

West Bengal Act VI of 1981

THE BERHAMPORE ELECTRIC SUPPLY COMPANY LIMITED (UNDERTAKING) ACQUISITION ACT, 1981

[28th March, 1981.]

An Act to provide for the acquisition of the electric supply undertaking of the Berhampore Electric Supply Company Limited with a view to ensuring proper functioning of the said electric supply undertaking for public purpose and for matters connected therewith or incidental thereto.

WHEREAS the financial condition of the Berhampore Electric Supply Company Limited is such that it is unable to carry out its functions properly in relation to its electric supply undertaking;

AND WHEREAS it is expedient to provide for the acquisition of the electric supply undertaking of the Berhampore Electric Supply Company Limited with a view to ensuring proper functioning of the said electric supply undertaking for public purpose and for matters connected therewith or incidental thereto;

It is hereby enacted in the Thirty-second Year of the Republic of India, by the Legislature of West Bengal, as follows:—

1. (1) This Act may be called the Berhampore Electric Supply Company Limited (Undertaking) Acquisition Act, 1981.

(2) It shall be deemed to have come into force on the 12th day of February, 1981.

2. In this Act, unless the context otherwise requires,—

(a) "appointed day" means the 12th day of February, 1981; (b) "Board" means the West Bengal State Electricity Board constituted under section 5 of the Electricity (Supply) Act, 1948;

(c) "fixed assets" includes works, spare parts, stores, stocks, instruments, tools, motor and other vehicles, office equipments and furniture;

(d) "licensee" means the holder of the Berhampore Electric Licence, 1928;

(e) "notification" means a notification published in the *Official Gazette*;

(f) "prescribed" means prescribed by rules made under this Act; (g)

"undertaking" means the electric supply undertaking of the Berhampore Electric Supply Company Limited held under the Berhampore Electric Licence, 1928 granted under the Indian Electricity Act, 1910;

For Statement of Objects and Reasons, see *the Constitution Gazette, Extraordinary*, Part IV, dated the 7th March, 1981 (Hill No. 2 of 1981); for proceedings, see the West Bengal Legislative Assembly, see the proceedings of the Legislative Assembly held on the 16th March, 1981.

Short title and commencement.

Definitions.

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(Sections 3, 4.)

(h) words and expressions used but not defined in this Act, and defined in the Indian Electricity Act, 1910 or the Electricity Act, 1948. (Supply) Act, 1948 shall have the meanings respectively assigned to them in that Act.

3. (1) Notwithstanding anything in any other law for the time being in force or in any contract, on and from the appointed day the undertaking shall, by virtue of this Act, stand transferred to, and vest in, the State Government.

(2) The undertaking which stands vested in the State Government by virtue of sub-section (1) shall, immediately after such vesting, stand transferred to, and vested in, the Board.

4. (1) The undertaking which vests under section 3 shall be deemed to include all rights, powers, authorities, privileges, properties, liabilities and obligations as specified below:

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(a) all lands, buildings, works, materials, plants, fixed assets and books, documents and other papers of the licensee in relation to the undertaking; -

(b) all rights, liabilities and obligations of the licensee in relation to the undertaking under hire-purchase agreement, if any, made before the appointed day;

(c) all rights, liabilities and obligations of the licensee in relation to the undertaking under any contract entered into *bona fide* before the appointed day, not being a contract relating to the borrowing or lending of money, or to the employment of staff,

General
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(2) The undertaking which vests under section 3 shall, by force of such vesting, be freed and discharged from any trust, obligation, mortgage, debt, charge and all other incumbrances affecting it, and any attachment, injunction or decree or order of any court restricting the use of such undertaking in any manner shall be deemed to have been withdrawn.

(3) The licence shall be deemed to have terminated on the appointed day and all rights, liabilities and obligations of the licensee under any agreement to supply electricity shall on the appointed day be so devolved on the Board.

(4) It shall be lawful for the Board or any officer or employee of the Board authorised by the Board in this behalf to take possession of the undertaking.

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(Sections 5-7.)

5. (1) For the transfer and vesting of the undertaking under section 3, the Board shall pay to the licensee in the manner provided in section 8 an amount determined as herein provided.

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(7) The gross amount payable to the licensee shall be the market value of the undertaking on the appointed day.

(3) The market value of the undertaking shall be deemed to be the value of all lands, buildings, works, materials, fixed assets and plants of the licensee suitable to, and used by him for, the purpose of the undertaking, other than the service lines or other capital works or any part thereof which have been constructed at the expenses of the consumers, due regard being had to the nature and condition for the time being of such lands, buildings, works, materials, fixed assets and plants and the state of repair (hereof and to the circumstance that they are in such position as to be ready for immediate working and to the suitability of the same for the purpose of the undertaking, but without any addition in respect of compulsory acquisition or of goodwill or of any profits which may be or might have been made from the undertaking or of any similar consideration.

6. Where the Board is of opinion that the licensee has on or after the appointed day disposed of any fixed assets whether by way of sale, exchange, gift, lease or otherwise, or incurred any expenditure, liability or obligation otherwise than in the normal course of events, with a view to benefit, unduly the licensee or some other person or persons and thereby caused loss to the Board as succeeding owner or the undertaking, the Board shall be entitled to deduct from the amount payable to the licensee under this Act an amount which the Board considers to be the loss sustained by the Board:

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Provided that before making such deduction, the licensee shall be given a notice to show cause against such deduction within a period of fifteen days from the date of receipt of such notice.

7. (1) Notwithstanding anything to the contrary contained in any other law for the time being in force, the Board shall be entitled to deduct the following amounts from the gross amount payable to the licensee under this Act:

- (a) the amount, if any, due from the licensee under any mortgage or charge;
- (b) the amount, if any, 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 account from the licensee to the employee employed in the affairs of the undertaking immediately before the appointed day;

Deduction
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(Section 7.)

- (c) the amount, if any, already paid by [he Board to licensee in advance;
- (d) the amount due, if any, including interest [hereon from the licensee to the Board, for energy supplied by the Board before [he appointed day;
- (e) all amounts and arrears of interest, if any, on such amounts due from the licensee to the State Government;
- (f) the amount, if any, which the Board is entitled to deduct under section 6;
- (g) the amount of all loans due from the licensee to any financial institution constituted by or under the authority of the State Government and arrears of interest, if any, on such loans;
- (h) all advances from consumers and prospective consumers and all sums which have been or ought to be set apart to the credit of the consumer's fund, in so far as such advances have not been paid by the licensee to the Board;
- (i) the amount remaining in tariffs and Dividend Control Reserve, Contingencies Reserve, Development Reserve and reserve to consumer's account, in so far as such amount has not been paid by the licensee to the Board;
- (j) the amount, if any, due from the licensee under any debt or obligation:

Provided that before making any deduction under this section the licensee shall be given a notice in show cause against such deduction within a period of fifteen days from the date of receipt of such notice.

(2) The amount referred to in clause (b) of sub-section (1) shall, on adjustment of the amount, if any, due from the employee to the licensee immediately before the appointed day, have preference to all amounts due under clauses (d), (e), (g) and (j) or sub-section (1) and shall be payable out of the amount payable to the licensee under this Act after deduction therefrom of the amount, if any, that may be due from the licensee under clauses (a), (c), (f), (h) and (i) of sub-section (1).

(3) If, however, the amount payable under this Act after deduction therefrom of the amounts, if any, that may be due under clauses (a), (c), (f), (h) and (i) of sub-section (1) falls short wholly or in part of the amount referred to in clause (b) of sub-section (1) on adjustment of the amount, if any, due from the employee to the licensee immediately before the appointed day, the Board shall be liable to pay such amount due to the employee to the extent of such shortage.

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(4) The licensee shall, within such period as may be specified in this behalf by the State Government by notification, submit to the Board a statement containing the following particulars:

- (a) the amount due under different heads of account to each employee from the licensee,
- (b) the amount, if any, due to the licensee from each such employee with reason therefor, and
- (c) the amount due on adjustment to each employee, and shall furnish to each employee a copy of such portion of the statement as relates to such employee.

(5) An employee may, within fifteen days of the receipt of the copy of the statement relating to him, submit in writing his objection thereto to the Board and send a copy of the objection to the licensee.

(6) If no objection is submitted by an employee under sub-section (5), the amount shown on adjustment to be due to him in the statement shall be deemed to be the amount determined to be due to him.

(7) On receiving an objection under sub-section (5), the Board shall give notice to the employee and the licensee of the date fixed for hearing of the objection and, after hearing the employee and the licensee and taking into account the evidence adduced, shall determine the amount due to the employee. If the licensee fails to appear at the hearing, the amount due to the employee shall be determined *ex-parte*. If the employee fails to appear at the hearing the objection shall stand rejected.

(8) If the Board is of opinion on the application of the employee or the licensee or of its own motion that some relevant facts had not been disclosed or considered at the time of determination under sub-section (6) or under sub-section (7) it may review the matter and determine the amount due to the employee.

8. (1) The Board shall determine the net amount payable to the licensee after determining the gross amount payable to the licensee and making therefrom the deductions provided in this Act. amount,

(2) The Board may call for the assistance of such officers and staff of the undertaking as it may deem fit in determining the net amount under sub-section (1).

(3) If any dispute arises in the determination of the net amount payable to the licensee under sub-section (1), the Board shall report the dispute to the State Government and the State Government shall refer the dispute to an Arbitrator to be appointed by the State Government for

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determination of the net amount payable to the licensee. The Arbitrator shall be a person who is or has been a High Court Judge or a District Judge.

(4) The dispute in the determination of the net amount payable to the licensee under sub-section (1) may include any of the following matters:

- (a) Whether any property belonging, or any right, liability or obligation attaching, to the undertaking vests under section 3?
- (b) Whether any fixed asset forms part of the undertaking?
- (c) Whether any hire-purchase agreement or other contract has been entered into *bona fide* or not?
- (d) What was the value of the undertaking on the appointed day?
- (e) What amount, if any, is due from the licensee to the employee under clause (b) of sub-section (1) of section 7 on adjustment of the amount, if any, due from such employee to the licensee immediately before the appointed day?
- (f) What amounts, if any, have to be deducted under this Act from the gross amount payable to the licensee?

(*) The net amount payable to the licensee shall, on determination under sub-section (1) or sub-section (3), as the case may be, be paid by the Board to the licensee as soon as possible.

(6) The net amount referred to in sub-section (5) shall bear interest at the rate of four *per centum per annum* from the appointed day till the date of payment.

(7) When the gross amount payable to the licensee is equal to or less than the total amount to be deducted no payment shall be made to the licensee by the Board.

(8) The determination of the amount due to the employee under sub-section (6) or sub-section (7) or sub-section (8) of section 7 or under sub-section (3) of this section, as the case may be, shall be final and conclusive and shall not be called in question in any court or tribunal or any other authority.

(9) The Board shall, on final determination of the amount due to the employee, pay to him in terms of the provisions of sub-section (2) or sub-section (3), as the case may be, of section 7 the amount so determined to be due to him, if any amount due in any employee remains unpaid, the same shall be deposited by the Board in any branch of the State Bank of India and shall be payable to the employee or his legal representative.

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(Sections 9-12.)

10 Pt' 1940, (10) Subject to the provisions of this section, the provisions of the Arbitration Act, 1940 shall apply to the arbitration under this Act,

9. (1) Where any property forming part of the undertaking has been transferred and vested under section 3, 6

Duty to deliver possession of property etc.

(a) every person in whose possession, custody or control any such property may be, shall forthwith deliver possession thereof to the Board:

(b) any person who, immediately before such transfer and vesting, has in his possession, custody or control any books, documents or oilier papers relating to the undertaking, shall be liable to account to the Board and shall deliver them to the Board or to such person or persons as the Board may authorise in this behalf.

(2) Without prejudice to the other provisions of this section it shall be lawful for the Board to take all necessary steps (or securing possession of all properties which have been transferred and vested under section 3.

10. (1) The persons who have been in employment under the licensee in connection with the affairs of the undertaking immediately before the appointed day shall cease to be in such employment so far as the undertaking is concerned and such persons who were not part-time employees and who have not attained the age of superannuation on the appointed day under the rules framed by the Board shall be appointed afresh on the appointed day by the Board on such remuneration and on such terms and conditions of service as may be fixed by the Board.

Employment of employees of the undertaking.

(2) If any question arises as to whether any person was employed part-time in connection with the affairs of the undertaking immediately before the appointed day, the question shall be referred, within a period of one year from the appointed day, to the State Government and the State Government shall, after giving such person a reasonable opportunity of being heard, decide it in such manner as it thinks fit and the decision of the State Government thereon shall be final.

11. Any employee or the Board authorised by the Board in this behalf by general or special order may, at any time, after giving the licensee reasonable notice, enter upon any land or premises in his possession and make survey, examination or investigation for the purposes of this Act.

12. (1) Any person who

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(a) having in his possession or custody or control any property forming part of the undertaking wrongfully withholds such property from the Board, or

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- (b) wrongfully obtains possession of, or retains, any property forming part of the undertaking which have vested under section 3, or
 - (c) wilfully withholds or fails to furnish to the Board or to any person authorised in this behalf by the Board any books, documents or other papers relating to the undertaking which may be in his possession, custody or control, or
 - (d) fails to deliver to the Board any assets, books of account or other documents in his possession, custody or control relating to the undertaking, or
 - (e) wrongfully removes or destroys any property forming part of the undertaking, or
 - (f) wrongfully uses any property forming part of the undertaking,

shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to ten thousand rupees, or with both:

Provided that the court trying any offence under this section may, at the time of convicting the accused person, order him to deliver up or refund, within a time to be fixed by the court, any property wrongfully withheld or obtained or any document wilfully withheld or not furnished.

(2) No court shall take cognizance of an offence punishable under this section except with the previous sanction of the State Government or an officer authorised by the State Government in his behalf.

13, (1) Where an offence punishable under this Act has been committed by a Company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the Company for the conduct of the business of the Company as well as the Company,

shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any such offence has been committed by a Company and it is proved that the offence has been committed with the consent or the connivance of, or is attributable to any neglect on the part of, any director, manager,

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secretary or other officer of the Company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—ô For the purposes of this section,ô

- (a) "Company" means any body corporate and includes a firm, society or other association of individuals; and
- (b) "director" in relation to
 - (i) a firm, means a partner in the firm,
 - (ii) a society or other association of individuals, means the person who is entrusted, under the rules of the society or other association, with the management of the affairs of the society or other association, as the case may be.

14. No suit, prosecution or other legal proceedings shall lie against the State Government or the Board or any employee of the State Government or of the Board in respect of anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.

Protection of action taken in good faith.

15. The provisions of this Act shall have effect notwithstanding anything to the contrary contained in any law or in any instrument or in any decree or order of any court, tribunal or other authority.

Act to override other laws.

16. If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by order not inconsistent with the provisions of this Act, remove such difficulty.

Power to remove difficulties.

17. (1) The State Government may, by notification, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the matters which may be, or are required to be, prescribed or made by rules.

Power to make rules.

WesiBen. 18. (1) The Berhampore Electric Supply Company Limited Repeal and Ord. II 1981. (Undertaking) Acquisition Ordinance, 1981, is hereby repealed.

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(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been validly done or taken under this Act.