertaking and pay compensation as provided in the Act whereas both the Central Acts (Acts of 1910 and 1948) have made general provisions with regard to supply and use of electrical energy. The provisions regarding purchase of undertaking in the Act of 1910 would not be applicable as the appellants are not licensees within the meaning of the Act of 1910. There is not even a semblance of conflict what to talk of direct conflict between the impugned State Act and the Central Acts to bring about the situation where one cannot be obeyed without disobeying the others. Both the Acts can operate simultaneously as they do not occupy the same field. As the enactments operate in two different fields without encroaching upon each other's field there is no repugnancy.

Since there is no repugnancy the question of the State Act being kept for the consideration of the President or receiving his assent did not arise.

For the reasons stated above, we do not find any merit in these appeals and the same are dismissed. Parties shall bear their own costs in these appeals.