
INDIAN ELECTRICITY (UTTAR PRADESH AMENDMENT AND VALIDATION) ACT, 1975

16 of 1975

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An Act further to amend the Indian Electricity Act, 1910 in its application to Uttar Pradesh and to validate certain action purporting to have been taken thereunder It is hereby enacted in the Twenty-sixth Year of the Republic of India as follows :

Statement of Objects and Reasons.-- (1) In accordance with the provision of the Indian Electricity Act, 1910 the State Electricity Board, the State Government or the local authority has the option to purchase an electricity undertaking on the expiration of the period of licence. According to Section 6 of the said Act, after the exercise of such option the possession of the undertaking should immediately be delivered to the State Electricity Board. There is no provision for payment of interest for the period intervening between the date of delivery of possession of the undertaking and the date of payment of the purchase price. The Supreme Court have declared sub-section (6) of Section 6 to be ultra vires on the ground that the same does not provide for the purchase price to be paid simultaneously or for payment of interest on the said price. (2) It was, therefore, necessary that a provision for payment of interest for the period between the date of delivery of the undertaking and

the date of payment of the amount payable may be made by amending the provisions of the Indian Electricity Act. At the same time it was also considered in the public interest that while determining the amount to be so paid, the valuation of the undertaking should be determined on the basis of its book value. It was also considered desirable to provide that the amount due from the licensee to the State Electricity Board or the State Government shall be deducted from the amount to be so paid. (3) As the State Legislature was not in session and it was necessary to make the aforesaid provision the Indian Electricity (Uttar Pradesh Amendment and Validation) Ordinance, 1975, was promulgated. (4) The Bill is being introduced to replace the said Ordinance with certain amendments. 1. Received the assent of the President on March 31, 1975, and published in U.P. Gazette, (Extra.), dated 31st March, 1975.

1. Short title, extent and commencement :-

(1) This Act may be called the Indian Electricity (Uttar Pradesh Amendment and Validation) Act, 1975. (2) It extends to the whole of Uttar Pradesh. (3) It shall be deemed to have come into force on February 4, 1975.

2. Amendment of Section 5 of Act No. IX of 1910 :-

In Section 5 of the Indian Electricity Act, 1910, as amended in its application to Uttar Pradesh (hereinafter referred to as the principal Act) for sub-sections (2) and (3) the following sub-sections shall be substituted, namely : "(2) Where an undertaking is sold under sub-section (1) the purchaser shall pay to the licensee an amount determined in accordance with the provision of Section 7 and Section 7-A as substituted by the Indian Electricity (Uttar Pradesh Amendment and Validation) Act, 1975, excepting sub-section (3) of the said Section 7-A. (3) Where the State Government issues any notice under subsection (1) requiring the licensee to sell the undertaking, it may by such notice require the licensee to deliver, and thereupon the licensee shall deliver on a date specified in the notice the undertaking to the designated purchaser or to such officer as the designated purchaser may appoint in that behalf pending determination and payment of the said amount to the licensee : Provided that in any such case, the purchaser shall pay to the licensee, interest at the Reserve Bank rate ruling at the time of delivery of the undertaking plus one per centum, on the amount payable to the licensee for the period from the date of delivery of the undertaking to the date of payment of such amount."

3. Repeal and re-enactment of sub-sections (6) and (7) of Section 6 :-

In Section 6 of the principal Act, sub-sections (6) and (7) are hereby repealed with effect from September 5, 1959, and are re-enacted and shall be deemed to have been re-enacted with effect from the same date as follows, namely : "(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 or to such officer as the Board, the Government or the local authority may appoint in that behalf on the expiration of the relevant period referred to in sub-section (1) pending the determination and payment of the amount referred to in sub-section (7) : Provided that the licensee shall, in addition to the said amount, be entitled to interest thereon at the Reserve Bank rate ruling at the time of delivery of the undertaking plus one per centum for the period from the date of delivery of the undertaking to the date of payment of said amounts : (7) Where an undertaking is purchased under this section, the purchaser shall pay to the licensee an amount determined in accordance with the provisions of Section 7 and Section 7-A as substituted by the Indian Electricity (Uttar Pradesh Amendment and Validation) Act, 1975."

4. Amendment of Section 7 :-

In Section 7 of the principal Act,-- (i) in sub-section (1) for the proviso to clause (1) the following proviso shall be substituted, namely : "Provided that any such debt, mortgage or similar obligation shall attach to the amount payable for undertaking," (ii) in sub-sections (2), (3) and (5), for the words "purchase money" wherever occurring, the word "amount" shall be substituted.

5. Substitution of new Sections 7-A and 7-AA for Section 7-A :-

For Section 7-A of the principal Act, the following sections shall be substituted, namely :- "7-A. Determination of amount.-- (1) Where an undertaking of a licensee is sold under sub-section (1) of Section 5 or is purchased under Section 6, the amount payable therefor shall be determined as hereinafter provided. (2) The gross amount payable to such licensee shall be the aggregate value of the amounts specified below-- (i) the book value of all completed work in beneficial use pertaining to the undertaking and taken over by the State Electricity Board, the State Government or local

authority, as the case may be (excluding works paid for by consumers), less depreciation calculated in accordance with the Sixth Schedule read with the Seventh Schedule of the Electricity (Supply) Act, 1948; (ii) the book value of all works in progress taken over, excluding works paid for by the consumers or prospective consumers; (iii) the book value of all stores, including spare parts taken over, and in the case of used stores and spare parts, if taken over, such sum as may be decided upon by the Special Officer referred to in sub-section (6) (hereinafter referred to as the Special Officer); (iv) the book value of all other fixed assets in use on the date of vesting under Section 7, hereinafter referred to as the vesting date, and taken over, less depreciation calculated in accordance with the said Schedules: (v) the book value of all plants and equipments existing on the vesting date, if taken over but no longer in use owing to wear and tear or to obsolescence, to the extent such value has not been written off in the books of the licensee, less depreciation calculated in accordance with the said Schedules; Explanation.--The book value of any fixed asset means its original cost, and shall comprise-- (i) the purchase price paid by the licensee for the asset, including the cost of delivery and all charges properly incurred in erecting and bringing the asset into beneficial use as shown in the books of the undertakings; (ii) the cost of supervision actually incurred, but not exceeding fifteen per cent of the amount referred to in paragraph (i) : Provided that before deciding the amount under this sub-section, the licensee shall be given an opportunity by the Special Officer of being heard, after giving him a notice of at least 15 days therefor. (3) A sum equal to 10 per cent. of the amounts assessed under clauses (i) to (iv) of sub-section (2) shall be paid to the licensee in respect of compulsory purchase under Section 6. (4) When any asset is acquired by the licensee after the expiry of the period to which the latest annual account relate, the book value of the asset shall be such as may be decided upon by the Special Officer : Provided that before deciding the book value of any such asset, the licensee shall be given an opportunity by the special officer of being heard, after giving him a notice of at least 15 days therefor. (5) The purchaser shall be entitled to deduct the following sums from the gross amount payable under the foregoing sub-section to a licensee-- (a) the amount, if any, already paid in advance; (b) where the purchaser is the State Electricity Board the amount due, if any, including interest thereon from the licensee to the Board, for energy supplied by the Board before the vesting date; (c) all

amounts and arrears of interest, if any, thereon due from the licensee the State Government or the State Electricity Board ; (d) the amount, if any, equivalent to the loss sustained by the purchaser by reason of any property or rights belonging to the undertaking not having been handed over to the purchaser, the amount of such loss being deemed to be the amount by which the market value of such property or rights exceeds the amount payable therefor under this section, together with any income which might have been realised by the purchaser, if the property or rights had been handed over on the vesting date ; (e) the amount of all loans due from the licensee to any corporation as defined in the Uttar Pradesh Public Moneys (Recovery of Dues) Act, 1972, and arrears of interest, if any, thereon; (f) all sums paid by the consumers by way of security deposit and arrears of interest due thereon on the vesting date, in so far as they have not been paid over by the licensee to the purchaser, less the amounts which according to the books of the licensee are due from the respective consumers to the licensee for energy supplied by him before the date: (g) All advances from consumers and prospective consumers, and sums which have been or ought to be set aside to the credit of the consumers, in so far as such advances or sums have not been paid over by the licensee to the purchaser; (h) the amounts remaining in Tariffs and Dividends Control Reserve Contingencies Reserve and the Development Reserve, in so far as such amounts have not been paid over by the licensee to the purchaser. (6) The State Government shall appoint, by order in writing, a person having adequate knowledge and experience in matter relating to the accounts, to be Special Officer to assess the net amount payable under this section to the licensee, after making the deductions mentioned in this section. (7) (a) The Special Officer may call for the assistance of such officers and staff of the State Government or the State Electricity Board or the licensee as he may deem fit in assessing the net amount payable. (b) The Special Officer shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (Act V of 1908), when trying a suit, in respect of the following matters-- (i) enforcing the attendance of any person and examining him on oath; (ii) compelling the production of documents; and (iii) issuing commissions for the examination of witnesses. The Special Officer shall also have such further powers as may be specified by the State Government by notification in the Gazette. (8) Where the gross amount payable to the licensee is equal to or less than the

total amount to be deducted under this section no payment shall be made to the licensee by the purchaser. "7-AA. Power to take forcible delivery of possession of undertaking.-- (1) On failure of the licensee to deliver the undertaking in compliance with the provision of sub-section (3) of Section 5 or sub-section (6) of Section 6, as the case may be, the officer appointed under the said provisions may forthwith enter into possession of such undertaking and may take or cause to be taken such steps and use or cause to be used such force as may in the opinion of such officer be reasonably necessary for that purpose. (2) On the entry into possession under sub-section (1) by the officer concerned, the provisions of Section 7 shall apply as if the undertaking had been delivered to the State Electricity Board, the State Government or the local authority, as the case may be, under sub-section (3) of Section 5 or sub-section (6) of Section 6, as the case may be."

6. Insertion of new Section 42-AA :-

After Section 42-A of the principal Act, the following section shall be inserted, namely : "42-AA. Penalty for refusal or failure to deliver possession of undertaking or its property and for obstructing the taking of possession thereof.-- Whoever-- (a) being a licensee or an officer or employee of the licensee, wilfully fails or refuses to deliver to the officer appointed under sub-section (3) of Section 5 or sub-section (6) of Section 6 as the case may be (hereinafter in this section referred to as "the appointed officer") the possession of the undertaking, or the possession of any property or effects belonging to or forming part of such undertaking or of any books of accounts or other documents relating to the undertaking the possession of which the appointed officer is entitled to take, or (b) wilfully obstructs the appointed officer in entering into possession of the undertaking or taking possession of any of its property or effects belonging to or forming part of such undertaking or of any books of accounts or other documents relating to the undertaking the possession of which the appointed officer is entitled to take, shall be punishable with imprisonment of either description for a term which may extend to three years or with the fine which may extend to ten thousand rupees, or with both."

7. Application of Act :-

The provisions of this Act shall apply to all licensee in respect of their undertakings sold after September 5, 1959, under Section 5 or Section 6 of the principal Act and purchase price in respect whereof was not determined prior to the commencement of this

Act.

8. Validation :-

Notwithstanding any judgment, decree or order of any court or tribunal to the contrary-- (a) every option of purchase of an electricity undertaking exercised by the Uttar Pradesh Electricity Board, by serving notice upon a licensee under Section 6 of the principal Act, and every delivery of an undertaking effected by a licensee to the said Board, in pursuance of such notice at any time after September 5, 1959, and anything done or purporting to have been done and any action taken or purporting to have been taken (including purchase and delivery of every undertaking before the commencement of delivery of an undertaking) before the commencement of this Act, under Sections 6, 7 and 7-A of the principal Act shall be deemed to be and always to have been as valid as if the provisions of this Act were in force at all material times, and shall not be called in question in any court or tribunal or before any other authority on the ground that Section 6 of the principal Act did not provide for the payment of any interest on the purchase price for the period from the date of delivery of the undertaking to the date of payment of the amount; and (b) notwithstanding that the payment of the amount referred to in sub-section (7) of Section 6 of the principal Act is not simultaneous with the taking delivery of possession of an undertaking the provision in sub-section (6) of that section requiring delivery of the undertaking to the said Board shall have effect; and (c) a licensee whose undertaking is purchased, or for the purchase of which proceedings have been commenced and are pending at the commencement of this Act, shall be entitled in addition to the amount referred in sub-section (7) of Section 6 of the principal Act, interest thereon in accordance with the proviso to sub-section (6) of that section (as inserted by this Act) as if the proviso existed at all material times.

9. Repeal :-

The Indian Electricity (Uttar Pradesh Amendment and Validation) Ordinance, 1975 (U.P. Ordinance No. 7 of 1975) is hereby repealed.