principal appeal fails it would not be necessary to make any effective orders on the rest of the appeals in this group. The said appeals also fail and are dismissed; but there would be no order as to costs.

*Appeals dismissed.*

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*November 13.*

THE OKARA ELECTRIC SUPPLY CO. LTD., AND ANOTHER

*v.*

THE STATE OF PUNJAB AND ANOTHER

(B. P. SINHA, C.J., P. B. GAJENDRAGADKAR, K. SUBBA RAO, K. C. DAS GUPTA and J. C. SHAH, JJ.)

*Constitution—Electricity undertaking—Grant of temporary sanction for supplying energy—Condition imposed for compulsory acquisition of undertaking on payment of compensation—Whether ultra vires—Statute authorising imposition of such condition—Whether infringes fundamental rights—Indian Electricity Act, 1910 (IX of 1910), s. 28(1)—Constitution of India, Arts. 19(1)(f) and Art. 31.*

Section 28(1) of the Indian Electricity Act, 1910 authorised the State Government to grant sanction to a non-licensee to engage in the business of supplying energy on "such conditions in this behalf" as it may fix. By a notification dated May 26, 1948, issued under s. 28(1) the first respondent granted sanction to the first petitioner, to engage in the business of supplying energy to Muktsar. Clause 11 of the notification provided that the Provincial Government shall have the option of acquiring the undertaking at anytime after October 21, 1950, after giving one year's notice and that it shall pay the price of lands, buildings, works, material and plant that may be acquired at the fair market value. On January 3, 1958, the first respondent issued a notice exercising the option given under cl. 11 and intimated to the first petitioner that upon expiry of one year its undertaking shall vest and become the absolute property of the first respondent. On January 4, 1959, the first respondent took possession of the undertaking in pursuance of the notice. The petitioners contended that cl. 11 of the notification was *ultra vires* s. 28 and that if cl. 11 was justified by s. 28 then s. 28 was void as it offended Arts. 19 and 31 of the Constitution.

*Held*, that cl. 11 of the notification was *intra vires* s. 28. A statutory provision which dealt with the grant of sanction to

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a person to engage in the business of supplying energy must, having regard to the special features of the business, necessarily deal with the position which would arise on the termination of the sanction; so it could be assumed that such statutory provision would make adequate provision empowering the State Government to provide for the compulsory acquisition of the assets of the supplier on payment of proper compensation. Though s. 28(1) did not specifically provide for compulsory acquisition on payment of compensation, the expression "such conditions in this behalf" in s. 28(1) in the context would include conditions dealing with the position which would inevitably arise when the business came to an end. The sanction under s. 28 being necessarily temporary it was in the interest of the grantee himself that some provision was made for payment of compensation to him. A condition for acquisition like cl. 11 was, therefore, within the scope of s. 28(1).

*New Orleans Gas Light Co.* v. *Louisiana Light and Heat Producing and Manufacturing Co.* 115 U.S. 650; 29 L. Ed. 516, referred to.

*Held*, further, that s. 28 was valid and did not offend either Art. 19 or Art. 31. The Act could not be challenged on the ground of violating Art. 31(2) as it was an existing law which was saved by clause (5) of the Art. 31. Similarly, it was saved by s. 299(4) of the Government of India Act, 1935, from an attack under s. 299(2). The restrictions imposed by s. 28 of the Act were reasonable restrictions imposed in the interests of the general public within the meaning of Art. 19(5). Such limitations were generally imposed on the business of supplying energy.

ORIGINAL JURISDICTION: Petition No. 19 of 1959.

Petition under Article 32 of the Constitution of India, for enforcement of fundamental rights.

*Veda Vyasa, S. K. Kapur* and *Ganpat Rai*, for the petitioners.

*S. M. Sikri, Advocate-General for the State of Punjab, N. S. Bindra* and *D. Gupta*, for the respondents.

1959. November 13. The Judgment of the Court was delivered by

*Gajendragadkar J.*

GAJENDRAGADKAR J.—The Okara Electric Supply Co. Ltd., which is a Joint Stock Company and Shrimati V. V. Oberoi, one of the principal shareholders of the said company (hereinafter called petitioners 1 and 2 respectively) have filed the present petition against the State of Punjab and the Punjab

State Electricity Board (hereinafter called respondents 1 and 2 respectively) in which they have claimed a writ, order or direction in respect of a notice issued by respondent 1 on January 3, 1958. The petition was presented on January 3, 1959 and it claimed an order or writ restraining the respondents from giving effect to the said notice. It appears that on January 4, 1959, in pursuance of the said impugned notice the respondents took possession of the petitioners' property in question, and so, by an order passed by the learned Chamber Judge the petitioners were allowed to make an additional claim for a writ or order or direction in the nature of *mandamus* directing the respondents to hand over to the petitioners the said property in question. This petition is made on the ground that the impugned notice and action taken by the respondents in pursuance of it are illegal and unauthorised and they affect the petitioners' fundamental rights under Arts. 19 and 31 of the Constitution.

The first petitioner was granted sanction under s. 28 of the Indian Electricity Act, 1910 (9 of 1910) (hereinafter called the Act) authorising it to engage in the business of supplying energy at Muktsar by Government Notification No. 1766-I & C-48/28784 published on May 26, 1948. By virtue of the said sanction the first petitioner has ever since been engaged in the business of supplying electric energy at the said place and for the purpose of its business it has set up an electricity undertaking at considerable cost. On January 3, 1958, the Secretary to respondent 1, P. W. D., Irrigation and Electricity Branches, Chandigarh, issued notice against the first petitioner purporting to exercise the option given to respondent 1 by cl. 11 of the said notification. By this notice the first petitioner was told that respondent 1 had exercised its option under the said clause, and that on the expiry of the period of one year after the receipt of the notice by the first petitioner its undertaking shall vest in and become the absolute property of respondent 1.

The first petitioner has been having bulk supply from P. W. D. Electricity branch of respondent 1, and,

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according to the petition, respondent 1 could not and will not take over the plant and yet has ordered the first petitioner that it cannot sell the plant without permission of respondent 1. The imposition of this condition is wholly illegal and it amounts to an unreasonable restriction on the petitioners' right to carry on business and to hold and dispose of its property.

The petition alleges that cl. 11 of the notification on which the impugned notice is founded is *ultra vires* s. 28 of the Act, and that alternatively, if the inclusion of the said clause in the notification is justified by s. 28 of the Act, s. 28 itself is *ultra vires* since it offends against Arts. 19 and 31 of the Constitution. It is on these allegations that originally the petition claimed an order against the enforcement of the notice and subsequently added the prayer for a writ of *mandamus* directing respondent 1 to restore to the petitioners possession of the property which has been taken over by respondent 1 after the filing of the present petition.

The claim thus made is denied by both the respondents. It is urged that the petitioners cannot challenge the validity of cl. 11 which was accepted by them before the Constitution came into force. It is further urged that the said clause is justified by the provisions of s. 28 of the Act and that both the said clause and s. 28 are *intra vires* and valid. The respondents further alleged that after possession was taken of the property of the first petitioner in exercise of the option under cl. 11 the first petitioner had been repeatedly called upon by the respondents to assist them in making a proper valuation of the assets of the first petitioner taken over by the respondents. In fact an amount of Rs. 60,000 has been paid to the first petitioner in part payment by way of compensation and it has been accepted by it though under protest; but the work of completing the valuation of the total assets has been delayed and hampered by the non-cooperative attitude of the first petitioner.

Thus the first question which falls to be decided on this petition is whether cl. 11 of the notification is

justified by s. 28 of the Act. The notification consists of 14 clauses and it sets out exhaustively the terms and conditions on which sanction had been granted to the first petitioner under s. 28 of the Act. For the purpose of the present petition it would be enough to refer to cl. 11 only. This clause provides that the Provincial Government shall have the option to acquire the undertaking at any time after October 21, 1950, provided firstly that not less than one years' notice in writing of the election to acquire shall be served upon the supplier by the Provincial Government; provided secondly that the generating station shall not form part of the undertaking for the purpose of acquisition if the undertaking is acquired after grid supply from the East Punjab Public Works Department, Electricity Branch, has reached Muktsar; provided thirdly that the price to be paid to the supplier for such lands, buildings, works, materials and plant as may be acquired by the Provincial Government under this clause will be the fair market value at the time of purchase (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) such value to be in case of difference or dispute determined by arbitration in the manner prescribed in s. 52 of the Act; provided fourthly that the Provincial Government shall pay the price of the property acquired under this clause within a period of six months after the price has been determined." Mr. Veda Vyas, for the petitioners, contends that the condition which gives respondent 1 the option to acquire the property of the petitioners is *ultra vires*.

We are concerned with s. 28 as it stood prior to its amendment by Act 32 of 1959. Section 28(1) reads thus:

> "No person, other than a licensee, shall engage in the business of supplying energy except with the previous sanction of the State Government and in accordance with such conditions as the State Government may fix in this behalf, and any agreement to the contrary shall be void."

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The Act which was passed in 1910, to amend the law relating to the supply and use of electrical energy was intended to provide for and regulate the supply of energy by granting licences and so the provisions in respect of licences are dealt with by ss. 3 to 27 in Part II. Part III in which s. 28 occurs deals with the supply of energy by non-licensees. It appears that the Legislature intended to adopt the course of sanctioning the supply of energy by non-licensees as a temporary measure and in areas wherever it was expedient to do so. A person other than a licensee cannot engage in the business of supplying energy except with the previous sanction of the State Government and s. 28(1) authorises the State Government to impose conditions subject to which it proposes to grant sanction. This position is not disputed; but the argument is that the conditions which can be legitimately imposed in granting sanction must be such as would relate to or have bearing on the business of supplying energy. Such conditions "in this behalf", it is urged, cannot include any conditions as to compulsory acquisition of the property of the person to whom sanction is intended to be given. The acquisition of such property does not relate and has no bearing on the business of supplying energy and is in no manner connected with it. It would be competent to the State Government to provide for the area of supply, the aerial lines, the nature of the supply, the limitation of prices to be charged for the supply of energy and the purchase of energy in bulk. These and other similar conditions can be properly regarded as conditions "in behalf of" the business of supplying energy; but the condition of compulsory acquisition of the supplier's property cannot be treated as falling under s. 28(1).

In support of this construction reliance is placed on the provisions of ss. 5 and 6 which specifically deal with the question about the acquisition of the undertaking. Section 3 of the Act provides for the granting of licences and s. 4 for the revocation and amendment of licences. Having provided for the grant, revocation and amendment of the licences s. 5 deals *inter*

*alia* with the question of paying compensation to the licensee whose licence has been revoked. Similary, s. 6 makes appropriate provisions for compensation where the licence of a local authority has been revoked. Section 7 makes a provision for the purchase of an undertaking and lays down the procedure for determining the value of the properties. The petitioners urge that where the Legislature thought it necessary to acquire properties of the licensees either on the revocation or the cancellation of the licences it has made express provisions in that behalf; a similar provision would have been made in respect of persons other than licensees to whom sanction is granted under s. 28 if it was in the contemplation of the Legislature that the properties of such persons may be acquired. Thus presented, the argument no doubt appears to be plausible. *Prima facie* there is some force in the contention that conditions "in this behalf" in the context should mean conditions which are relevant to or connected with the business of supplying energy. In deciding this question, however, it is essential to bear in mind the special nature of the article, viz., energy for the supply of which sanction is granted, and to take into account the scheme of the Act in regard to the conditions which are intended to be imposed on the business of its supply.

In this connection it would not be unreasonable to ascertain how the supply of energy is regulated in England and America. It is clear that the Act is based on the provisions of the English law and it would be useful to inquire whether conditions for the acquisition of the supplier's property were treated as a part of the conditions on which the supplier was allowed to carry on the business of supplying electricity. This aspect is considered by Halsbury under the heading "Acquisition of undertaking by Local Authority". "In Local Authority", it is observed, "within whose jurisdiction the area of supply or any part of it is situated may within six months after the expiration of 42 years or any shorter period specified in the special order from the coming to force of the said

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order . . . by a notice in writing require the undertakers to sell (and thereupon the undertakers must sell to them their undertaking or so much of it as within its jurisdiction) upon terms of paying the then value of all lands, buildings, works, materials and plant of the undertakers suitable to and used by them for the purpose of the undertaking within such jurisdiction such value to be determined by arbitration in case of difference (1)". It would thus appear that where sanction was given to a person for carrying on the business of supplying electricity under a special order, a condition was introduced in the said order itself for the compulsory acquisition of the undertaking on payment of adequate compensation to the person concerned.

Subsequently, after the passing of the Electric Lighting Act, 1909, powers to supply electricity were not granted by provisional orders but a large number of such orders still remained in force; and, as Halsbury has observed, "many of these orders are in a standard form but a number contain special clauses of which the most common is a clause giving special purchase rights to local Authorities. These special orders were confirmed by Acts and contained special clauses for the protection of county bridges, for the breaking up of streets, for the connection of the generating stations and systems of different undertakings and the use of such generating stations in common for the purpose of such undertakings" (2). It is thus clear that where a licence was given to a person to supply electricity it generally included the right of the licensing authority to acquire the licensee's property on terms and conditions included in the licence by the provisional order.

The American lawyers describe the right or privilege to supply electricity as a franchise. This right falls under a class of rights "in public streets which are granted for furtherance of public purposes but which involving as they do the right to use the streets in

(1) Halsbury's "Laws of England", Vol. 12, 2nd Ed., page 597, Art. 1152.

(2) Halsbury's "Laws of England", Vol. 12, 2nd Ed., page 668, footnote (t).

various ways, give rise to a series of questions as between the grantee of the right on the one hand and the municipality or abutting owners on the other" (1). Dillon in "Muncipal Corporations" further observes that "for convenience these rights are described as franchises to use the public streets and highways, and whether correctly or incorrectly denominated franchises, they answer in essential respects to the definition and elements of a franchise from the State". "The business of furnishing water and light", observes the author, "when carried on by a corporation or individual, of necessity involves the use of streets and highways of the municipality; and the right to lay pipes, mains and conduits, and to erect poles and stretch wires therein and to maintain, operate and use them, is a franchise vested in the State, and it can only be exercised by a corporation or individual pursuant to the authority granted by the State"(2).

The question of the purchase of works of companies by municipality is also considered by Dillon: "Where a municipal corporation has granted a franchise to a water or gas company to construct its plant, to use the city streets for pipes and mains, and to furnish water or light to the city and its inhabitants, it has been held that the legislature under special constitutional restrictions was without authority to compel the city to purchase the property or plant of the company if it desired to acquire or construct works of its own; but in the absence of constitutional limitations statutes may be enacted and contracts made which in their effect prevent municipalities from establishing water works of their own until they have at least offered to purchase the works of corporations organised and existing within their limits" (3). The learned author also says that "If a municipality stipulates in a contract with a water or other public service company that it shall have the right to purchase the works of the company at a time and in a

(1) Dillon's "Municipal Corporations", 5th Ed., Vol. III, p. 1905, s. 1210.

(2) Dillon's "Municipal Corporations", 5th Ed., Vol. III, p. 2136-37 s. 1304.

(3) Ibid. p. 2183, s. 1312.

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manner specified, and if such stipulation is inserted in and becomes a part of a grant of the right to use the streets and public places of the municipality for the purpose of laying mains and pipes, the corporation is estopped to deny the authority of the municipality to make and enforce the stipulation" (1).

In *New Orleans Gas Light Co.* v. *Louisiana Light and Heat Producing and Manufacturing Co.* (2), it has been held by the Supreme Court of the United States of America that "the manufacture and distribution of gas by means of pipes, mains and conduits placed under legislative authority in the public ways of a municipality, is not an ordinary business in which everyone may engage as of common right upon terms of equality; but is a franchise, relating to matters of which the public may assume control and, when not forbidden by the organic law of the State, may be granted by the Legislature as a means of accomplishing public objects to whomsoever, and upon what terms, it pleases". In that case the question which arose for decision of the court related to the validity of the constitutional prohibition upon State laws impairing the obligation of contracts but with that aspect of the matter we are not concerned in the present appeal. It thus appears that American lawyers describe the business of supplying energy as well as the business of supplying water and gas as a franchise, and it also appears that in granting licence or sanction to a person to engage in such business, a condition is usually imposed for the compulsory acquisition of the business when the licence or sanction comes to an end.

Let us look at this question from a practical point of view. If a person is granted sanction to engage in the business of supplying energy it is not denied that s. 28(1) would justify the imposition of a time limit on the grant of sanction. If sanction is granted for a specified number of years, and it comes to an end what would happen to the constructions made by the supplier for the purpose of supplying energy? He

(1) Ibid. p. 2187, s. 1312. (2) 115 U.S. 650; 29 L. Ed. 516.

cannot dismantle them because thereby he would cause damage to public property such as streets, and so he cannot take them away. In such a case the Legislature may well provide for the acquisition of such constructions in order to safeguard the interest of the person to whom temporary sanction is granted. Such a provision also serves another public purpose. It guarantees the availability of suitable constructions and works which may be used for the continuance of the supply of electricity by another agency. In other words, the statutory provision which deals with the grant of sanction to a person to engage in the business of supplying energy must, having regard to the special features of the business, necessarily deal with the position which would arise on the termination of the sanction; and so it would not be unreasonable to assume that the statutory provisions which deals with this question would think of making adequate provision empowering the State Government to provide for the compulsory acquisition of the assets of the supplier on payment of proper compensation. It is in the light of this special feature of the business of supplying energy that we must construe s. 28(1) of the Act.

Besides, the provisions of ss. 5, 6 and 7 also afford assistance in the matter. They clearly show that in the case of a licence specific provisions have been made for the acquisition of the undertaking in cases of revocation or cancellation of licences. The reason for thus providing for compulsory acquisition of licensee's undertaking is equally relevant in the case of the sanction with which s. 28(1) deals. It is true that s. 28 does not specifically and expressly provide for compensation as the other sections do; but that must be because recourse to the provisions of Pt. III was intended not to be the rule but only as a temporary measure wherever it was deemed necessary to do so; and so the Legislature left it to the State Government to provide for compulsory acquisition in the light of the guidance given by the provisions contained in ss. 5, 6 and 7.

Let us then look at s. 28(1) in the light of these considerations. It authorises the State Government to

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give sanction to a person to engage in the business of supplying energy on conditions in that behalf. The expression "such conditions in this behalf" in the context should take in conditions dealing with the position which would inevitably arise when the business comes to an end. There is no doubt that the grant of sanction contemplated by s. 28 cannot be permanent. It was always bound to be temporary, issued on an *ad hoc* basis according to the requirement of each case, and when granting sanction for a specified number of years it is in the interest of the grantee himself that some provision should be made for payment of compensation to him in respect of the investment made by him in carrying out the business of supplying energy when otherwise it would be difficult for him to collect his assets in that behalf. That is why we think that the relevant words should not be given a narrow and limited construction for which the petitioners contend. In our opinion, the context requires that the said words should receive a wider and liberal construction. A condition for the acquisition of the property of the petitioners, like cl. 11 would, therefore, fall within the scope of s. 28(1). The challenge to the validity of this condition on the ground that it is *ultra vires* s. 28(1) must accordingly fail.

If s. 28 permits the imposition of such a condition does it violate Art. 19 or Art. 31 of the Constitution? That is the next question which must be considered. It is not seriously disputed that Art. 31(2) on which reliance is placed by the petitioners cannot be of much help to them for Art. 31(5) provides *inter alia* that nothing in cl. (2) shall affect the provisions of any existing law other than the law to which the provisions of cl. (6) applies. It is conceded that cl. (6) does not apply to the Act, so that it follows that Art. 31(2) cannot be invoked to challenge the validity of the Act. Mr. Veda Vyas attempted to contend that the vires of the Act could be challenged if not under Art. 31(2) at least under s. 299(2) of the Government of India Act, 1935; but he realised that he was up against a similar difficulty created by the provisions of s. 299(4) which says that nothing in s. 299 shall affect the provisions

of any law in force at the date of the passing of the Act; and he conceded that in 1910 when the Act was passed the Legislature was competent to pass it and it then suffered from no infirmity. That is why though an attempt was made to press into service Art. 31(2) it was ultimately given up. We need not, therefore, discuss this point any further.

In regard to the attack on s. 28 on the ground that it offends Art. 19(f) or (g) the answer is obvious. The limitations imposed by s. 28 quite clearly are reasonable restrictions and have been imposed in the interests of the general public within the meaning of Art 19(5) of the Constitution. As we have already seen such limitations are generally imposed on the business of supplying energy and their reasonableness cannot be and has in fact not been seriously challenged. Therefore, we have no hesitation in holding that the vires of s. 28 cannot be successfully challenged.

Incidentally we may observe that on the day when the Constitution came into force what vested in the petitioners was the property subject to the liability imposed on it by cl. 11 of the notification; and so, when the Constitution came into force the only rights which the petitioners had in their property in question were rights of a limited character which were subject to the exercise by the State of its election to acquire the said property. In this connection the respondents rely on the decision of this Court in *Director of Endowments, Government of Hyderabad* v. *Akram Ali* (1) and seek to urge that the exercise of the option given to respondent 1 by cl. 11 of the notification cannot be successfully challenged as *ultra vires* under Art. 19 of the Constitution; we do not, however, think it necessary to decide this point because it was fairly conceded before us that if s. 28 is valid and is construed to include a condition like cl. 11 of the notification no other point would survive.

There is one more minor point to which reference may be made. In the petition the validity of the notice given by respondent 1 to the petitioners prohibiting them from dealing with the property was

(1) A.I.R. 1956 S.C. 60.

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challenged; but that is no longer a matter in dispute between the parties since respondent 1 has in substance withdrawn the said notice. This fact, however, would be relevant on the question of costs.

The result is the petition fails but in the circumstances of this case there would be no order as to costs.

*Petition dismissed.*