A BHOLA NATH MUKHERJEE AND ORS.

v.

GOVERNMENT OF WEST BENGAL AND ORS.

NOVEMBER 22, 1996

B [J.S. VERMA AND S.C. SEN, JJ.]

Indian Electricity Act, 1910—Sections 3, 4, 5, 6, 7-A and 7- B—Companies Licence revoked—taken over by Board—Purchase price paid—Employees continued in service—Fresh terms and conditions of C *Employment—High Court directing the Board to pay retrenchment compensation to the Employees—Whether Board is liable to pay retrenchment compensation? Held—No, if the purchase price paid by the Board is sufficiently large to pay the claims of the workmen, then the dues of the workman should be paid out of the purchase money.*

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Industrial Disputes Act, 1947—Section 25-FF, Held, Employees of private company purchased by Electricity Board—Purchased money paid—Such employees have no right to claim any compensation from the Board nor any right to claim continuous employment on same terms and conditions.

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The Asansol Electricity Company's licence was revoked and the undertaking was taken over by the West Bengal State Electricity Board. The Employees of the Company were allowed to continue in the service of the Board. The Board asked the Employees to execute fresh terms and F **conditions of service. The Employees challenged the decisions of the Board by filling a writ petition in the High Court. The High Court held that the Employees were entitled to continue in service. The writ petition was disposed of certain directions to the Board. The Board preferred an appeal. The appeal was allowed holding that there would be no continuity in service but employees were entitled to retrenchment compensation in** G **accordance with the provisions of Section 25-FF of the Industrial Disputes Act, 1947. Aggrieved by the said order of the High Court, the Board as well as the employees have come up in appeal before this Court.**

Allowing the appeal of the Board and dismissing the appeal of the H **employees, this Court**

HELD : 1. Where an undertaking is sold, upon completion of the sale or on the date on which the undertaking is delivered to the purchaser, the undertaking shall vest in the purchaser free any debt, mortgage or similar obligation of licencee. The debt shall be attached to the purchase money which was paid by the Board for the undertaking of the company. If the purchase price paid by the Board is sufficiently large to pay the claims of the workmen, then the dues of the workmen should be paid out of the purchase money. It is not the case of the workmen that the money paid by the board was not sufficient to pay the erstwhile Employees of the company. It cannot be said that the board has any liability to pay the workmen any amount on account of retrenchment compensation.

[120-D-E; 122-A-B]

2. The services of the workmen have been interrupted. Fresh Employment has been offered by the transferee. The workmen, who had previously been permanently employed, were offered temporary employment by the Board. The workmen accepted the offer. There is no legal obligation cast upon the Board under the terms of the transfer or otherwise to pay any retrenchment compensation to the workmen. The employees have no right under Sec. 25-FF to claim any compensation from the Board. Nor do they have any right to claim to be in continuous employment on the same terms and conditions even after the purchase of the undertaking by the Board. The High Court in appeal was right in holding that the employees were entitled to retrenchment compensation under the provisions of Section 25-FF. But the High Court was in error in holding that Board even after payment of the purchase price to the transferor-company was liable to pay retrenchment compensation to the employees. [123-FH; 124-A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10219 of 1995.

From the Judgment and Order dated 27.2.91 of the Calcutta High Court in R.M.A.T. No. 1382 of 1988.

V.R. Reddy, Additional Solicitor General, S. Hegde, (Dr. Sumant Bharadwaj for Ms. Mridula Ray Bharadwaj, H.K. Puri, Rajesh Srivastava, Ujjwal Banerjee, Dilip Sinha, D. Krishnan for the the appearing parties.

The Judgment of the Court was delivered by

A **SEN, J.** Asansol Electricity Supply Co. Ltd. (hereinafter described as 'the Company') was a licensee under the Indian Electricity Act, 1910 and was engaged in the business of generation and distribution of electricity. On 5th April, 1979 West Bengal Government, in exercise of its powers under Section 4(1) of the Indian Electricity Act, 1910 (hereinafter described as 'the Act'), revoked the licence of the Company and directed the Company to sell the undertaking to the West Bengal State Electricity Board (hereinafter described as 'the Board') on 16th April, 1979. Pursuant to the said order, the Deputy Chief Engineer (Commercial) took over the said undertaking on behalf of the Board on 16th April, 1979. The employees of the Company were allowed to continue in the service of the C Board.

After an interval of about twenty days, on 5th May, 1979 the Board asked the employees to execute a form containing fresh terms and conditions of service which, according to the employees, amounted to fresh appointments under the Board. Such appointments were to be temporary D and/or provisional appointments, initially for a period of three months. The further continuance of the writ petitioners in the service of the Board was to depend on their suitability for appointment under the Board. It was further stipulated that the employees would not be entitled to the benefit of their past service under the Company. For all practical purposes, the E employees were to be treated as fresh appointees on and from 16th April, 1979, that is, from the date of take over of the undertaking by the Board.

The employees challenged the decision of the Board to treat the employees as fresh appointees by a writ petition to the High Court. By judgment and order dated 12th April, 1988 Justice Ajit Kumar Sengupta F held that the employees were entitled to continue in their service despite the change in ownership of the undertaking. The employees could not be deprived of the benefits which they had been enjoying before the undertaking was taken over by the Board. The writ petition was disposed of by giving, *inter alia*, the following directions :

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"(a) The respondent shall treat the petitioners to be in continuous service for the purpose of assigning seniority with effect from 16th April, 1979.

(b) The basic pay of the petitioners and other admissible allowan- H ces shall be fixed taking into account the total length of service

under the erstwhile Company as well as under the Board. A

(c) Certified Standing Order of the erstwhile Company shall remain in force so far as the petitioners are concerned.

(d) Amount of gratuity shall be calculated for the petitioners who have already retired or would be retiring taking into account B their entire period of service i.e. from the date of initial appointment under the Company.

(e) If any of the petitioners was entitled to bonus for the period 1978-79 such bonus shall be awarded to the petitioners. C

(f) Retrenchment benefit shall be given to the petitioners as admissible if the petitioners are treated as retrenched.

(g) The respondents shall pay the petitioners the arrears of pay and allowances after fixation of pay and allowances taking into account their entire service period." D

Sengupta, J. however, directed that this order would not be treated as a precedent.

The Board preferred an appeal against the decision of Sengupta, J. The Appeal Court allowed the appeal and held that there could be no E continuity of service after the taking over of the management. The services of the employees were terminated by operation of Section 25FF of the Industrial Disputes Act, 1947.

The Appeal Court, however, directed that employees entitled to F retrenchment compensation in accordance with the provisions of Section 25FF of the Industrial Disputes Act, 1947. The Board was directed to pay such compensation to the employees within a period of eight weeks from the date of communication of the order passed by the Court. Aggrieved by the said order of the High Court, the Board as well as the employees have G come up in appeal before this Court.

So far as the Board is concerned, it is their case that the company had gone into liquidation and the Board had paid to the Official Liquidator Rs. 54,50,350, Rs. 8,00,000 and Rs. 46,50,350 during the period 1.9.83 to 6.5.88. According to the Board, the burden of payment of amount of H

A compensation under Section 25FF of the Industrial Disputes Act, 1947 will be on the Company. The purchase price paid by the Board was more than adequate for making full payment of compensation to the employees. The Board had given fresh employment to the employees after taking over of the undertaking and, thereafter, has been regularly paying salaries and B other benefits to the employees from the date of their appointment under the Board. Neither in fact nor in law, the employees could be treated as in continuous service in spite of the change in management.

In our view, the contention of the Board must be upheld in the facts of this case.

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Under Section 3 of the Indian Electricity Act, 1910, the State Government may grant licence to any person to supply energy in a specified area. Such licence can be revoked under Section 4 in publish interest in certain specified cases. Clause (c) of sub-section (1) of Section 5 enables D the State Government, after revocation of licence under Section 4, to require the licensee to sell the undertaking to the State Electricity Board, if the State Electricity Board is willing to purchase the undertaking. Section 7 provides that where an undertaking is sold under Section 5 or Section 6, then upon the completion of the sale or on the date on which the under- E taking is delivered to the purchaser, the undertaking shall vest in the purchaser free from any debt, mortgage or similar obligation of the licensee or attaching to the undertaking. There is a proviso to sub-section (i) of Section 7 which lays down that "any such debt, mortgage or similar obligation shall attach to the purchase money in substitution for the undertaking". F Likewise, under sub-section (ii) the rights, powers, authorities, duties and obligations of the licensee under his licence shall stand transferred to the purchaser and such purchaser shall be deemed to be the licensee. Section 7A deals with determination of purchase price. Section 7B was inserted by West Bengal Act 39 of 1984 to safeguard the interest of the employee of an undertaking which is being sold. Section 7B lays down :

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> "*7B. Special provision for safeguarding the interest of the employee.* - (1) Notwithstanding anything to the contrary contained elsewhere in this Act or in any other law for the time being in force, where an undertaking is sold under Section 5 or Section 6, any amount H that may be due on account of salary or wages, leave-salary or

leave wages, bonus, gratuity, retrenchment compensation, contribution to provident fund or on similar or other amount from the licensee to the employee in the affairs of the undertaking on the date of completion of the sale or on the date on which the undertaking is delivered to the intending purchaser under sub-section (3) of Section 5 or sub-section (6) of Section 6, as the case may be, whichever is earlier, shall be deemed to be a debt due to the employee.

(2) The debt referred to in sub-section (1) shall, on adjustment of the amount, if any, due from the employee to the licensee on the date referred to in sub-section (1), have preference to all other debts and obligations except mortgage, and shall be payable out of the purchase price after deduction therefrom of the amount that may be due from the licensee under mortgage, if any.

(3) If, however, the purchase price, after deduction therefrom of the amount that may be due under mortgage, if any, falls short, wholly or in part, of the debt due on adjustment to the employee, the purchaser or the intending purchaser, as the case may be, shall be liable to pay such debt due to the employee to the extent of such shortage.

... ...

(11) The provisions of this section shall also apply to an undertaking which has been sold under Section 5 or Section 6 but the sale has not been completed prior to the date of commencement of the Indian Electricity (West Bengal Amendment) Act, 1980.

Provided that the sale of the undertaking shall not be deemed to be completed if the purchase price, if payable after deducting the claim of the employees of the licensee from the consideration money, has not been paid to the licensee in full and final settlement of the claim."

The effect of sub-section (1) of Section 7B is to protect the dues on account of salary, wages, leave-salary or leave wages, bonus, gratuity, retrenchment compensation, contribution to general provident fund, etc. to

A be a debt due to the employee. That means such debt shall attach to the purchase money which was paid by the Board for the undertaking of the Company. But the undertaking shall vest in the Board free from any debt, mortgage or similar obligation under Section 7 of the Act. In other words, if the purchase price paid by the Board is sufficiently large to pay the B claims of the workmen, then the dues of the workmen should be paid out of the purchase money. It is not the case of the workmen here that money paid by the Board was not sufficient to pay the erstwhile employees of the Company. Therefore, in the facts of this case, it cannot be said that the Board has any liability to pay the workmen any amount on account of C retrenchment compensation.

On behalf of the employees, our attention was drawn to Section 25FF of the Industrial Disputes Act, which provides :

> "*25FF. Compensation to workmen in case of transfer of undertakings.* - Where the ownership or management of an undertaking is D transferred, whether by agreement or by operation of law, from the employer in relation to or that undertaking to a new employer, every workman who has been in continuous service for not less than one year in that undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with E the provisions of section 25F, as if the workman had been retrenched:
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> Provided that nothing in this section shall apply to a workman in any case where there has been a change of employers by reason of the transfer, if - F
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> (a) the service of the workman has not been interrupted by such transfer :
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> (b) the terms and conditions of service applicable to the G workman after such transfer are not in any way less favourable to the workman than those applicable to him immediately before the transfer; and
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> (c) the new employer is, under the terms of such transfer or otherwise, legally liable to pay to the workman, in H the event of his retrenchment, compensation on the

basis that his service has been continuous and has been interrupted by the transfer." A

This section declares the right of the workman, who has been in continuous service for not less than one year in an undertaking, to notice and compensation in accordance with the provisions of Section 25F in a case where the ownership and management of an undertaking is transferred by agreement or operation of law to a new employer. In such a case, by legal fiction, the workman is treated as if he had been retrenched. The proviso to Section 25FF lays down that nothing in Section 25FF will apply to a workman where there has been a change of employer by reason of the transfer of the undertaking if three conditions laid down in the proviso are fulfilled. The three conditions are : B C

(a) the service of the workman has not been interrupted by such transfer;

(b) the terms and conditions of service applicable to the workman after such transfer are not in any way less favourable to the workman than those applicable to him immediately before the transfer; and D

(c) the new employer is, under the terms of such transfer or otherwise legally liable to pay to the workman, in the event of his retrenchment, compensation on the basis that his service has been continuous and has been interrupted by the transfer." E

None of these conditions has been fulfilled in this case. The service of the workmen has been interrupted. Fresh employment has been offered by the transferee. The workmen, who had previously been permanently employed, were offered temporary employment by the Board. The workman accepted the offer. There is no legal obligation cast upon the Board under the terms of the transfer or otherwise to pay any retrenchment compensation to the workmen. Therefore, the employees have no right under Section 25FF to claim any compensation from the Board. Nor do they have any right to claim to be in continuous employment on same terms and conditions, even after the purchase of the undertaking by the Board. The High Court in appeal was right in holding that the employees were entitled to retrenchment compensation under the provisions of Section F G H

A 25FF. But the High Court was in error in holding that the Board even after payment of the purchase price to the transferor-Company was liable to pay retrenchment compensation to the employees. The assertion of the Board that the purchase money was more than adequate to pay retrenchment compensation to the employees has not been denied.

B In view of the aforesaid, we allow Civil Appeal No. 10220 of 1995, preferred by the Board, and dismiss Civil Appeal No. 10219 of 1995, preferred by the employees. There will be no order as to costs in both these appeals.

S.V.K.I. Appeal No. 10220/95 allowed and C.A. No. 10219/95 dismissed.