U.P. State Electricity Board, Lucknow vs The Official Liquidator Lower ... on 1 May, 1973

Equivalent citations: 1973 AIR 2546, 1974 SCR (1) 142, AIR 1973 SUPREME COURT 2546, 1973 2 SCC 224, 1974 (1) SCR 142, 1974 (1) SCJ 527, 1973 2 SCWR 21

Author: A. Alagiriswami

Bench: A. Alagiriswami, D.G. Palekar

PETITIONER:
U.P. STATE ELECTRICITY BOARD, LUCKNOW

Vs.

RESPONDENT:
THE OFFICIAL LIQUIDATOR LOWER GANGESJAMUNA ELECTRICITY DISTR

DATE OF JUDGMENT01/05/1973

BENCH:
ALAGIRISWAMI, A.
BENCH:
ALAGIRISWAMI, A.
PALEKAR, D.G.

CITATION:
1973 AIR 2546 1974 SCR (1) 142
1973 SCC (2) 234

ACT:
Electricity Supply Act, 1948, schedule 6, cl. V A-Liability to hand over development reserve-Scope of.

HEADNOTE:
Under cl. VA of the 6th Schedule to the Electricity Supply Act, 1948, on the purchase of an undertaking the development reserve shall be handed over to the purchaser. The appellant-Board purchased an electricity distributing company in liquidation and insisted that a certain sum in the development reserve should be handed over to it or deducted from the purchase price. The official liquidator, who was administering the company, contended that the development reserve had, been used in adding to the assets of the electricity undertaking and that, therefore that

amount could not be paid. The High Court held against the appellant.

Dismissing the appeal to this Court,

HELD : The development reserve can be handed over to the purchaser only if it is available. Since the entire sum has been utilised by investment in the business and there is no amount left in cash in the development reserve the official liquidator cannot be directed to pay any amount, as representing the development reserve to the appellant-Board. [144-G]

(1) The whole of the development reserve had admittedly gone into the ,creation of assets which had enhanced the value of the undertaking, and the appellant-Board had the benefit of all such, additions, improvements and accretions to the assets of the undertaking. "at is really asked on behalf of the appellant-Board is that the official liquidator should pay to it a notional sum representing what should have been the development reserve and not that there is any amount available in the development reserve, but a notional amount cannot be handed over. The demand of the Board would amount to saying that it must be paid twice over, once in the form of the assets created out of the development reserve which it had already got, and again in cash as though it is still available. There is no justification either in law or in equity for such a demand. [144E-H]

(2) Under cl. VA (3) of the 6th Schedule to the Electricity Supply Act, the development reserve shall be available only for investment in the business of electricity supply of the undertaking. I here is no allegation that the development reserve was used for any purpose other than in the business of electricity supply of the undertaking or on any item not permissible either under the Electricity Supply Act, of the Indian Electricity Act, 1910. [144D-E]

(3) The provision regarding development reserve came into existence. in 1957 when the new cl. VA was inserted in the 6th Schedule. The language of that clause therefore is not the same as the language of cls. II, III and IV which have been in the Act from the very beginning. But that does not create any difficulty or problem in the interpretation of cl. VA. [145C-D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1201 of 1967.

Appeal by certificate from the judgment and decree dated December 5, 1963 of the Allahabad High Court in Special Appeal No. 727 of 1962.

S. N. Kacker, and O. P. Rana, for the appellant. B. Sen, A. Banerjee and B. Dutta, for the respondent.

The Judgment of the Court was delivered by ALAGIRISWAMI, J. This is an appeal against judgement of a Division Bench of the Allahabad High Court affirming on appeal the judgment of a learned Single Judge dealing with company matters. The appellant is the U.P. State Electricity Board and the respondent is the Official Liquidator of the Lower Ganges Jamuna Electricity-Distributing Co. Ltd. This company went into liquidation in 1937 and had been administered by the Official Liquidator till it was purchased by the appellant Board on, 1-6-1961 for a sum of Rs. 7,82,256/- as mutually agreed. Thereafter disputes arose 'about certain reserves of the company and in the present appeal we are concerned only with what is called the Development Reserve. It was by the Finance Act of 1955 that a provision was made in the Income Tax Act for development rebate. In 1957 the Sixth Schedule of the Electricity (Supply) Act, 1948 was amended introducing a new clause VA which reads :

> " (1) There shall be created a reserve to be called the Development Reserve to which shall be appropriated in respect of each accounting year a sum equal to the amount of income-tax and super-tax calculated at rates applicable during the assessment year for which the accounting year of the licensee is the previous year, on the amount, of development rebate to which the licensee is entitled for the accounting year under clause
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> (vi) (b) of sub-section (2) of section' 10 of the Indian Income-tax Act, 1922. Provided.....
>
> (2) Any sum to be appropriated towards the Development Reserve in respect of any accounting year under subparagraph (1), may be appropriated in annual instalments spread over a period not exceeding five years from the commencement of that accounting year. (3) The Development Reserve shall be available only for investment in the business of electricity supply-of the undertaking. (4) On the purchase of the undertaking, the Develop.merit Reserve shall be handed over to the purchaser and maintained as such Development Reserve :
>
> Provided that where the undertaking is purchased by the Board or the State Government, the amount of the Reserve may be deducted from the price payable to the licensee."

The Board insisted that a sum of Rs. 1,45 422 in the Development Reserve should be handed over to it or deducted from the purchase price. Though in the beginning there was a dispute about the actual amount in the Development Reserve it was finally agreed that the above sum was the correct figure.

The Official Liquidator contended that the Development Reserve had been used in adding to the assets of the Electricity Undertaking and, therefore, that amount could not be paid. On the purchase of an Electricity Undertaking by the Electricity Board the market value of the Undertaking at the

time of the purchase is payable under section 7A of the Indian Electricity Act, 1910 and under sub-section (2) of that section the market value shall be deemed to be the value of all lands, buildings, works, materials and plant of the licensee, suitable to, and used by him, for the purpose of the undertaking..... but without any addition in respect of compulsory purchase or of goodwill or of any profits which may be or might have been made from the undertaking or of any similar consideration. As already noticed under clause VA of the Sixth Schedule to the Electricity (Supply) Act, 1948, on the purchase of an undertaking the Development Reserve shall be handed over to the purchaser. It is on this basis that the appellant Board insisted that a sum of Rs. 1,45,482/- should either be paid to it or should be deducted from the purchase price payable by it to the licensee. This contention having been overruled by the Courts below this appeal has been filed. It appears to us that the decision of the Courts below was right. Under sub-cl. (3) of clause VA of the Sixth Schedule to the Electricity (Supply) Act,' 1948 the Development Reserve shall be available only for investment in the business of electricity supply of the undertaking. There is no prohibition against the Development Reserve being used for that purpose. There is no allegation that the Development Reserve in this case was used for any purpose other than in the business of electricity supply of the undertaking. There is no allegation of the money in the Development Reserve having been dissipated otherwise or mis- appropriated or anything of that sort. There is no allegation that any portion of the Development Reserve was spent on any item not permissible under either of the two Acts. There is no allegation that the Development Reserve is as a matter of fact available in the form of either cash or deposits banks or in investment in Government bonds or in liquid cash. The whole of the Development Reserve has admittedly gone into the creation of assets which have enhanced the value of the undertaking and the appellant Board has, had the benefit of all such additions, improvements and accretions to the assets of the Electricity Supply Undertaking as a consequence of the investment of the Development Reserve in the business of electricity supply of the undertaking What is really asked for on behalf of the appellant Board is that the Official Liquidator should pay to it a notional sum representing what should have been in the Development Reserve and not that there is any amount available in the Development Reserve. The argument that the Development Reserve should be handed over is based upon sub- cl. (4) of clause VA of the Sixth Schedule. The Development Reserve can be handed over to the purchaser only if it is, available. A notional amount cannot be handed over. The Development Reserve has been converted into other assets which have passed on to the appellant Board. In that sense the appellant Board has had the benefit of the Development Reserve, though not in cash but in other assets representing the Development Reserve. The demand of the Board realty amounts to saying that it must be paid twice over, once in the form of the assets created out of the Development Reserve, which it has already had, and again the same Development Reserve in cash as though it is still available in cash. There is no justification either in law of in equity for such a demand. We are not impressed by the argument on behalf of the appellant Board that compared to the language used in clauses II, III and IV which deal with the Tariffs and Dividends Control Reserve and the Contingencies Reserve, the language in clause VA regarding the Development Reserve is different and, therefore, the Development Reserve should be handed over to it. The Division Bench has dealt in detail with the arguments regarding the distinction between the Development Reserve and the other reserves advanced before it and we find ourselves in agreement with those observations and consider it unnecessary to repeat them. We can see no such distinction which will lead to the conclusion that the accumulated Development Reserve should be paid over to the purchaser even where it has already been used up in the creation of

tangible assets which have passed on to the purchaser. The principle is so clear that it does not lend itself to any argument whatsoever. Nor does section 70 of the 1948 Act give us any guide in interpreting the relevant provision of law which will lead to the conclusion contended for by the appellant The provision regarding Development Reserve came into existence only in 1957 when the new clause VA was inserted in the Sixth Schedule by Act 101 of 1956 with effect from. 1-4-1957. The language of that clause, therefore, is not the same as the language of clauses II, III 'and IV which have been in the Act from the every beginning. But that by. itself does not create any difficulty or problem in the interpretation of clause VA. We, therefore,'find ourselves in agreement with the learned Judges of the High Court that as the Development Reserve is available for investment in the business-of electricity supply of the undertaking and the entire sum therein has been utilized by investment in such business and there is no amount left in cash in the Development Reserve the Official Liquidator cannot be directed to pay any amount to the appellant Board as representing the Development Reserve. The appeal is dismissed, the appellant, will pay the respondent's costs.

V.P.S. Appeal dismissed.
11-L944SupCI/73