A MAHARASHTRA STATE ELECTRICITY BOARD

v.

THANA ELECTRIC SUPPLY CO. & OTHERS.

APRIL 13, 1989

B

[R.S. PATHAK, CJ, SABYASACHI MUKHARJI, S. NATARAJAN, M.N. VENKATACHALIAH AND S. RANGANATHAN, JJ.]

Indian Eelectricity Maharashtra Amendment) Act, 1976 & Indian
C *Electricity (Maharashtra Amendment and Validation) Act, 1974: Sections 4, 5 and 6/Section 2—Constitutional validity of—Whether protected by Article 31C of the Constitution.*

Constitution of India: Articles 14, 19, 31, 31C, 39(b)—Legisla-
D *tive enactment challenged as not conforming to Constitutional mandate—Duty of Court—Nexus between the law and objects of Article 39(b)—Could be shown independently of any declaration of the legislature—Indian Electricity (Maharashtra Amendment) Act 1976, Sections 4 to 6 and Indian Electricity (Maharashtra Amendment and Validation) Act 1974 Section 2—Whether constitutionally valid.*

E

The respondent-Company took over, with the consent of the State Government, the licence granted to a private firm under the Indian Electricity Act, 1910 for supply and distribution of electricity in the areas covered by the licence, and became entitled to the benefits and
F **privileges of the licence. Under cl. (11) of the licence, Government had the option to purchase the undertaking on the expiry of the period of licence.**

The licence was to expire on 21st September, 1977. The State Electricity Board, in exercise of its option, issued a notice to the Com-
G **pany on 26th August, 1976 and required it to sell and deliver the undertaking to the Board on the midnight between 21st and 22nd September, 1977.**

Under the provisions of the Indian Electricity Act, 1910, as they
H **stood at the time of option, the Company was entitled to be paid the**

market value of the undertaking. But, by the Amending Act, 1976 the Bill for which had been introduced in the State legislature on 13.7.1976 the principle of market value in the relevant provisions of the 1910 Act was substituted by the concept of "Amount" legislatively fixed as a sum equal to the depreciated Book-Value of the assets of the undertaking to be taken over. The amended provisions were to govern cases where notices had been issued prior to the amendment. A B

The respondent-Company filed writ petitions before the High Court challenging the validity of ss. 4, 5 and 6 of the Indian Electricity (Maharashtra Amendment) Act, 1976 and s. 2 of the Indian Electricity (Maharashtra Amendment and Validity) Act, 1974 as violative of Arts. 14, 19(1)(f) and (g) and 31 of the Constitution. C

The appellants, the State and the Electricity Board, claimed protection of Art. 31-C to the Amending Act, 1976 and the consequent immunity from attack on the ground of violation of Arts. 14, 19 and 31.

The High Court held that in the absence of a declaration in the Amending Act of 1976 that the law was one intended to give effect to the objects of Art. 39(b) and (c) of the Constitution, the Amending Act cannot have the protection of Art. 31-C. Declaring s. 4 of the Amending Act as violative of Art. 19(1)(f) and Art. 14, it held that the State could not unilaterally reduce, even by legislation, its liability to pay the purchase price under a consensual transaction and that conferment on Government of power to fix instalments was grossly unreasonable and arbitrary and that provision for payment of interest at the Reserve Bank rate plus one per cent made more unreasonable the provisions of the Amending Act. D E

The High Court also rejected the respondent-Company's claim as to the Constitutional infirmity attributed to s. 2 of the 1974 Act and ss. 5 and 6 of the Amending Act, 1976. It further rejected the Company's contention that, upon the service of the notice exercising the option to purchase, the Company's right to be paid the market value under the law as it then stood, was crystallised into an "actionable claim" or "A chose-in-action" and that what was sought to be acquired was not the undertaking itself but a chose-in-action, and that the law was bad for excluding the service lines from computation of the amount. F G

The appellants filed appeal in this Court assailing the correctness of the High Court's view that s. 4 of the Amending Act was bad. The respondent-Company, also filed a cross appeal, questioning the correct- H

A ness of the judgment on the points held against it.

It was contended on behalf of the appellants that the law was entitled to the protection of Art. 31C and that the High Court was in error in postulating that the absence of the express legislative declaration in the law that it was enacted for giving effect to the directive B principles of State Policy in Art. 39(b) and (c), was itself conclusive against the attraction of Art. 31-C. It was urged that the presence of such a declaration merely furnished evidence of a reasonable and direct nexus between the legislation and the objects of Art. 39(b) and (c) but the declaration was by itself not conclusive either way, and the court was entitled to go behind the facade of the declaration and scrutinise whether there was really such a direct and reasonable nexus, and that C the absence of such an express declaration did not preclude the State from showing the existence of the requisite nexus, and that apart altogether from the protection of Art. 31-C, the Amending Act of 1976 was justifiable as a reasonable restriction on the freedom under Art. 19(1)(f) and (g).

D

On behalf of the Company, it was contended that any appeal to and reliance upon Art. 31-C was wholly misplaced, as the option to purchase the undertaking was in effectuation of a purely consensual transaction and that the scheme of the Electricity Act, 1910, and the covenants in the license enabling the Government or the Board, as the E case may be, to exercise the option to purchase did not amount to a compulsory acquisition of the undertaking, and that the provisions of the Amending Act, 1976, which had the effect of bringing down the purchase-price payable under a mutual agreement, could not be justified on any nexus with or for the effectuation of the objects of Art. 39(b).

F

The point for consideration was whether Indian Electricity (Maharashtra Amendment) Act, 1976, which statutorily modified the principles for the determination of the purchase price for the undertaking from the principle of market value contained in the unamended s. 7A of 1910 Act to the concept of "Amount" equal to the depreciated G book-value of the assets under s. 7A as amended the Amending Act of 1976, could be said to be a law enacted for the acquisition of the undertaking with a reasonable and direct nexus with the object of Art. 39(b) of the Constitution and, therefore, had the protection of Art. 31-C.

Allowing the appeals preferred by the appellants-Maharashtra H State Electricity Board and dismissing the cross appeal of the

respondent-Company, this Court,

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HELD: The provisions of the Amending Act of 1976 have a direct and substantial relationship with the objects of Art. 39(b) and, therefore, are entitled to the protection of Art. 31-C. Therefore, all challenge to the law on the ground of violation of Articles 14, 19 and 31 must necessarily fail. That apart, there is no merit in the B grievance that service-lines had been omitted from computation of the amount. Similarly, there is no merit in the contention that the value of the "goodwill" has been omitted from computation of the amount. [542D-F]

The nexus between the law and the objects of Art. 39(b) could be shown independently of an express declaration by the legislature in the C law that it was enacted for giving effect to the directive principles of State Policy contained in Art. 39(b). The absence of evidence of nexus, in the form of such an express declaration, was not by itself evidence of absence of such nexus. [534F-G]

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State of Maharashtra v. *Basantibai,* A.I.R. 1986 SC 1466 at 1475 and *Fazilka Electric Supply Co. Ltd.* v. *The Commissioner of Income Tax,* Delhi 1962 Supp. 3 S.C.R. 496, referred to.

The business of an electricity supply undertaking, a public utility service, in pursuance of a license granted under the Electricity Act, E 1910 is comprehensively controlled by the terms of that Statute. The terms on which a franchise is created and conferred are amenable to unilateral modification by Statute, and include the term pertaining to the quantification of the price payable for the take-over. The proposition that the right to the payment of the price gets crystallised into a 'chose-in-action' independently of or even before the actual transfer of F ownership of the undertaking, cannot be accepted. [539C-D]

Fazilka Electric Supply Company's case, [1962] Supp. 3 S.C.R. 496 and *Gujarat Electricity Board* v. *Girdharilal Motilal,* [1969] 1 S.C.R. 589, referred to.

G

Even if the provisions of the Electricity Act, 1910 are held and understood to provide for take over by the State of a privately owned undertaking only by the adoption of the expedient of a consensual sale, that circumstance, by itself, would not be decisive of whether the amending Act of 1976 had no direct and reasonable nexus with the objects of Art 39(b). [539F]

H

A The effect of the relevant provisions of the 1910 Act, as amended by the amending Act of 1976, is the transfer of the ownership and control of material resources of the community for purposes of ensuring that they are so distributed as best to subserve the common good. In effect, the provisions bring about nationalisation in the larger sense of that term. The Amending Act of 1976 sought to limit the economic B burden of this reform. [540C-D]

The expression "nationalisation" means 'the acquisition and control of privately owned business by Government.' [540D-E]

The idea of nationalisation of a material resource of the community cannot be divorced from the idea of distribution of that resource in C the community in a manner which advanced common-good. [540G]

No doubt, the protection of Art. 31-C is accorded only to those provisions which are *basically and essentially necessary* for giving effect to the objects of Art. 39(b). [540H]

D

But, the High Court, was in error in taking the view that, while the provision for the take-over in the Principal Act might amount to a power to acquire, the objects the Amending Act of 1976, which merely sought to beat down the price, could not be said to be part of that power and was, therefore, incapable of establishing any nexus with E Art. 39(b). [541A-B]

The amending Act of 1976, renders the cost of this economic-reform brought about with the objects of Art. 39(b) in view an affordable one in terms of money. This can not be held to have no direct or reasonable nexus with the objects of Act. 39(b)? When a legislative F enactment is challenged as not conforming to the constitutional mandate the judicial branch of the Government has only one duty-to lay the Article of the Constitution which is invoked beside the Statute which is challenged and to decide whether the latter squares with the former. [541B-C]

G The community's economic burden for social and economic reforms is an integral part of the exercise involved in social and economic change in the ushering in of an egalitarian and eclectic social and economic order in tune with the ethos of the Constitution. The cost in terms of monetary expenditure of economic change is a factor integrated with the objects of Art. 39(b). The Court must, H on matters of economic policy, defer to legislative judgment as con-

ditioned by time and circumstances. The wisdom of social change, is, dependant, in some degree, upon trial and error, on the felt needs of the time. [542A-C]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4113 of 1985 etc. etc.

From the Judgment and Order dated 20.7.1984 of the Bombay High Court in Misc. Petition No. 1115 of 1977.

T.R. Andhyarujina, S.B. Bhasme, R.A. Dada, V.S. Desai, A.K. Sen, M.L. Dhamuka, M.A. Firoz, A.S. Bhasme, A.M. Khanwilkar, Harish Salve, R.F. Nariman, J.B. Dadachanji, Mrs. A.K. Verma, Joel Pares, B.H. Vani, D.N. Misra, Arun Madan and Miss A. Subhashini for the appearing parties.

The Judgment of the Court was delivered by

VENKATACHALIAH, J. These appeals, the first two by the State Electricity Board of Maharashtra, by certificate, and the State of Maharashtra, by special leave, arise out of and are directed against the same judgment dated 20.7.1984, of the High Court of Judicature at Bombay made in proceedings under Article 226 of the Constitution in Misc. Petn. No. 1115 of 1975. The writ-petition before the High Court was filed by the respondent—The Thana Electricity Supply Company Limited—('company' for short) challenging the constitutional validity of Sections 4, 5 and 6 of the Indian Electricity (Maharashtra Amendment) Act, 1976, (Maharashtra Act No. XLIV of 1976) ("Amending Act of 1976", for short) and Sec. 2 of the Indian Electricity (Maharashtra Amendment and Validation) Act, 1974. Respondent-Company by its CMP No. 40944 of 1984 (CA No. 243 of 1985) sought certain reliefs which had been disallowed by the High Court. That CMP was treated as a petition for grant of Special Leave and Special Leave was granted on 11.1.1985. That is how CA 243 of 1985 has come to be registered.

2. The compass of the controversy before the High Court could broadly be indicated.

The "company" became entitled, by transfer, to the benefit and privileges of the "Thana Electricity Licence 1927" granted on 14.9.1927 by the then-Government of Bombay under the Indian Electricity Act, 1910, for supply and distribution of electricity in the

areas covered by the license. The grant was originally in favour of a firm of partners under the name and style 'Messrs P. Patel & Co.' On 16.2.1928, respondent-Company was formed as a Private Limited Company with the object of taking over the license from the said firm Messrs P. Patel & Co. Government, by its order dated 11.6.1928, consented to the transfer of the license to the said Private Limited Company. On 15.1.1965, the Private Limited Company became a Public Limited Company.

The license was to expire, by efflux of time on the 21st day of September, 1977. Clause 11 of the license envisaged the option to the Government, usual to such grants, to purchase the undertaking on the expiration of the period of the license. The Bill for the Amending Act, 1976, was introduced in the Legislature on 13.7.1976. The State Electricity Board, by notice dated 26th of August 1976 served on the company, exercised its option to purchase the undertaking on the expiry of the period of the license and accordingly, required the company to sell and deliver the undertaking to the Appellant-Board on the mid-night between 21st and 22nd day of September, 1977. The provisions of the Electricity Act 1910, as they stood on the day the option was exercised, would entitle the Company to be paid the "Market-Value" of the undertaking.

However on 20.9.1976, the Amending Act 1976, pursuant to the Bill introduced on 13.7.1976 became law. The Act received the assent of the President on 2nd September, 1976, and came into force with effect from 20th September, 1976, within a month of the option to purchase contained in the notice dated 26.8.1976. By this Amending Act of 1976 the principle of "Market-Value" in the relevant provisions of the 1910 Act was substituted by the concept of an "Amount" legislatively fixed as a sum equal to the depreciated Book-Value of the assets of the "undertaking" to be taken over. The Amended provisions were to govern cases where, as here, notices had been issued prior to the amendment. The Company and its shareholders challenged the Amending Act of 1976 as violative of Articles 14, 19(1)(f) & (g) and 31 of the Constitution. The Appellants—State of Maharashtra and the State Electricity Board—claimed the protection of Article 31-C to the Amending Act of 1976 and the consequent immunity from attack on the ground of violation of Articles 14, 19 and 31.

3. While the High Court rejected the appellants' claim that the impugned Law had the protection of Article 31-C, it did not also accept the contention of the company as to the constitutional infirmity

attributed to Section 2 of the 1974 Act and Sections 5 and 6 of the Amending Act of 1976; but the High Court declared that Section 4 of the Amending Act of 1976 was violative of Article 19(1)(f) and Article 14.

The High Court rejected the contention of the 'Company' that upon the service of the Notice exercising the option to purchase, the company's right to be paid the' market-value', under the law as it then stood, was crystallised into an "actionable claim" or a 'chose-in-action' and that what was sought to be acquired was not the 'undertaking' itself but a "chose-in-action". While the State and Electricity Board assail the correctness of the view of the High Court that Section 4 of the Amending Act of 1976 was bad, the Company, in its appeal No. CA 243 of 1985 has questioned the correctness of the Judgment on the points held against it.

4. The company filed the writ-petition in the High Court on 1.9.1977. On 21.9.1977 the High Court by its interlocutory-order permitted the take-over of the undertaking subject to the Board paying to the company Rupees four crores and five lakhs. The Board paid and took possession on 21/22 September, 1977. On 11.1.1985, in the appeals of the State and Board, this Court ordered a further payment of Rupees one crore and sixteen lakhs to the company.

5. We must, here, advert to three legislative events touching the provisions of the 1910 Act in relation to its application to the State of Maharashtra.

On 27.10.1974, the Governor of Maharashtra promulgated Ordinance No. 18 of 1974, which was later replaced by the Indian Electricity (Maharashtra Amendment and Validation) Act No. LXIII of 1974. By that Act, *inter-alia*, Section (1-AA) was inserted in Sec. 3 of 1910 Act, which was deemed always to have been inserted, to the effect to that licence granted shall be published in the Government-Gazette and that, as stipulated in Section 3(2)(cc), the licence shall commence on the date on which such licence was published in the Gazette. The 1974 amending Act also substituted Sub-section (6) and amended sub-section (7) of Sec. 6 of the 1910 Act. The substituted Sub-Sec. (6) provided that where notice exercising the option to purchase had been served, the licensee shall deliver the undertaking pending determination and payment of the purchase price and interest. This was, apparently, intended to over-come certain judicial observations touching the legalities of a take-over without the tender

of the price. The amended Sub-section (7) restricted the interest to "the Reserve Bank of India rate ruling at the time of the delivery of the undertaking plus one per centum from the date of delivery of the undertaking to the date of payment of the purchase price."

The Amending Act of 1976 was, indeed, more far reaching and brought about certain fundamental changes in the basis of the payment for the take over. The idea of "market value" was done away with and was substituted by the concept of an 'Amount' which was to be limited to the 'depreciated book value'. The statement of objects and reasons accompanying the Amending Bill sets out its main objects:

> "Section 7A of the Indian Electricity Act, 1910, provides for determination of purchase price where any undertaking of a licensee is sold under sub-section (1) of section 5 or purchased under section 6 of the Act. The basis for determining such price is the market value of the undertaking at the time of purchase or at the time of delivery of the undertaking. Having regard to the present trend of rising prices, the market value of an undertaking would be much higher than the original purchase price. In such an event, the purchaser will be required to incur very heavy expenditure for payment of the purchase price or payment of compensation in accordance with the existing provisions of the Act and will involve the purchaser in heavy financial commitments. In the interest of the consumer and social justice, therefore, it is necessary to amend the Act suitably to provide for payment of an amount equal to the depreciated book value of the undertaking either in cash or in annual instalments.
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> The Bill is intended to achieve these objects."

By the Amending Act of 1976 sub-sec. (2) of sec. 5 of 1910 Act was substituted. The Sub-sec. (2), as substituted, reads:

> "(2) Where an undertaking is sold under sub-section (1), the purchaser shall pay to the licensee for the undertaking an amount determined in accordance with the provisions of sub-sections (1) and (2) of section 7A";

In Sub-sec. (3) and Proviso to Section 5 and Section 6 of 1910 Act, the words "payment of market-value" were substituted by the words

"payment of the amount for the undertaking". Sub-sec. (7) of Sec. 6 was substituted. The substituted sub-section provided:

> "(7) Where an undertaking is purchased under this Section, the purchaser shall pay to the licensee the amount determined in accordance with the provisions of Section 7A and interest at the Reserve Bank of India rate ruling at the time of delivery of the undertaking plus one per centum on the amount payable for the undertaking for the period from the date of delivery of the undertaking to the date of payment of such amount."

Sub-sections (1) and (2) of the new Section 7A of Act said:

> "7A(1) where an undertaking of a licensee is sold under sub-section (1) of section 5 or purchased under section 6, the amount payable for the undertaking shall be the book value of the undertaking at the time of delivery of the undertaking.
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> (2) The book-value of an undertaking for the purposes of sub-section (1) shall be deemed to be the depreciated book-value as shown in the accounts rendered by the licensee in accordance with the provisions of section 11 of all lands, buildings, works, materials and plant of the licensee, suitable to, and used for him, for the purpose of the undertaking other than—
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> (i) a generating station declared by the licensee not to form part of the undertaking for the purpose of purchase; and
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> (ii) the service lines or other capital works or any part thereof, which have been constructed at the expense of the consumers,—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."

Sub-sec. (3) the new Sec. 7A envisaged payment of a solatium of ten per cent of the "book-value" as determined under sub-sec. (1) and (2) of new Sec. 7A overriding "any stipulation contained in any licence, instrument, order, or agreement or any law for the time being in force

for payment of any additional sum, by whatever name it was called."

Similarly sub-sec. (4) of the new Sec. 7A sought to give an overriding effect to the provisions of the new Sec. 7A and provided that no provisions of any Act for the time being in force including "the other provisions of this Act or any rule made thereunder or any licence" shall have effect in so far as they are inconsistent with sec. 7A. New Section 7A(5) enabled the payment of the amount either in lump-sum or in instalments, together with the rate of interest stipulated in Section 6(7) as amended.

Section 5 of the Amending Act, 1976, provided:

> "The provisions of section 5, 6 and 7A of the Principal Act as amended by this Act, shall have effect in relation to all the licensees in respect of their undertakings, including any licensee on whom a notice requiring him to sell the undertaking has been issued under sub-section (1) of section 5, *or on whom a notice exercising the option of purchasing the undertaking has been served under sub-section (1) of section 6 of the Principal Act before the commencement of the Indian Electricity (Maharashtra Amendment) Act, 1976,* and the purchase price in respect of whose undertaking was not determined before such commencement."
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> (Emphasis Supplied)

Another legislative development was the amending Act, 1981, which occurred during the pendency of the writ petition before the High Court. The amendment provided that where the amount was payable in instalments the interest would be payable from the date of the delivery of the undertaking to the date of payment of the last instalment.

6. The effect of the Amending Act of 1976, in substance, was that the concept of "Market-Value" was substituted by the concept of an "amount", which was the book value of the undertaking at the time of its delivery. The "book-value" was deemed to be the "depreciated book-value" as shown in the accounts rendered by the licensee in accordance with section 11 of the 1910 Act, of all lands, buildings, works, materials, plants, etc. The licensee was given a solatium of ten per cent of such book value. The provisions of the Amending Act of 1976 were made applicable to all licensees including a licensee upon

whom a notice requiring him to sell the undertaking had been served prior to coming into force of the Amending Act of 1976, but the purchase price had not been determined before the Amendment of the Act. The up-shot of the Amending Act of 1976 was that the entitlement of the company for payment for its "undertaking", respecting which the notice exercising the Board's option to purchase had been served on 26.8.1976, i.e. prior to the date of coming into force of the Amending Act, 1976, also came to be governed by the provisions of the Amending Act, 1976. While on the basis of the provisions as they then stood the respondent-company was entitled to the payment of the "market-value" as determinable under these provisions, now, by virtue of the Amending Act, of 1976, the respondent-company became entitled to the payment of an "amount" which was equal to and represented the "depreciated book value" of all the lands, buildings, works etc., instead of the "Market-Value".

7. As stated earlier, the principal controversy before the High-Court was whether the provisions of the Amendment Act, 1976, which scaled down, quite drastically, the measure of the recompense for the taking-over of the company's undertaking, were violative of Articles 14, 19(1)(f) and (g), and 31 of the Constitution of India, as contended by the company, or whether the Amending Act of 1976 had the protection of and attracted the provisions of Article 31-C of the Constitution, rendering the law immune from assailment on the ground of violation of fundamental rights. The contentions of the parties would require to be examined as the provisions of Articles 19(1)(f) and 31 stood at the relevant time. Articles 19(1)(f) and 31 were deleted later; but that does not affect the constitutional position with reference to which the present cases would require to be decided.

Some aspects of the contentions bearing on the inter-relation between a law of the kind we are concerned with and Article 31-C have been considered in our judgment in the companion matters arising out of the Assam Legislation in W.P. Nos. 457 and 458 of 1972 rendered separately today.

The High Court was persuaded to the view that the absence of a legislative declaration in the Amending Act of 1976 itself was decisive against the acceptability of the State's contention that the law was one for giving effect to the objects of Article 39(b) and (c). The High Court observed:

"A Division Bench of this court (to which one of us, Rege

A J., was a party) has held (in writ petition No. 2401 of 1983, The Elphinstone Spinning and Weaving Mills Company Ltd. *v.* The Union of India) *that to bring an enactment within the protection of Article 31 C so as to bar a challenge to it on the ground of infringement of Articles 14 or 19, it was necessary that the enactment should contain a declaration manifesting the intention of Parliament or a State Legislature to give effect by that enactment to the directive principles in Article 39(b) or (c).* This could be done either by specific reference to Article 39(b) or (c) in the enactment or by incorporating in it the wording of Article 39(b) or (c). The Amending Act of 1976 does not contain a declaration, manifesting the State Legislature's intention to give effect thereby to the directive principles contained in Article 39 (b) or (c). Having regard to this, counsel for the respondents have not pressed before us the argument based on Article 31 C but have reserved it, should it be necessary, for the Supreme Court."

(Emphasis Supplied)

On this premise, the High Court did not enter into the question whether the Amending Act of 1976 was really one for giving effect to the policy in Article 39(b) and (c). With the protection of Article 31C to the legislation so held unavailable, the High Court proceeded to consider whether the provisions of the impugned law including those that gave power to Government to postpone payment by instalments and those that limited the rate of interest etc. violated the fundamental-rights under Articles 14 and 19. Rejecting the contention of the appellants that with the payment of Rs.4,05,00,000, under the order of the Court, the grievance of the company about the arbitrariness of the provisions giving power to the Government to decide either or pay the amount in lump-sum or in instalments, becoming purely academic, the High Court said:

"It is crystal clear from the orders of the learned Judge that the payment of Rs.4,05,00,000 was made by the Board to the company pursuant to these orders and as a condition of being allowed to take possession of the company's undertaking. The company is, therefore, entitled to urge that the provisions delaying payment of the purchase price and enabling it to be paid by instalments are unreasonable and unconstitutional."

8. In the view of the High Court the State Electricity Board, as a matter of its declared policy, was purchasing the private electricity undertakings as and when their licenses expired and that the reduction in the measure of payment, sought to be achieved by the Amending Act of 1976 was violative of Article 19(1)(f). The High Court held:

> ". . . . . Electricity undertakings were compulsorily purchased upon payment of their market value until 1976, when the Amending Act of 1976 was mooted. *There is no explanation in the affidavit made on behalf of the respondents as to what it was that made it imperative in the public interest at that point of time to reduce the purchase price from market value to depreciated book value. There is no statement in the affidavits that upon the basis of market value the Board could no longer have effected compulsory purchase . . . . . .*"
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> (emphasis supplied)

> ". . . . . The obligation to pay market value did not deter the State from adopting this policy. The affidavits on behalf of the respondents do not aver that after compulsory purchases in the past the electricity tariff had to be raised; all that they state is that the expenditure incurred on compulsory purchases had to be taken into account . . . ."

> ". . . . . Considering all these factors, the objects and reasons for the Amending Act of 1976 could only be thus to reduce the Board's liability on compulsory purchase. Legislation enacted to reduce the State's liability or augment the State's funds as its only purpose infringes the fundamental right given by Article 19(1)(f). We have already cited the cases that so hold."

It is to be recalled that the Statement of Objects and Reasons and the Financial Statement appended to the Bill set-out these considerations compelling the State to cut-down the compensation. But according to the High Court, the absence of their reiteration in the affidavits would assume materiality.

9. The High Court, in substance, also held that the State could not unilaterally reduce, even by legislation, its liability to pay the purchase price under a consensual transaction and that such an attempt would be violative of Article 19(1)(f). We may set out the

A reasoning of the High Court where the inference drawn on the premise appears a non-sequitur:

> ". . . . . *Though the purchase is compulsory, though the terms of the contract are amendable by legislation,* though the electricity franchise and its returns are controlled by legislation *and though the purchase deals with a material resource, control over which is a directive principle,* the State as the purchaser under a contract cannot be countenanced to act unilaterally to drastically reduce its liability in regard to the purchase price. Such a reduction is not reasonable, not in the public interest and infringes the fundamental right under Article 19(1)(f).
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> (Emphasis Supplied)

Upholding the company's contention that the reduction in the quantum of the payment brought about by the Amending Act of 1976 violated Article 19(1)(g), the High Court said:

> "The reduction in the purchase price cannot but have a direct and proximate effect on the licensee's right to carry on the business of electricity supply while the licence was current. Upon compulsory purchase of his undertaking the licensed would do or want to do other business. The depletion in his capital of so considerable a nature as that caused by the reduction of the purchase price of his undertaking from market value to depreciated book value cannot but hinder him in doing so. There would, therefore, also be a transgression of the guarantee of Article 19(1)(g)."

Further, the conferment on Government of the power to fix instalments was held to be "grossly unreasonable and arbitrary and violative of Article 19(1)(f) and (g) and Article 14". The provision for payment of interest at the Reserve Bank rate plus one percent, according to the High Court, made "more unreasonable the provisions of the Amending Act, 1976" and that "A rate approximating, if not equal, to the higher commercial rate of interest would have been more appropriate."

10. The High Court, however, rejected the company's contention that its right to payment of 'market-value' became crystallised upon the service on it of the notice exercising the Board's option to purchase the undertaking and that what was sought to be acquired was

a mere 'chose-in-action' and not the undertaking itself. High Court also rejected the contention that the law was bad for excluding the 'service-lines' from the computation of the 'amount'. The correctness of these rejections is challenged in the company's cross-appeal i.e. C.A. No. 243 of 1985. A

11. We have heard Shri Andhyarujina, learned Senior Advocate for the State of Maharashtra and the State Electricity Board and Shri A.K. Sen, learned Senior Advocate for the respondent-company. B

The principal contention urged on behalf of the State and the Electricity Board was that the High Court was in error in denying to the impugned law the protection of Article 31-C. It was urged that the High Court fell into a serious error in postulating that the absence of an express legislative declaration in the law that the law was enacted for giving effect to the principles of State Policy in Article 39(b) and (c) was itself conclusive against the attraction of Article 31-C. It was urged that the presence of an express legislative declaration in that behalf merely furnished evidence of a reasonable and direct nexus between the legislation and the objects of Article 39(b) and (c) but such a declaration was, however, not by itself conclusive either way and the court was entitled to go behind the facade of the declaration where there is one and scrutinise whether really there was such a direct and reasonable nexus and that, as a corollary, it followed that the absence of such an express declaration did not preclude the State from showing the existence of the requisite nexus. The impugned law, it was contended, was one intended to give effect to the directive principles contained in Article 39(b) and was entitled to the protection of Article 31-C. C D E

Sri A.K. Sen for the licensee-company contended that any appeal to and reliance upon Article 31-C is wholly misplaced inasmuch as the option to purchase the undertaking was in effectuation of a purely consensual transaction and that the scheme of the Electricity Act, 1910, and the covenants in the license enabling the Government or the Board, as the case may be, to exercise the option to purchase did not amount to a "compulsory" acquisition of the undertaking. It was urged that the impugned provisions of the Amending Act of 1976, which had the effect of bringing down the purchase-price payable under a mutual agreement, could not be justified on any nexus with or for the effectuation of the objects of Article 39(b). F G

The point that arises for consideration in these appeals, therefore, is whether: H

A "the Maharashtra Act No. XLIV of 1976, which statutorily modifies the principles for the determination of the purchase price for the undertaking—from the principle of Market-value contained in the unamended Section 7A of 1910 Act to the concept of an 'amount' equal to the depreciated book-value of the assets under Section 7A as B amended by Maharashtra Act No. XLIV of 1976—could be said to be a law enacted for the acquisition of the undertaking with a reasonable and direct nexus with the object of Article 39(b) of the Constitution and has, therefore, the protection of Article 31-C?"

C If the contention of the State and the Electricity Board prevails and is accepted, all other contentions which, in turn, rest on an alleged infraction of Articles 14, 19(1)(f) and (g) and 31 do not survive. It is, however, the contention of Shri Andhyarujina that the question whether the power given to the Government to postpone payment of the price by fixing instalments and statutory limitations on the rate of D interest are violative of Article 19(1)(f) and (g) became purely academic in the present case, as indeed, under the orders of the High Court Rupees Four Crores and Five Lakhs had been paid even before possession was taken and that a further sum of Rupees One Crore and Sixteen Lakhs was paid pursuant to the orders of this Court. Learned counsel also submitted further that apart altogether from the protec- E tion of Article 31-C, the Amending Act, of 1976 is justifiable as a reasonable restriction on the freedom under Article 19(1)(f) and (g).

At the outset the misconception that an express legislative declaration in the legislation is condition precedent to the attraction of Article 31-C would, perhaps, require to be removed. The High Court, F we say so with respect, was under a clear misconception on the point that an express incantation was necessary in the law itself. The nexus between the law and the objects of Article 39(b) could be shown independently of any such declaration by the legislature. The absence of evidence of nexus, in the form of an express declaration, was not by itself evidence of absence of such nexus. Indeed in *State of Maha-* G *rashtra* v. *Basantibai,* AIR 1986 SC 1466 at 1475 this court, while examining the correctness of the view of High Court that Article 31-C was inapplicable in the absence of such a declaration in the very law itself, observed:

"... . First, Art. 31C does not say that in an Act there H should be a declaration by the appropriate legislature to

the effect that it is being enacted to achieve the object contained in Art. 39(b). In order to ascertain whether it is protected by Art. 31C, the Court has to satisfy itself about the character of the legislation by studying all parts of it. The question whether an Act is intended to secure the objects contained in Art. 39(b) or not does not depend upon the declaration by the legislature but depends on its contents ....."

12. We may now turn to the principal contention. Sri Sen, quite understandably, places considerable reliance on the pronouncement of this Court in *Fazilka Electric Supply Co. Ltd* v. *The Commissioner of Income Tax, Delhi,* [1962] Supp. (3) SCR 496 which was a decision in an income tax case in the context of the question whether the sale of the electricity undertaking of the company as enabled by the relevant Section of the 1910 Act could be regarded as a sale within the meaning of Section 10(2)(vii) of the Income Tax, 1922, and the excess realisation over the written down value of the Building, Machinery, Plant etc. as did not exceed the difference between the original cost and the written-down value—a sum of 77,700 in that case—was to be brought to tax. The question arose whether the sale pursuant to the option under the 1910 Act was a consensual sale in which case Section 10(2)(vii) stood attracted or whether it was a "compulsory acquisition" or "compulsory-sale". The contention urged by counsel was noticed by this Court thus:

"..... *He has argued that on a proper construction of the provisions of the Electricity Act and the rules made thereunder, the so-called sale in the present case was really a compulsory acquisition of property and not a sale as legally understood;*"

(Emphasis Supplied)
(p. 501)

This proposition was not accepted. This Court said:

"..... If the whole scheme of the Electricity Act and the rules made thereunder, is kept in mind, it becomes obvious that notwithstanding the use of the expression "compulsory purchase" in the second proviso to sub s.(1) of s. 7, there is no compulsory purchase or compulsory acquisition in the sense in which that expression is ordinarily understood ....."

(p. 505)

Placing strong reliance on these observations Sri Sen contended that any proposition of a "compulsory-acquisition" with the cognate implication of the acquisition seeking to subserve the objects of Article 39(b) is alien to the present case which was one of a contractual sale. Sri Sen also referred to Article 31(2A), as it then stood, which provided:

> "(2A) *Where a law does not provide* for the transfer of the ownership or right to possession of any property to the State or to any corporation owned or controlled by the State, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of his property,"
>
> (Emphasis Supplied)

to contend that where the transfer of ownership is not brought about by the operation of law itself—but, as here, only by a consensual transaction—there is no idea of a "compulsory—acquisition" in the situation which might, in turn, serve the objects of Article 39(b).

13. Sri Sen, also referred to *Bihar State Electricity Board and Ors* v. *Patna Electricity Supply Co. Ltd. & Anr.*, AIR 1982 Cal. 74. In that case, on 5.1.1973 the State Electricity Board exercised its option—to purchase the licensee's undertaking on the expiry of 5th February 1974. On 2nd February 1974, Ordinance 50 of 1974 was promulgated substituting Section 7A of the 1910 Act so as to reduce the concept of "market-value" to one of Book-Value. The Ordinance was renewed by Ordinance 83 of 1974 and the latter by Ordinance 123 of 1974. Possession of the undertaking was taken 5th/6th February 1974. On 15th January 1975 Bihar Act 15 of 1975 was enacted to replace the last of the Ordinances. On 10th January, 1976, Bihar Act 7 of 1976 was passed making its operation retrospective from 2nd February, 1974, when the first Ordinance No. 50 of 1974 had been issued.

The Division Bench of the High Court held that as the option to purchase had been exercised prior to the issue of Ordinance 50 of 1974, the Licensee was entitled to the market-value under the unamended Section 7A. The High Court in effect took the view that once the option was exercised and communicated, the option with all the incidents that go with it including the stipulation as to the particular price implicit in the option binds both the parties and that the right to receive the purchase price was crystallised into a 'chose-in-action'. The reasoning of the High Court is on these lines:

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> "..... At the time the option was exercised by the appellant under s. 7-A of the Act, the respondent company was entitled to the market value of the undertaking to be determined in accordance with the provisions of sub-sec. (2) of S. 7-A. There was, therefore, an implied contract between the respondent company and the appellant that the appellant would pay to the respondent company the market price of the undertaking in the event it purchased the undertaking. The option of purchase was exercised by the appellant before the amendment of S. 6 and S. 7A of the Act the Bihar Ordinance 50 of 1974. The appellant is, therefore, liable to pay to the respondent company the market value of the undertaking in terms of the unamended provision S. 7A ....."

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C

> ..... In other words, when the option is exercised the licensee is bound to sell and the concerned authority is bound to purchase the undertaking. It is difficult to accept the contention that this binding effect on either party will be without the fixation of the purchase price or the consideration for the transaction. As soon as this stage is reached after the exercise of option to purchase by the service of a notice as mentioned in S. 6 of the Act, the concerned authority has to purchase the undertaking on payment of the market value of the undertaking to be determined in accordance with the provision of S. 7A of the Act ....."

D

E

> "The right to receive the market value of the undertaking is a debt or a chose in action and is property within the meaning of Art. 19(1)(f) and Art. 31(2) of the Constitution ....."

F

It was held in that case the amending-processes were violative of the Licensees' fundamental rights under Article 31(2) of the Constitution.

G

14. What, in the ultimate analysis, underlies, and is indeed, the emphasis in, Sri Sen's submission is the postulate that in the take-over by Government of an "undertaking", there is no element of "nationalisation" of the undertaking and consequently, no question of effectuation of the objects of Article 39(b) arises. The arguments addressed in the case are not without their interesting aspects as to

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what, in the last analysis, is and should be, the form and content of a law which seeks to serve the objects of Article 39(b). In the decision of the Calcutta High Court relied upon by Sri Sen, no appeal was made by the Electricity Board to the protection of Article 31-C. That apart, the concept of the licensee's rights crystallising themselves into a chose-in-action upon the exercise of the option that commended itself to the Calcutta High Court did not appeal to the Bombay High Court in the judgment under appeal.

15. Sri Andhyarujina emphasised the essentially statutory character of the business of the Electricity Supply Undertaking carried on pursuant to the License granted under the 1910 Act, and that the provisions of the said Act and the Electricity Supply Act, 1948, leave no doubt that the license and the operations thereunder are totally controlled by statutory provisions. Section 57 of the latter Act requires that the charges for consumption of Electricity levied on the consumers shall be in accordance with the financial principles guiding the matter prescribed in Schedule VI of that Act. That schedule limits the profits of the licensee and tells as to how they should be arrived at for purposes of ensuring compliance with the provisions limiting the profits. Sri Andhyarujina also referred to the decision of this court in *Gujarat Electricity Board* v. *Girdharilal Motilal and Anr.*, [1969] 1 SCR 589 at 592-93.:

> "..... *It is a mode of exercising the power conferred on the State Electricity Board by the exercise of which the property rights of the licensees can be affected.* Section 6(1) confers power on the State Electricity Board *to take away the property of the licensee.* Such a power must be exercised strictly in accordance with law ....."
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> (Emphasis Supplied)

16. Sri Andhyarujina submitted that there was no dispute that electricity supplied by even a private enterprise was 'material resources of the community' for purposes of Article 39(b) and that the legislative expedient by which the State seeks to achieve the objective of Article 39(b) that the ownership and control of that material resource is so distributed as best to subserve the common good, is merely a matter of form than substance. If the State, instead of resorting to this particular legislative expedient, had enacted a separate law for the take-over with the same principles for the determination of the 'amount', that law, says learned counsel, would have been quite unexceptionable from the point of view of its eligibility for protection

under Article 31-C. Learned counsel submitted that it should, in substance, make no difference if the same result is sought to be achieved by a more simple legislative expedient of enacting a law, with Presidential assent, which, while unaffecting the take over under the 1910 Act, however, made the economic cost of implementing the object of Article 39(b) less unaffordable by the State. Learned counsel says that the arguments in the case, accepted by the High Court, laid stress more on form than on substance of the legislation.

17. The business of an electricity supply undertaking, a public utility service, in pursuance of a license granted under the Electricity Act, 1910, is comprehensively controlled by the terms of that Statute. The terms on which a franchise is created and conferred are amenable to unilateral modification by Statute. The terms which are so amenable to unilateral alteration to the disadvantage of the licensee include the term pertaining to the quantification of the price payable for the take-over. It is difficult to accept the proposition that the right to the payment of the price gets crystallised into a 'chose-in-action' independently of or even before the actual transfer of ownership of the undertaking. In *Fazilka Electric Supply Company's* case [1962] 3 SCR 496 it was, no doubt, held that the transfer of the ownership of the undertaking was the result of consensual, bilateral activity. However, in *Gujarat Electricity Board* v. *Girdharilal Motilal,* [1969] 1 SCR 589 referring to the relevant provisions of the 1910 Act it was held that they conferred power on the State Electricity Board "to take away the property of the licensee."

18. It appears to us that even if the provisions of the Electricity Act, 1910, are held and understood to provide for take over by the State of a privately owned undertaking only by the adoption of the expedient of a consensual sale, that circumstance, by itself, would not be decisive of whether the amending Act of 1976 has no direct and reasonable nexus with the objects of Article 39(b). The High Court, itself referring to the object of the relevant provisions of the 1910 Act enabling a take-over observed:

> "The Electricity Act, 1910, as enacted contemplated State Control over the material resources of electricity by providing for compulsory purchase of electricity undertakings."

But so far as the Amending Act was concerned the High Court said:

A "This was already the objective of the parent Act. It cannot, therefore, be held to be the object of the Amending Act of 1976."

The reasoning of the High Court that the Amending Act, 1976. which was incorporated into and became part of the principal Act, B would have no such purpose, does not square with its own view of the purpose of the principal Act. After having said that the relevant provisions of the Amending Act did not share with the principal Act the objective of take-over of an 'undertaking' the High Court on a logical corollary of that premise, held that the Amending Act had no nexus with the object of Article 39(b).

C The effect of the relevant provisions of the 1910 Act, as amended by the amending Act of 1976, is the transfer of the ownership and control of material resources of the community for purposes of ensuring that they are so distributed as best to subserve the common good. In effect, the provisions bring about nationalisation in the larger sense D of that term. The Amending Act of 1976 sought to limit the economic burden of this reform.

The expression "nationalisation" means 'the acquisition and control of privately owned business by Government' (See Black's Law Dictionary, 5th Edn., p. 924). In 'A New English Dictionary on E Historical Principles' by Murray, Vol. VI Page 32 the word 'nationalisation' is stated to connote:

> "the acquisition and operation by a national government of business enterprises formerly owned and operated by private individuals or corporations. Most States have F nationalised their postal and telegraphic systems, and many have nationalised railways and other means of transportation. It is the policy of socialism to nationalize all productive industry."

The idea of nationalisation of a material resource of the commu- G nity cannot be divorced from the idea of distribution of that resource in the community in a manner which advanced common-good. The cognate and sequential question would be whether the provisions of the amending Act, 1976, had a reasonable and direct nexus with the objects of Article 39(b). It is true, the protection of Article 31-C is accorded only to those provisions which are *basically and essentially* H *necessary* for giving effect to the objects of Article 39(b). The High

Court, from the trend of its reasoning in the Judgment, appears to take to the view that while the provision for the take-over in the Principal Act might amount to a power to acquire, however, the objects the Amending Act of 1976, which merely sought to beat down the price could not be said to be part of that power and was, therefore, incapable of establishing any nexus with Article 39(b). There is, we say so with respect, a fallacy in this reasoning.

The amending Act of 1976, renders the cost of this economic-reforms brought about with the objects of Article 39(b) in view an affordable one in terms of money. Can this be held to have no direct or reasonable nexus with the objects of Article 39(b)? When a legislative enactment is challenged as not conforming to the constitutional mandate "the judicial branch of the Government" it is said "has only one duty—to lay the article of the Constitution which is invoked beside the Statute which is challenged and to decide whether the latter squares with the former". (See: *United States* v. *Butler,* 297 U.S. 1.)

In the financial memorandum appended to the Amending Act of 1976 it is, *inter alia*, stated:

> ". . . . . So far as Maharashtra State is concerned, it is a matter of policy that Maharashtra State Electricity Board is purchasing private Electricity Undertakings as and when their licences expire. This policy will be continued and the Board will take over private undertakings hereafter also as and when their licence periods expire.
>
> Under Section 7A of the Indian Electricity Act, on revocation of the licence as well as on the purchase of the undertaking, the Board or the State Government as the case may be has to pay compensation or purchase price at the market value of the undertaking. In the normal course this market value will be very high. Under the amended Act, the Board or the State Government will be required to pay as compensation or purchase price the depreciated book-value of the undertaking. This will be less than the compensation or purchase price to be paid under the present Act.
>
> Since purchase of an electrical undertaking by the State Government would be a rare possibility the extent of expenditure to Government involved can not be foretold with any amount of accuracy."

19. The community's economic burden for social and economic reform is an integral part of the exercise involved in social and economic change in the ushering in of an egalitarian and eclectic social and economic order in tune with the ethos of the Constitution. The cost—in terms of monetary expenditure—of economic change is a factor integrated with the objects of Article 39(b). The Court must, on matters of economic policy, defer to legislative judgment as conditioned by time and circumstances. The wisdom of social change is, dependant, in some degree, upon trial and error, on the felt needs of the time.

A similar contention was urged in Writ Petition Nos. 457 and 458 of 1972. We have discussed at para 16 of that judgment the inevitability of integrating the costs of social and economic reform—in terms of monetary burden on the State—with the effectuation of the directive principles.

20. We accordingly hold that the provisions of Amending Act of 1976 have a direct and substantial relationship with the objects of Article 39(b) and, therefore, are entitled to the protection of Article 39-C. If the impugned law has such protection, as we indeed hold that it has, all challenges to it on the ground of violation of Articles 14, 19 and 31 must necessarily fail. That apart, even on the merits, many of the contentions are insubstantial. For instance, the grievance that "service-lines" had been omitted from computation of the amount is without merit. That again has been dealt with in para 29 of the Judgment in Writ Petition Nos. 457 and 458 of 1972. Insubstantial, likewise, is the contention that the value of the "goodwill" has been omitted from computation of the amount.

21. So far as the company's cross appeal in CA 243 of 1985 in which the company assails the correctness of the judgment of the High Court to the extent it has gone against the company is concerned, we approve the reasons of the High Court in coming to such conclusions as it did on those aspects. Some of those aspects have, again, been dealt with in our judgments in WP Nos. 457 and 458 of 1972 and Writ Petition Nos. 5, 14 and 15 of 1974.

22. In the result, for the foregoing reasons, Civil Appeal Nos. 4113 of 1985 and 344 of 1985 are allowed, the Judgment dated 20.7.1984 of the High Court under appeal in so far as it has declared certain provisions of the Amending Act, 1976, unconstitutional is set

aside, and the civil petition No. 1115 of 1977 before the High Court dismissed. C.A. No. 243 of 1985 preferred by the company fails and is dismissed. In the circumstances of the cases, we leave the parties to bear and pay their own costs, both here and below. Ordered accordingly. A

S.K.A. Appeals allowed. B