A TINSUKHIA ELECTRIC SUPPLY CO. LTD.

v.

STATE OF ASSAM AND ORS.

APRIL 13, 1989

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

Constitution of India, 1950: Articles 14, 19, 31-C and 39(b) and (c)—Nationalisation—Acquisition and take over of electric supply companies by State Government—Validity of—Nexus between the legislation and the objectives and principles of nationalisation—Court to look into the real nature of the statute.

C

Indian Electricity Act, 1910/Indian Electricity (Assam Amendment) Act, 1973: Sections 5(2), 6(7) and 7A—Acquisition and take over of electricity supply companies—Constitutional validity of.

D

Tinsukhia and Dibrugarh Electric Supply Undertakings (Acquisition) Act, 1973: Sections 1(3), 2(f), (h), (j), 2(l), 3 to 10, 20 and 23—Constitutional validity of—Acquisition and take over of Tinsukhia Electric Supply Co. Ltd. and Dibrugarh Electric Supply Co. Ltd.—Protection under Article 31-C of the Constitution of India—Payment of compensation—Justiciability of.

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The petitioners—Public Limited Companies—were granted licences under the provisions of the Indian Electricity Act, 1910 for supply of electricity within the respective licensed areas of Tinsukhia and Dibrugarh Municipal Boards.

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The Dibrugarh Company was granted licence in 1928 on certain terms and conditions with an option to the State to purchase the undertaking on the expiry of 50 years and thereafter on the expiry of every subsequent period of twenty years.

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So also, the Tinsukhia company was granted licence in 1954 on certain terms and conditions with an option to the State Government to purchase the undertaking on the expiry of 20 years and thereafter on the expiry of every 20 years.

H **The State Government negotiated with the companies for pur-**

chasing them. The negotiations were going on for several years. On 27.9.1972 the Governor promulgated two ordinances for the compulsory acquisition of the undertakings of the two companies. Subsequently, the ordinances were replaced by the Indian Electricity (Assam Amendment) Act, 1973 and the Tinsukhia & Dibrugarh Electric Supply Undertakings (Acquisition) Act, 1973.

The two legislations, one amending the provisions of Sections 5(2), 6(7) and 7-A of the Indian Electricity Act, 1910 and the other providing for the acquisition of the two undertakings viz., the Tinsukhia and Dibrugarh Electric Supply Undertaking (Acquisition) Act, 1973 were challenged in this Court by the writ-petitioners on several grounds. It was contended that in view of the private negotiations and the exercise of the option to purchase, the legislations were not *bona fide*, but constituted a mere colourable exercise of legislative power and that the real objects of the two legislations have no direct and reasonable nexus to the objects envisaged in Article 39(b) of the Constitution. It was also contended that what was sought to be acquired was not the undertakings of the two companies, but the difference between the market value of the undertakings agreed to by the State Government and the Book-value of the undertakings which the law has substituted by virtue of the amendments made in the Indian Electricity Act, 1910. The Article 31-C protection given to the legislations, and some of the specific provisions of the acquisition law which excluded certain items from the computation of compensation and authorised certain deductions in the amount of compensation have also been challenged.

On behalf of the Respondents, it was contended that electrical energy has been a material source of the community and any legislative measure to nationalise the undertaking fell squarely within the ambit of Article 39(b) and was entitled to Article 31-C protection. It was also asserted that book-value has been a well accepted concept of valuation in accountancy and it cannot be characterised as illusory even if the legislations did not enjoy the protection of Article 31-C.

Dismissing the writ petitions,

HELD: [*R.S. Pathak, CJ, M.N. Venkatachaliah, S. Natarajan and S. Ranganathan, JJ—per Venkatachaliah, J.*]

1.1. The proposition that the legislative declaration of the nexus between the law and the principles in Article 39 is inconclusive and justiciable is well settled. The sequentor is that whenever any immunity

A is claimed for a law under Article 31-C, the Court has the power to examine whether the provisions of the law are basically and essentially necessary for the effectuation of the principles envisaged in Article 39(b) and (c). [539E, F]

1.2. It can, hardly be gain-said that the electrical energy gene-
B rated and distributed by the undertakings of the petitioners constitutes "material resources of the community". The idea of distribution of the material resources of the community in Article 39(b) is not necessarily limited to the idea of what is taken over for distribution amongst the intended beneficiaries. That is one of the modes of "distribution". Nationalisation is another mode. The economic cost of social and
C economic reform is, perhaps, amongst the most vexed problems of social and economic change and constitute the core element in Nationalisation. The need for constitutional immunities for such legislative efforts at social and economic change recognise the otherwise unaffordable economic burden of reforms. It is not possible to divorce the economic considerations or components from the scheme of nationalisa-
D tion with which the former are inextricably integrated. The financial cost of a scheme of nationalisation lies at its very heart and cannot be isolated. Both the provisions relating to the vestiture of the undertakings in the State and those pertaining to the quantification of the "Amount" are integral and inseparable parts of the integral scheme of nationalisation and do not ambit of being considered as distinct provi-
E sions independent of each other. The debate whether nationalisation is by itself to be considered as fulfilling a public purpose or whether the nationalisation should be shown to be justified effectuation of the avowed objectives of such nationalisation—the choice between the pragmatic and the doctrinaire approaches—is concluded and no longer available. [578C, D, E, 579C, D, H, 580A, B, E]

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1.3. The right, title and interest of the licensee in the undertaking does not get transferred to the Board or the State, as the case may be, immediately upon the mere exercise of the option to purchase. The exercise of the option would have no such effect on the licensee's right to carry on his business until the undertaking was actually taken over and
G paid for. The contentions that immediately upon the exercise of the option, *ipso-facto,* the relationship between the parties get transformed into one as between a Debtor and a Creditor and that the interest of the licensee in the undertaking becomes an "actionable-right", or a "chose-in-action" and that no public-purpose could be said to be served by the acquisition of a "chose-in-action" are all out of place in the instant
H case. [582E, 583C]

1.4. The acquisition legislation was brought-forth for securing the principles contained in Article 39(b) of the Constitution and is protected under Article 31-C. The Assam amendment made to the provisions of the Indian Electricity Act, 1910, amending the basis for quantification of the amount payable in the case of a statutory purchase pursuant to the exercise of the option in terms of the licence would apply to and govern cases of statutory-sales and would not assume any immateriality in the instant case. [585E, F]

Kesavananda Bharati **v.** *State of Kerala;* **[1973] Suppl. SCR 1;** *Minerva Mills Ltd.* **v.** *Union of India,* **[1981] 1 SCR 206;** *Sanjeev Coke Mfg. Co.* **v.** *Bharat Coking Coal Ltd.,* **[1983] 1 SCR 1000;** *State of Tamil Nadu* **v.** *L. Abu Kavar Bai,* **AIR 1984 SC 326;** *Akadasi Padhan* **v.** *State of Orissa and Ors.,* **AIR 1963 SC 1047;** *Godra Electricity Co. Ltd. and Anr.* **v.** *The State of Gujarat and Anr.,* **[1975] 2 SCR 42 and** *Madan Mohan Pathak* **v.** *Union of India and Ors.,* **[1978] 2 SCR 334, relied on.**

Fergusan **v.** *Skrupa,* **372 U.S. 726;** *Fazilka Electric Supply Co. Ltd.* **v.** *The Commissioner of Income Tax, Delhi,* **[1962] Suppl. 3 SCR 496 and** *Gujarat Electricity Board* **v.** *Shantilal,* **[1969] 1 SCR 580, referred to.**

Bihar State Electricity Board **v.** *Patna Electricity Supply Co. Ltd.,* **AIR 1982 Cal. 74; distinguished.**

"History of the treatment of choses-in-action by the common law"—by W.S. Holdsworth—Vol. 33—Harvard law Review referred to.

2. It may not be just to deprive a recompence that is just and fair, in all cases. But that is not to say that even under a law which has the protection of Art. 31-A or 31-C, the adequacy, or justness or fairness of the compensation would, yet, be justiciable. Article 31-C is in effect and substance is to 'urban property' of what Article 31-A is to 'agricultural property'. All the same, the concept of "Book-Value" is an accepted accountancy concept of value. It cannot be held to be illusory. Even if the impugned law had no protection of Article 31-C and tests appropriate to and available are applied, in the circumstances of the present case, it cannot be said that the principles envisaged in the acquisition law lead to an "amount" which can be called unreal or illusory. [590C, 592B]

A *Eswari Khetan Sugar Mills* v. *State of U.P.,* [1980] 3 SCR 331; relied on.

Gwalior Rayon v. *Union of India,* [1974] SCR 1 671; referred to.

3. Under the law when a requisition is made by an intending B consumer for electrical-energy, the licensee has an obligation to lay down service-lines. But, according to the provisions the entire cost of service-line is not required to be borne by the licensee. The licensee is entitled to call upon the consumer to pay part of the cost of service-line—which may in a given case amount to a substantial part—in accordance with the provisions in the Schedule to the Electricity Supply Act. While it is true that the expression 'works' in Section 2(h) of the C Indian Railways Act, 1910 includes 'Service-lines', the reason why 'Service-lines' could justifiably be excluded from valuation for purposes of determination of the 'amount', is that the new licensee is to repair and maintain them. [593B, C; 592F, G]

D *Dakor-Umreth Electricity Co. Ltd.* v. *State of Gujarat,* 13 GLR 88; approved.

4. On a reasonable construction, the expressions 'amounts remaining' and 'in so far as such amounts have not been paid over' necessarily exclude any such duplication of the accountability of the E licensee for these 'Reserves'. If any part of the reserves is invested in "fixed assets" and the reserves in the form of such "fixed assets" are taken-over by the Government pursuant to the acquisition, what remains to be accounted for by the licensee is only the 'amounts remaining' in the pertinent accounts. The liability of the licensee for deduction of the 'Reserves' from the 'amount' would arise only if the balance F remaining in those accounts are not paid. [594F, G]

5. As regards the liability of the licensee under Section 11(3) of the Acquisition Act in respect of the amounts payable to employees retrenched by the Government or the 'Board' as the case may be, within one year from the vesting date after the take-over—even if this G question is justiciable—it is not unreasonable or arbitrary as it envisages the continuance of a liability which was, otherwise, substantially that of the licensee. [595F, G, H, 596A, B]

6. Though some of the liabilities arising out of the conduct of the licensees' business prior to vesting are not taken over by Government, H some of those liabilities are, yet, authorised to be deducted from the

amount. The purpose of this provision is too obvious to require any statutory declaration or the obligations that arise in law and are attandant upon these sums coming to the hands of and retained by the Government. Quite obviously, the provision is not intended for an unjust enrichment in the hands of Government. The purpose is obviously to facilitate recovery of certain types of debts owed to public institutions etc., and the deduction is for the benefit of those creditor-institutions. The Government would, plainly, be under a legal obligation to pay the sums so deducted, to the concerned creditors. The provisions of the Statute must be read along, and in consonance, with the general principles of law which import such obligations on the part of the Government and an implied corresponding discharge to the petitioners to the extent of such deductions in their liabilities. There is a resulting statutory-trust in the hands of the Government to pay the sums so deducted to the respective creditors, even in the absence of express provisions in this behalf in the Statute, the general principles of law operate. As a matter of construction it requires to be held that these obligations and consequences follow. [596E, F, G, H, 597A]

7. The Courts strongly lean against any construction which tends to reduce a Statute to a futility. The provision of a Statute must be so construed as to make it effective and operative, on the principle "but *res majis valeat quam periat*". It is, no doubt, true that if a Statute is absolutely vague and its language wholly intractable and absolutely meaningless, the Statute could be declared void for vagueness. This is not in judicial-review by testing the law for arbitrariness or unreasonableness under Article 14; but what a Court of construction, dealing with the language of a Statute, does in order to ascertain from, and accord to, the Statute the meaning and purpose which the legislature intended for it. It is, therefore, the Court's duty to make what it can of the Statute, knowing that the statutes are meant to be operative and not inept and that nothing short of impossibility should allow a Court to declare a Statute unworkable. [597F, G, 598C]

Manchester Ship Canal Co. v. *Manchester Race Course Co.*, [1904] 2 Ch. 352 and *Fawcet Properties* v. *Buckingham County Council*, [1960] 3 All.E.R. 503, referred to.

8. Section 10 of the Acquisition Act enjoins upon the Government to appoint a person having adequate knowledge and experience in matters relating to accounts "to *assess* the net amount payable under the Act by the Government to the licensee after making the deductions mentioned in section 9". Proviso to Sections 8 and 9 envisages prior

notice to be issued to the licensee by the Government to show cause against any deduction proposed to be made under Section 8 or 9, as the case may be, within the period specified in the provisos. Even after the Government so makes such determination of the amounts which, according to it, are deductible from the gross amount, such determination would not be final. The assessment of the net amount payable to the licensee will have to be made by the "Special Officer". It is reasonable to construe that the decision of the Government both under Sections 8 and 9 arrived at, even after giving an opportunity to the lincensee of being heard, would not be final, but the final determination will have to be made by the "Special Officer" appointed under section 10 of the Act. Section 10(1) and (2) of the Act must be so construed as to enable the "Special Officer" to take into account the determination respecting the deduction under Sections 9 and 10 of the Act made by the Government and take the decision of his own in the matter. The power to "assess" the net amount by necessary implication takes within its sweep the power to examine the validity of the determination made by the Government in the matter of deduction from the gross amount. This power to determine and assess the 'net-amount' payable by necessary implication cover matters envisaged in Sections 8 and 9. Though only Section 9 is specifically referred to in sub-sections (1) and (2) of section 10, the language of sub-sections (1) and (2) which enable the Special Officer to "assess" the net amount payable would by necessary implication, attract the power to decide as to the validity and correctness of the deduction to be made under Section 8 as well. So construed, the provisions of Section 10 would furnish a reasonably adequate machinery for the assessment of the "net-amount" payable to the licensee. [598E-H; 599A-E]

9. So far as Arbitration is concerned, even after the decision of the "Special Officer", there is the further arbitral forum to decide disputes in respect of the specific areas in which disputes are rendered arbitrable under Section 20. There is a provision for appointment of a sitting or retired District or High Court Judge as arbitrator under the said section. Hence it cannot be said that there is no proper machinery for resolving the disputes between the Government and the licensee rendering the Acquisition Act unworkable. [599F, G]

Per Mukharji, J. (Concurring)

1. Article 39(b) of the Constitution enjoins that the State in particular should direct its policy towards securing that the ownership and control of the material resources of the community are so distri-

buted as to best subserve the common good and that the operation of the economic system does not result in concentration of wealth and means of production to the common detriment. In order to decide whether a Statute is within Article 31-C, the Court, if necessary, may examine the nature and the character of the legislation and the matter dealt with as to whether there is any nexus between the law and the principles mentioned in Article 39(b) and (c). On such an examination if it appears that there is no such nexus between the legislation and the objectives and the principles mentioned in Article 39(b) and (c), the legislation will not enjoy the protection of Article 31-C. In order to see the real nature of the Statute, if need be, the Court may also tear the veil. [553E-H] A B

Kesavananda Bharati v. *State of Kerala,* [1973] Suppl. SCR 1; relied on. C

Charles Russel v. *The Queen,* [1882] VII AC 829; referred to.

2. Whenever a question is raised that the Parliament or the State Legislature have abused their powers and inserted a declaration in a law for not giving effect to securing the Directive Principles specified in Article 39(b) and (c), the Court can and must necessarily go into that question and decide. If the Court comes to the conclusion that the declaration was merely a pretence and that real purpose of the law is the accomplishment of some object other than to give effect to the policy of the State towards securing the Directive Principles as enjoined by Article 39(b) and (c), the declaration would not debar the Court from striking down any provision therein which violates Articles 14, 19 or 31. In other words, if a law passed ostensibly to give effect to the policy of the State is, in truth and substance, one for accomplishing an unauthorised object, the Court would be entitled to tear the veil created by the declaration and decide according to the nature of the law. The only question open to judicial review under Article 31-C is whether there is a direct and reasonable nexus between the impugned law and the provisions of Article 39(b) and (c). Reasonableness is evidently regarding the nexus and not regarding the law. [554D, E, F, 555B, C] D E F

Kesavananda Bharati v. *State of Kerala,* [1973] Suppl. SCR 1; *Minerva Mills Ltd.* v. *Union of India,* [1981] 1 SCR 206 and *Sanjeev Coke Mfg. Co.* v. *Bharat Coking Coal Ltd. & Anr.,* [1983] 1 SCR 1000, relied on. G

3. It is indisputed that the electric energy generated by the petitioner companies constitutes material resources of the community H

within the scope and meaning of Article 39(b), and having regard to the true nature and the purpose of the legislations, reading the legislations entirely, the legislations have a direct and reasonable nexus with the objective of distributing the material resources so as to subserve the common good. The determination of value therof and the substitution of the book-value in place of market value, are only methods for such acquisition and do not disclose the true nature and character of the legislation, but are incidental provisions thereof. If that is the position then it is incorrect to say that what was acquired, was not the material resources but chose-in-action. The true nature and character of the legislations in question was to acquire the material resources, namely, the electric energy for better supply and distribution. [556D, E, F]

State of Tamil Nadu & Ors. **v.** *L. Abu Kavur Bai & Ors.,* **[1984] 1 SCC 515, relied on.**

Bihar State Electricity Board & Ors. **v.** *Patna Electricity Supply Co. Ltd.,* **AIR 1982 Cal. 74, distinguished.**

4. Having regard to the true nature and character of the legislations in question the legislations are not colourable legislations in the sense that there was no direct and reasonable nexus with Article 31(b) and (c) of the Constitution. [556H]

ORIGINAL JURISDICTION: Writ Petition No. 457 of 1972

(Under Article 32 of the Constitution of India)

Soli J. Sorabji, S. Rangarajan, Harish N. Salve, D.N. Mukharji, Ranjan Kukherjee, Udey K. Lalit, S.K. Nandi and S. Parekh for the Petitioner.

Dr. Shankar Ghosh, G.L. Sanghi, P. Chowdhary, C.S. Vaidyanathan, C.V. Subba Rao, for the Respondents.

Mrs. A.K. Verma for the Intervener.

The following Judgments of the Court were delivered:

SABYASACHI MUKHARJI, J. I agree with Brother Venkatachaliah, that the contentions urged on behalf of the petitioner in support of the challenge to the impugned legislations must fail and the writ petitions must be dismissed. I would, however, like to express my

views only on one aspect of the matter, which is common to this case as well as the writ petition No. 458/72, civil appeal No 4113/85 and writ petition No. 5(N)/74, i.e. the scope of judicial review of legislation where there is declaration in the legislation under Art. 31C of the Constitution. A

In these writ petitions we are concerned with two legislations, namely, the Indian Electricity (Assam Amendment Act, 1973, (Assam Act IX of 1973), and the Tinsukhia & Dibrugarh Electric Supply Undertakings (Acquisition) Act, 1973 (Act X of 1973). The main point which is significant in these writ petitions, is the extent and scope of judicial review of legislation where there is declaration under Art. 31C of the Constitution, which enjoins that no law giving effect to the policy of the State towards securing all or any of the principles laid down, *inter alia*, namely, Articles 38, 39, 39A, 40, 41, 42, 43A, 44 to 48, 48A and 49 to 51 shall be deemed to be void on the ground that those are inconsistent or take away or abridge any of the rights conferred by Article 14 or 19, and further provides that no law containing a declaration that it is for giving effect to such a policy, shall be called in question in any court on the plea that it does not give effect to such a policy. The two legislations in question are covered by the declaration under Article 31C of the Constitution. B C D

The principal question which falls for consideration is, whether that declaration is justiciable and open to judicial review and the extent of that judicial review. Article 39(b) of the Constitution enjoins that the State in particular should direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as to best subserve the common good and that the operation of the economic system does not result in concentration of wealth and means of production to the common detriment. See, in this connection, the observations of Ray J. as the learned Chief Justice then was, in *Kesavananda Bharati* v. *State of Kerala,* [1973] Suppl. SCR 1 at 451-452. Hence, in order to decide whether a Statute is within Article 31C, the Court, if necessary, may examine the nature and the character of legislation and the matter dealt with as to whether there is any nexus between the law and the principles mentioned in Article 39(b) and (c). On such an examination if it appears that there is no such nexus between the legislation and the objectives and the principles mentioned in Article 39(b) & (c), the legislation will not enjoy the protection of Article 31C. In order to see the real nature of the Statute, if need be, the court may also tear the veil. E F G

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A Justice Jaganmohan Reddy in the same decision at page 530 of the report reiterated that a law not attracting Article 31C cannot be protected by a declaration by just mixing it with other laws really falling within Article 31C with those that do not fall under that Article. Hence, in such a case the Court will always be competent to examine the true nature and character of the legislation in the particular B instance and its design and the primary matter dealt with—its object and scope. In this connection, reliance was placed on the observations of the Privy Council in *Charles Russel* v. *The Queen,* [1882] VII AC 829 at 838-840. Justice Palekar in the same decision at page 631 also reiterated that if the court comes to the conclusion that the object of the legislation was merely a pretence and the real object was discrimination or something other than the object specified in Article 39(b) C and (c), Article 31C would not be attracted and the validity of the Statute would have to be tested independently of Article 31C.

Whenever a question is raised that the Parliament or the State legislature have abused their powers and inserted a declaration in a D law for not giving effect to securing the Directive Principles specified in Article 39(b) & (c), the court can and must necessarily go into that question and decide. See the observations of Justice Mathew in *Kesavananda Bharati's* case (supra) at page 855 of the report. If the court comes to the conclusion that the declaration was merely a pretence and that the real purpose of the law is the accomplishment of E some object other than to give effect to the policy of the State towards securing the Directive Principles as enjoined by Article 39(b) & (c), the declaration would not debar the court from striking down any provision therein which violates Articles 14, 19 or 31. In other words, if a law passed ostensibly to give effect to the policy of the State is, in truth and substance, one for accomplishing an unauthorised object, F the Court would be entitled to tear the veil created by the declaration and decide according to the nature of the law. Also see pages 851 & 856 of the report. Justice Beg, as the learned Chief Justice then was, at pages 884-885 of the report reiterated that a colourable piece of legislation with a different object altogether but merely dressed up as a law intended for giving effect to the specified principles would fail to pass G the test laid down by the first part, and the declaration by itself would not preclude a judicial examination of the nexus, so that the courts can still determine whether the law passed is really the one covered by the niche carved out by Article 31C or merely pretends to be so protected by parading under cover of the declaration. Justice Dwivedi at page 934 of the report said that the Court still retains power to determine H whether the law has relevancy to the distribution of the ownership and

control of the material resources of the community and to the operation of the economic system. If the Court finds that the law has no such relevancy, it can declare the law void. The declaration cannot be utilised as a clog to protect law bearing no relationship with the objectives mentioned in the two clauses of Article 39.

With respect, I am inclined to agree with the observations of Justice Chandrachud, as the learned Chief Justice then was, at page 996 of the said report that the declaration under Article 31C does not exclude the jurisdiction of the Court to determine whether the law is for giving effect to the policy of the State towards securing the principles specified in Article 39(b) & (c).

Chief Justice Chandrachud in *Minerva Mills Ltd.* v. *Union of India,* [1981] 1 SCR 206 at 261 observed that the clear intendment of Article 31C is that the power to enquire into the question whether there is a direct and reasonable nexus between the provisions of a law and a Directive Principle can not confer upon the courts the power to sit on judgment over the policy itself of the State. At the highest, courts can, under Article 31C, satisfy themselves as to identity of the law in the sense whether it bears a direct and reasonable nexus with the directive principles. If the court is satisfied as to the existence of such nexus, the inevitable consequence provided for by Article 31C must follow. He recorded that all the 13 Judges in *Kesavananda Bharati's* case (supra) agreed. The only question open to judicial review under Article 31C is whether there is a direct and reasonable nexus between the impugned law and the provisions of Article 39(b) & (c). Reasonableness is evidently regarding the nexus and not regarding the law.

Justice Bhagwati, as the learned Chief Justice then was, reiterated at pages 337-338 of the report that if the Court finds that the law though passed seemingly for giving effect to a Directive Principle is, in pith and substance, one for accomplishing an unauthorised purpose—unauthorised in the sense of not being covered by any Directive Principle, such law would not have the protection of the amended Article 31C, which does not give protection to a law which has merely some remote or tenuous connection with a Directive Principle. What is necessary is that there must be a real and substantial connection and the dominant object of the law must be to give effect to the Directive Principles. Also see the observations of this Court in *Sanjeev Coke Mfg. Co.* v. *Bharat Coking Coal Ltd. & Anr.,* [1983] 1 SCR 1000 at 1020.

A Looked at from this point of view, it cannot be said that the principles of colourable legislation would not be applicable. If it was demonstrated that there was no direct and reasonable nexus between these two impugned laws and the principles as enshrined under Article 31(b) & (c) of the Constitution, then that would have been colourable legislations and would have been bad on that score.
B

It was contended on behalf of the petitioner by Mr. Sorabji as well as Mr. Rangarajan that in order to bye-pass the payment of compensation for acquisition of property of the petitioner in negotiations the device of the impugned Acts was envisaged. In that context, the substitution of the book-value in place of market value was, therefore,
C deprivation of property and is illusory and would amount to taking away of property without compensation.

I do not and cannot agree. It is indisputed that the electric energy generated by the supplier petitioner companies constitutes material resources of the community within the scope and meaning of Article
D 39(b), and having regard to the true nature and the purpose of the legislations, reading the legislations entirely, the object of the legislations have a direct and reasonable nexus with the objective of distributing the material resources so as to subserve the common good. The determination of value thereof and the substitution of the book-value in place of market value, are only methods for such acquisition
E and do not disclose the true nature and character of the legislation, but are incidental provisions thereof. If that is the position then it is incorrect to say that what was acquired, was not the material resources but choses-in-action. The true nature and character of the legislations in question was to acquire the material resources, namely, the electric energy for better supply and distribution. In that view of the matter
F the principles of the decision of the Division Bench of the Calcutta High Court in *Bihar State Electricity Board & Ors.* v. *Patna Electricity Supply Co. Ltd.*, AIR 1982 Cal. 74 would have no scope of application to this case. A Constitution Bench of this Court in *State of Tamil Nadu & Ors.* v. *L. Abu Kavur Bai & Ors.*, [1984] 1 SCC 515 has expressed the view that the Act giving effect to Article 39(b) & (c) is protected if
G a reasonable nexus is established.

In that view of the matter, I agree having regard to the true nature and character of the legislations that the impugned legislations are not colourable legislations in the sense that there was no direct and
H reasonable nexus with Article 31(b) & (c) of the Constitution.

On the other aspects of the matter, I agree with respect, with the conclusion indicated in the judgment of Justice Venkatachaliah. A

VENKATACHALIAH, J. 1. In these two writ petitions invoking Article 32 of the Constitution of India, the Tinsukia Electric Supply Company Limited and the Dibrugarh Electric Supply Company Limited, which are licensees under the Indian Electricity Act 1910 for B the supply of electricity within the areas of the municipal boards of Tinsukhia and Dibrugarh towns respectively, in the State of Assam and the share-holder-Managing Directors of the two companies assail the constitutional validity of the Indian Electricity (Assam Amendment) Act, 1973, and of the Tinsukia and Dibrugarh Electric Supply Undertaking (Acquisition) Act, 1973. By the latter enactments, the undertakings of the two companies were sought to be acquired so as to vest C them in the Government with effect from 27.9.1972.

The petitioners also urge, in the petitions, a challenge to the validity of the Twentyfourth and Twentyfifth Amendments to the Constitution. This part of the petition, in view of the subsequent D pronouncements of this court on these amendments, does not survive.

2. The petitioner-companies are Public Limited Companies registered under the Indian Companies Act, 1913, and are existing companies under the Companies Act 1956 with their registered offices at Tinsukhia and Dibrugarh respectively in the State of Assam. The E two companies, Tinsukhia Electric Supply Company Ltd., and the Dibrugarh Electric Supply Company Ltd.—hereinafter referred to respectively as the 'Tinsukhia Co.' and 'Dibrugarh Co.'—were granted 'licences under the provisions of the Indian Electricity Act, 1910 ('1910 Act' for short) for supply of electricity within the respective licenced areas viz. of the Tinsukhia and Dibrugarh Municipal Boards. The F 'Dibrugarh Company' was granted the 'Dibrugarh Electricity Licence, 1928' on terms and conditions particularised in the grant, incorporating, *inter alia*, an option to the State to purchase the undertaking on the expiration of 50 years from 13.2.1928 the date of commencement of the licence and thereafter on the expiration of every subsequent period of twenty years. G

The Tinsukhia Company was similarly granted the 'Tinsukhia Electricity Licence, 1954', incorporating, *inter-alia*, a condition as to the option exercisable by the State of Assam to purchase the electricity undertaking of the licencee on the expiration of 20 years from 21.7.1954, the date of commencement of the licence, and thereafter on H

A the expiration of every subsequent decennial period.

3. However, by two Ordinances, namely, The Indian Electricity (Assam Amendment) Ordinance, 1972: (Assam Ordinance VII, 1972) and the Tinsukhia & Dibrugarh Electricity Supply Undertakings (Acquisition) ordinance, 1972, (Assam Ordinance VIII of 1972) B promulgated by the Governor in exercise of his legislative powers under Article 213 of the Constitution, the Electricity Supply Undertakings of the two companies were acquired by, and stood vested in, the Government with effect from 23.30 hrs. on 27.9.1972. Possession and control of the two undertakings were, accordingly, taken-over by the Government of Assam that day. The two ordinances were subse- C quently replaced by the two corresponding legislative enactments viz., the Indian Electricity (Assam Amendment) Act, 1973, (Assam Act IX, 1973) and the Tinsukhia & Dibrugarh Electric Supply Undertakings (Acquisition) Act, 1973, (Assam Act, X of 1973).

At the time of filing of the writ petitions the two Ordinances had D not been replaced by the legislative measures. However, after the coming into force of the two legislative enactments, with retrospective effect from the date of promulgation of the earlier ordinances, petitioners sought, and were granted by an order of this Court dated 18.12.1973, leave to amend the petitions so as to direct the challenge against the enactments.

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4. An advertence, though brief, to the factual antecedents leading upto to the promulgation of the Ordinances and to certan earlier steps taken by the State Government to acquire the said undertakings, first by negotiations, and later by exercise of the option to purchase, is necessary in order to put the grounds of challenge in their proper F perspective.

Respondent No. 4 i.e. the Assam State Electricity Board, it would appear, had been expressing its intention to take-over the undertaking of the Tinsukia Co. by private negotiations even from the year 1964. Pursuant to and in implementation of this proposal the G Board had constituted a committee of 3 members for assessing the value of the assets of the Tinsukhia's undertaking. On the valuation so made and the inventories so prepared, the Board, on 27.3.1970, informed the Tinsukia Co. that the Board had approved the valuation of the assets of the undertaking at Rs.30,54,246, excluding, the value of the land, whose value was later estimated at Rs.2,40,000. By letter H dated 4.3.1971, the Chairman of the Assam State Electricity Board

informed Tinsukia Co., that the company should immediately signify and communicate its acceptance of the proposal to transfer the undertaking to the Board at the valuation of Rs.33,00,000. The company, appears to have tarried and did not signify and communicate its immediate and unqualified acceptance of the offer; but appears to have had some counter-proposal in mind and, in the expectation of pursuading the Board to its view, requested the Chairman of the Board to visit Tinsukia for holding further discussions in the matter of valuation of the Undertaking. Thereafter the Chairman along with the officers of the Board visited Tinsukia sometime in June, 1971, and held discussion with the company. The company avers that pursuant to these discussions, the Executive Engineer of the Board was asked by the Chairman to prepare a fresh inventory as on 31.10.1971 in collaboration with the company.

However, the Secretary of the Board sent a communication dated 10.12.1971 to the company to the effect that as the company had not conveyed its concurrence to the offer contained in the Board's letter dated 25.3.1970 the said offer be treated as withdrawn. Thereafter, the Board issued the notice dated 15/23 May 1972 to the company conveying the Board's intention to exercise its option of purchasing the undertaking under Section 6(1) of the 1910 Act read with clause 12(iv) of the licence on the expiration "the term of the licence" and, accordingly, required the company to sell the undertaking to the Board on the expiration of 21.9.1974 when the 20 year period of the licence would come to an end. In response to this notice, the company sent its communication dated 17.8.1972 seeking confirmation of its expectation that the purchase price for the statutory sale would be determined in accordance with the provisions of section 7A of the 1910 Act and that such price would also be tendered to the company on or before the date of taking-over. Nothing further appears to have happened pursuant to this notice to purchase. But, as stated earlier, the two Ordinances were promulgated on 27.9.1972 for the compulsory acquisition of the undertaking of the company.

So far as the Dibrugarh company is concerned, similar negotiations for purchase by private negotiations had been initiated and the Chief Engineer of the Board accompanied by the Finance and Accounts Member of the Board visited Dibrugarh on 27.1.1965 for discussions as to the valuation of the undertaking. Nothing moved in the matter for some years. However, in the communication dated 3.8.1970 addressed by the Secretary to Government 'of Assam, Power (Electricity), Mines and Minerals Department, to the Secretary of the

A Board, it was reiterated that Government had decided that the undertaking of the Dibrugarh Co. should be taken-over by negotiation. While matters remained thus, the company's undertaking was taken over on 27.9.1972 pursuant to the two ordinances promulgated by the Governor.

B 5. We may briefly turn to the provisions of the two enactments which have since replaced the two Ordinances:

The amendments made to Sections 5, 6 and 7A of the Indian Electricity Act, 1910, by the Indian Electricity (Assam Amendment) Act, 1973, are substantial and far-reaching. Section 2 of the Amending Act amended Section 5 of the Principal Act by substituting the expression "the purchase price of the undertaking" in sub-sec. (2) of Section 5 by the expression 'an amount'. Section 3 of the Amending Act which amended sub-Sec. (7) of Section 6 of the Principal Act substituted the words 'the purchase-price' occurring in sub-Sec. (7) of Section 6 by the words "an amount". The amendments brought about by Section 4 of the Amending Act to Section 7-A of the Principal Act were equally substantial. Section 7A of the Principal Act, it may be recalled, provided that where an undertaking of a licensee, not being a local authority, was sold under sub-Sec. (1) of Section 5 the purchase-price of the undertaking shall be the market-value of the undertaking at the time of purchase, or where the undertaking had been delivered before the purchase under sub-Sec. (3) of Sec. 5, at the time of delivery of the undertaking, and that if there was any difference of dispute regarding such purchase price, the same shall be determined by arbitration. But Section 4 of the Amending Act substituted an entirely different provision in the place of the old section 7-A. It substituted "book-value" in place of "market-price". Sections 5(2), 6(7) and 7-A, of the Principal Act after their amendment read thus:

> "Section 5(2): Where an undertaking is sold under sub-section (1) the purchaser shall pay to the licencee an amount in accordance with the provisions of sub-sections (1) and (2) of Section 7-A."

Sub-sec. (7) of Section 6, after the amendment, reads:

> Section 6(7): Where an undertaking is purchased under this section, the purchaser shall pay to the licensee an amount determined in accordance with the provisions of sub-sections (1), (2) and (3) of Section 7A.

Section 7A reads:

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"7-A. Determination of amount payable. (1) where an undertaking of a licensee is sold under sub-section (1) of Sec. 5 or purchased under Sec. 6, the amount payale for the undertaking shall be the book value of the undertaking at the time of purchase or where the undertaking has been B delivered before the purchase under sub-Section (3) of Sec. 5, at the time of delivery of the undertaking.

(2) The book value of an undertaking for the purpose of sub-section (1) shall be deemed to be the depreciated book value as shown in the audited balance-sheet of the C licensee under the law for the time being in force, of all lands, buildings, works, materials and plant of the licensee, suitable to and used by him for the purpose of the undertaking, other than (i) a generating station declared by the licensee not to form part of the undertaking for the purpose of purchase, and (ii) service lines or other capital works or D 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 any profit which may be or might have been made from the undertaking or of any similar consideration.

E

(3) Notwithstanding anything contained in any licence or any instrument, order agreement or law for the time being in force in respect of any additional sum by whatever name may it be called, payable to a licensee for compulsory purchase, the licensee shall be entitled only to a solatium of ten per centum of the book value as deter- F mined under sub-sections (1) and (2) for compulsory purchase of his undertaking under Sec. 6.

(4) No provision of any Act for the time being in force including the other provisions of this Act and of any rules made thereunder or of any instrument including G licence have effect by virtue of any of such Acts or any rule made thereunder, shall, in so far as it is inconsistent with any of the provisions of this section, have any effect."

It is material to point out that sub-section (3) of Section 1 of the Amending Act provides that the Amending Act shall be deemed to H

A have come into force on 27.9.1972, which was the date of promulgation of the earlier Ordinance.

6. We may now notice some of the material provisions of the Acquisition Act i.e. Assam Act X of 1973. Section 1(3) provides that the Act shall be deemed to have come into force on 27.9.1972. Clauses B (f), (h), (j) & (l) of the interpretation-clause (Sec. 2) may be noticed:

2(f) 'Fixed Assets' includes works, spare parts, stores, tools, motor and other vehicles, office equipment and furniture;

2(h): 'Licensee' means the Tinsukia Electric Supply Company Ltd. and/or the Dibrugarh Electric Supply Company Private C Ltd., as the case may be;

2(j): 'Undertaking' means the Tinsukia Electric Supply Undertaking owned and managed by the Tinsukia Electric Supply Company Ltd., and/or the Dibrugarh Electric Supply Under- D taking owned and managed by the Dibrugarh Electric Supply Company Private Ltd., as the case may be;

2(l): 'Works' includes electric supply lines and any lands, buildings, machinery or apparatus required to supply energy and to carry into effect the object of a licence granted under the Electr- E icity Act;

Section 3(2) provides:

3(2): Any notice given under any of the provisions of the Electricity Act or the Electricity Supply Act to the licensee for F the purchase of the undertaking and in pursuance of which notice the undertaking has not been purchased before the commencement of this Act, shall lapse and be of no effect.

Explanation: There shall be no obligation on the part of the Government or the Board to purchase any undertaking in G pursuance of any notice given as aforesaid, nor shall the service of such notice be deemed to prevent the Government from taking any proceeding *de novo* in respect of the undertaking under this Act.

Section 4 provides:

H

4. Vesting date. The Tinsukia and Dibrugarh Electric Sup-

ply Undertakings shall be deemed to be transferred to and shall vest in the Government, on the 27th day of September, 1972, at 11.30 P.M. A

Section 5 provides for the transfer of the undertaking so acquired by Government to the Board.

B

Section 6 provides for the gross amount payable to the licensee.

6. Gross amount payable to Licensee. (1) The gross amount payable to a licensee shall be the aggregate value of the amounts specified below:

C

(i) the book value of all completed works in beneficial use pertaining to the undertaking and taken over by the Government (excluding works paid for by consumers) less depreciation calculated in accordance with Schedule I;

(ii) the book value of all works in progress taken over by the Government, excluding works paid for by consumers or prospective cunsumers; D

(iii) the book value of all stores including spare parts taken over by the Government and in the case of used stores and spare parts, if taken over, such sums as may be decided upon by the Government; E

(iv) the book value of all other fixed assets in use on the vesting date and taken over by the Government less depreciation calculated in accordance with Schedule I;

F

(v) the book value of all plants and equipments existing on the vesting date, if taken over by the Government, but no longer in use owing to wear and tear or to obsolescence, to the extent such value has not been written off in the books of the licensee less depreciation calculated in accordance with Schedule I;

G

(vi) the amount due from consumers in respect of every hire-purchase agreement referred to in Sec. 7(i)(ii) less a sum which bears to the difference between the total amount of the instalments and the original cost of the material or equipment, the same proportion as the amount due bears to the total amount of the instalments; H

A

(vii) any amount paid actually by the licensee in respect of every contract referred to in Section 7(i)(iii).

Explanation—The book value of any fixed asset means its original cost and shall comprise—

B

(i) the purchase price paid by the licensee for the asset, including the cost of delivery and all charges properly incurred in erecting and bringing the asset into beneficial use as shown in the books of the undertaking;

C

(ii) the cost of supervision actually incurred but not exceeding fifteen per cent of the amount referred to in paragraph (i);

Provided that before deciding the amounts under this sub-section, the licensee shall be given an opportunity by the D Government of being heard, after giving him a notice of at least 15 days therefor.

(2) In addition a sum equal to 10 per cent of the amounts assessed under Clauses (i) to (iv) of sub-section (1) shall be paid to the licensee by the Government.

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(3) When any asset is acquired by the licensee after the expiry of the period to which the latest annual accounts relate, the book value of the asset shall be such as may be decided upon by the Government;

F

Provided that before deciding the book value of any such asset, the licensee shall be given an opportunity by the Government of being heard after giving him a notice of at least 15 days therefor.

Section 7 provides:

G

7. Vesting of undertakings. (1) The property, rights, liabilities and obligations specified below in respect of the undertaking shall vest in the Government of the vesting date;

(i) all the fixed assets of the licensee and all the documents H relating to the undertaking;

(ii) all the rights, liabilities, and obligations of the licensee under hire-purchase agreements, if any, for the supply of materials or equipment made *bona fide* before the vesting date;

(iii) all the rights, liabilities and obligations of the licensee under any other contract entered into *bona fide* before the vesting date, not being a contract relating to the borrowing or leading of money, or to the employment of staff.

(2) All the assets specified in sub-Section (1)(i) shall vest in the Government free from any debts, mortgages or similar obligations of the licensee or attaching to the undertaking;

Provided that such debts, mortgages or obligations shall attach to the amount payable under this Act for the assets.

(3) In the case of an undertaking which vests in the Government under this Act, the license granted to it under part II of the Electricity Act shall be deemed to have been terminated on the vesting date and all the rights, liabilities and obligations of the licensee under any agreement to supply electricity entered into before that date shall devolve or shall be deemed to have devolved on the Government;

Provided that where any such agreement is not in conformity with the rates and conditions of supply approved by the Government and in force on the vesting date, the agreement shall be voidable at the option of the Government.

(4) In respect of any undertaking to which Sec. 4 applies, it shall be lawful for the Government or their authorised representative on and after the vesting date, after removing any obstruction that may be or might have been offered, to take possession of the entire undertaking, or as the case may be the fixed assets and of all documents relating to the undertaking which the Government may require for carrying it on.

(5) All the liabilities and obligations, other than those vesting in the Government under sub-Sections (1) and (3), shall continue to be the liabilities and obligations of the licensee, after the vesting date.

Explanation. All liabilities and obligations in respect of

staff, taxes, provident fund, employees' state Insurance, Industrial disputes and all other matters, upto and including the vesting date, shall continue to be the liabilities and obligations of the licensee, after the vesting date.

Section 9 provides:

9. Deductions from the gross amount. The Government shall be entitled to deduct the following sums from the gross amount payable under this Act to a licensee—

(a) the amount, if any, already paid in advance;

(b) the amount if any, specified in Sec. 8;

(c) the amount due, if any, including interest thereon, from the licensee to the Board, for energy supplied by the Board before the vesting date;

(d) all amounts and arrears of interest, if any thereon, due from the licensee to the Government,

(e) the amount, if any, equivalent to the loss sustained by the Government by reason of any property or rights belonging to the undertaking not having been handed over to the Government, the amount of such loss being deemed to be the amount by which the market value of such property or rights exceeds the amount payable therefor under this Act, together with any income which might have been realized by the Government, if the property or rights had been handed over on the vesting date;

(f) the amount of all loans due from the licensee to any financial institutions constituted by or under the authority of the Government and arrears, or interest, if any, thereon;

(g) all sums paid by consumers by way of security deposit and arrears of interest due thereon on the vesting date, in so far as they have not been paid over by the licensee to the Government, less the amounts which according to the books of the licensee are due from the consumers to the licensee for energy supplied by him before that date;

(h) all advances from consumers and prospective consum-

ers, and all sums which have been or ought to be set aside to the credit of the consumers' fund, in so far as such advances or sums have not been paid over by the licensee to the Government;

(i) the amounts remaining in Tariffs and Dividends Control Reserve, Contingencies Reserve and Development Reserve, in so far as such amounts have not been paid over by licensee to the Government;

(j) the amount, if any, as specified in Ss. 11(2) and 11(3):

(k) the amount, if any, relating to debts, mortgages or obligations as mentioned in proviso to sec. 7(2);

Provided that before making any deduction under this section, 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.

Section 10 enables the Government to appoint, by order in writing, a person having adequate knowledge and experience in matters relating to accounts as Special Officer to assess the net amount payable under this Act, after making the deductions enumerated in section 9.

Section 20 provides:

20. Arbitration. (1) Where any dispute arises in respect of any of the matters specified below, it shall be determined by an arbitrator appointed by the Government, who shall be a sitting or retired District or High Court Judge—

(a) whether any property belonging, or any right, liability or obligation attaching to the undertaking, vests in the Government;

(b) whether any fixed asset forms part of the undertaking;

(c) whether any contract or hire-purchase agreement or other contract referred to in SEC. 7(1)(ii) or (iii) has been entered into *bona fide* or not;

(d) whether any agreement to supply electricity entered into by the licensee prior to the vesting date is of the nature referred to in proviso to S. 7(3).

A (2) Subject to the provisions of this section, the provisions of the Arbitration Act, 1940 (Central Act 10 of 1940) shall supply to all arbitrations under this Act.

Section 23 of the Act incorporates a declaration to the effect that the legislation is for giving effect to the policy of the State to secure the B principle of State Policy contained in Article 39(b) of the Constitution of India.

7. The two legislations, one amending the provisions of Sections 5(2) 6(7) and 7-A of the Indian Electricity Act, 1910, and the other providing for the acquisition of the two undertakings are challenged by the petitioner on several grounds, the principal attack, however, being C that the legislations, brought forth, as they were, in the wake of the private-negotiations and the exercise of the option to purchase, are not *bona fide*, but constitute a mere colourable exercise of the legislative power and that, at all events the real objects of the two legislations have no direct and reasonable nexus to the objects envisaged in clause D (b) of Article 39 of the Constitution and that a careful and critical discernment of the context in which the legislation was brought forth would lay bare before the judicial eye that what was sought to be acquired was not the "undertakings" of the two companies but really the difference between the "market-value" of the undertakings which the State has agreed, under the private treaties, to pay and what, in E any event, the State was obliged to pay under the provisions of Section 7A, as it then stood on the one hand and the "Book-Value" of the undertaking, which the law seeks to substitute on the other. If the protective umbrella of Article 31-C is, thus, out of the way, the 'amount' payable under the impugned law, it is urged, would be illusory even on the judicially accepted tests applied to Article 31(2) as it then F stood. The validity of some of the specific provisions of the acquisition law which excluded certain items from valuation and envisaged and authorised certain deductions in the amount are also assailed.

8. These writ petitions were heard along with a batch of writ-petitions, viz, WP Nos. 5, 14, and 15 of 1974, where the constitu-G tionality of an analogous statute of the State of Tamil Nadu was assailed by the companies whose undertakings were similarly sought to be acquired and civil appeal No. 243 of 1985, C.A. 344 of 1985 and C.A. 4113 of 1985 arising out of the Judgment, dated 20.7.1984, of the High Court of Bombay striking down certain amendments to the Indian Electricity Act, 1910, made by the Maharashtra State Legis-H lature in the matter of statutory purchase of some of the private

electricity supply undertakings in the State of Maharashtra. A

The three batches of cases arising from Assam, Tamil Nadu and Maharashtra were heard together as there were certain aspects common to them. However, in view of the distinctiveness and particularities of the facts of the cases and the situational variations even in respect of the legal context in which questions arise for decision, the three batches of cases are disposed of by separate Judgments. The present Judgment disposes of the challenge made to the Assam Legislation. B

9. We have heard Shri Soli J. Sorabji, learned Senior Advocate, and Shri Harish Salve, learned Advocate, for the petitioner in W.P. 457 of 1972 and Sri Rangarajan, learned Senior Advocate for the petitioner in W.P. 458 of 1972 and Dr. Shankar Ghosh, learned Senior Advocate, for the State of Assam and Sri G.L. Sanghi, learned Senior Advocate for the Assam State Electricity Board and its authorities. On the contentions urged at the hearing, the points that fall for consideration in the writ-petitions admit of being formulated thus: C D

(a) That the declaration in Sec. 23 of Assam Act X 1973 is invalid as the impugned Act has no reasonable and direct nexus to the principles in Article 39(b) of the Constitution and is merely a cloak which the law is made to wear to undo the legitimate obligations arising out of the intended statutory-sale of the undertakings and, accordingly, Article 31-C is not attracted. E

That, at all events, not every provision of a statute is entitled to the protection of Article 31-C but only those provisions which are basically and essentially necessary for giving effect to the principle in Article 39(b) and that, accordingly, the provisions in the impugned law relating to the determination of the amount do not attract Article 31-C. F

(b) That in effect and substance the law is not one for the acquisition electricity undertakings but is merely one to acquire a 'chose-in-action' and to extinguish the legal rights of the Tinsukhia Co. for the difference between the "market-price" of the undertakings which the State was obliged to pay under the intended statutory-purchase and the "Book-Value" to which the liability is sought to be limited under the impugned legislations. G

(c) That, if the immunity under Article 31-C for the legis- H

A lations is not available, the 'amount' payable in accordance with the provision of the acquiring law is wholly "illusory" and is an attempt to take away a 'fortune for a farthing'.

And accordingly, the law is *ultra-vires* and violative of Article 31(2) of the Constitution (as it then stood). Payment of B "Book-Value" of the assets acquired irrespective of their 'market-value' renders the 'amount' unreal and illusory.

(d) That the exclusion of "service-lines", which are part of the assets of the licensee as from valuation, renders the law unconstitutional and *ultra-vires*.

C (e) That the provision of Section 9(i) for the deduction of the 'Reserves' from the "Amount", in addition to the taking-over of the same in the form of 'fixed assets' and the omission to value the unexpired period of licence are unreasonable and arbitrary.

D (f) That the continued liability of the petitioner-licensee under Section 11(3) for payment to employees retrenched by Government after the vesting-date and the provision for deduction of such sums from the "Amount" payable for the acquisition are arbitrary and unreasonable.

E (g) That while Section 7(5) makes all the liabilities of the licensee, other than those specifically referred to and expressly taken over by Government under the Act, as the continuing liabilities of the licensee, yet some of those liabilities referred to in clauses (c) (d) and (f) of Section 9, are yet made deductible F from the "Amount", without the corresponding express obligation on the part of the Government to hold the sums so deducted in trust for, and for benefit of the concerned creditors and without statutory discharged to the petitioner in that behalf. This is unjust enrichment.

G (h) That there is no machinery envisaged by and set-up under the 'Act' to adjudicate upon and determine either the amounts deductible under clauses (c) (d) and (e) of Section 9 or the "loss" deductible under Section 8. This renders the provisions of the 'Act' intractable and liable to be declared unworkable.

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(i) That Section 20 limits arbitrability only to matters enumerated in clauses (a) to (d) of that section, leaving many other disputes arising under the 'Act' between the Government and the licensee without any machinery for their resolution, also rendering the 'Act' unworkable. A

10. The contentions noticed at (a), (b) and (c) cover amongst them certain overlapping areas. The central attack, however, remains that Assam Act X of 1973 has no reasonable and direct nexus with the effectuation of the principles envisaged in clause (b) of Article 39 of the Constitution and that the relationship of the impugned legislation to the objects of Article 39(b), being merely remote and tenuous, the legislation is a colourable legislation. The contentions are, however, noticed distinctively to make due acknowledgement for the shifts of emphasis in the course of the arguments. B C

In this case the legal and constitutional position has to be examined with reference to the provisions of the Constitution as they stood as in 1972. Article 31C was inserted by the 25th Amendment with effect from 20.4.1972 prior to its more comprehensive expansion to extend its protection to the laws giving effect to "All or any of the provisions laid down in Part IV' brought about by the Constitution (Fortysecond Amendment) 1976. Article 31C gave protection in respect of a law giving effect to the policy of the State towards securing the principles specified in clause (b) or clause (c) of Article 39. Then again, though Article 31 had not, by then, been deleted, its content had been cut-down so much, so that even under a law providing for acquisition of property which did not have the protection of 31C the adequacy of the "Amount" determined was not justiciable and all that was necessary was that it should not be unreal or illusory. By then the Constitution had done away with the idea of a Just-equivalent or full idemnification principle and substituted therefore the idea of an "Amount" and rendered the question of the adequacy or the inadequacy of the amount non-justiciable. D E F

The Indian Constitutional experiments with the 'right to property' offer an interesting illustration of how differences in the interpretation of the fundamental law sometimes conceal—or, perhaps, expose—conflicts of economic idealogies and philosophies. With the right to property conceived of as a fundamental right at the inception of the Constitution, it found so strong an entrenchment that in its pristine vigour it tended to be overly demanding and sought the sacrifice of too many social and economic goals at its alter and made G H

A the economic cost of social and economic change unaffordably prohibitive and the fulfilment of the constitutional ethos of the promise of an egalitarian social order difficult. Inevitably the constitutional process of de-escalation of this right in the constitutional scale of values commenced culminating, ultimately, in the deletion of this right from the fundamental-rights part. Articles 31-A and 31-C were significant B Constitutional milestones in the harnessing and socialisation of the concept of the right to property which, in its laissez-faire trappings, became an unruly horse. Article 31-C in effect and substance is to urban property what Article 31-A is to agricultural-property.

11. The arguments in this case in regard to what, if at all, survives for judicial scrutiny in the matter of the Constitutional-tests of C the validity, under Article 31(2) of the 'amount' if the law has the protection of Article 31C, were marked by a forensic resourcefulness aimed at a resuscitation and re-kindling of the relics and embers of old and hard fought—but lost—legal battles. Sri Rangarajan, learned Senior Advocate, relying upon the construction suggested by him of D certain observations of Chandrachud, J. in the *Keshavananda* case (1973 SCR Suppl 1) and certain observations of Fazl Ali J. in *State of Tamil Nadu* v. *Abu Kavur Bai,* AIR 1984 SC 326 strenuously, and quite seriously, attempted the exercise that even if a law had the protection of Article 31C, yet the court would be required—when the provision is challenged—to go into the question of the "Amount" E being illusory or the principles for its determination being arbitrary. Learned Counsel further propounded that despite Article 31-C, the burden of proving that the amount is not illusory and principles for its determination not arbitrary is on the State. We may excerpt the substance of the contention from the written-submissions filed by Sri Rangarajan:

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> "..... Therefore, where the law provides for compensation, in spite of the same being protected by Article 31-C the Court can go into the question of the amount being illusory or the principles being arbitrary. Not merely that, the burden of providing that the amount is not illusory G and the principles are not arbitrary, is on the State."

We shall later examine how far this contention is at all available in the light of the authoritative pronouncements of this Court on the effect of Article 31C and whether if a law has such protection, the plenitude of its constitutional immunity would not extend to all attacks H based on Articles 14, 19 and 31 (as it then stood).

We may now examine the contentions seriatim. Contentions (a) and (b) admit of being dealt with together. A

12. *Re: Contentions (a) and (b)*:

Shri Soli J Sorabjee submitted that in the present case, notwithstanding the legislative declaration in Sec. 23 of Assam Act X of 1973, B the question whether there is any real nexus between the legislation and the principles envisaged in Article 39(b) is justiciable and indeed the existence of such nexus or connection is a condition-precedent for the attraction and applicability of Article 31-C. Learned Counsel submitted that in order to decide whether a Statute is within Article 31-C or not, the Court has to examine the nature and character of the C legislation and if upon such scrutiny it appears that there is no nexus between the legislation and the principles in Article 39(b) the legislation must be held to fall outside the protection of Article 31-C. Shri Sorabjee said, stripped of its veils and vestments, the law, would show its real nature as one whose avowed nexus to Article 39(b) is merely a pretence and that its purpose is other than the objects envisaged D in Article 39(b). The validity of the legislation, learned counsel says, would have to be examined independently of the immunity under Article 31C.

The proposition that the legislative declaration of the nexus between the law and the principles in Article 39 is in-conclusive and E justiciable is well settled. Indeed that part of Article 31-C which sought to impart a Constitutional sanctity, conclusiveness and non-justiciability to such legislative declarations was struck-down in the *Keshavanada* case. The sequintor is that whenever any immunity is claimed for a law under Article 31-C, the Court has the power to examine whether the provisions of the law are basically and essentially F necessary for the effectuation of the principles envisaged in Article 39(b) and (c). The observations of Mathew, J. in *Keshvananda* case (1973 SCR Supp 1) may be recalled:

> "..... Whenever a questiion is raised that the Parliament or State Legislatures have abused their power and G inserted a declaration in a law not for giving effect to the State Policy towards securing the directive principles specified in Article 39-B or 39-C, the Court must necessarily go into that question and decide it ....."
>
> (P. 855)

H

A

> "..... If the Court comes to the conclusion that the declaration was merely a pretence and that the real purpose of the law is the accomplishment of some object other than to give effect to the poliy of the State towards securing the directive principles in Article 39(b) and (c) the declaration would not be a bar to the court from striking down any provision therein which violates Article 14, 19 or 31. In other words, if a law passed ostensibly to give effect to the policy of the State is, in truth and substance, one for accomplishing an anauthorised object, the court would be entitled to tear the veil created by the declaration and decide according to the real nature of the law ....."
>
> (P. 855-56)

B

C

Chandrachud, J. observed in the *Keshavananda* case:

> " 'Laws passed under Article 31-C can, in my opinion, be upheld only, and only if, there is a direct and reasonable nexus between the law and the directive policy of the State expressed in Article 39-B or C."
>
> (P. 996)

D

To the same effect are the observations of the learned Chief Justice in *Minerva Mills Ltd.* v. *UOI,* [1981] 1 SCR 206:

E

> "..... the Courts can, under Article 31-C, satisfy themselves as to the identity of the law in the sense whether it bears direct and reasonable nexus with a directive principle."

F

> "The only question open to judicial review under the unamended Article 31-C was whether there is a direct and reasonable nexus between the impugned law and the provisions of Article 39(b) and (c)." (P. 261)
>
> (Emphasis Supplied)

G

In the same case, Bhagwati, J. observed:

> "..... The point that I wish to emphasis is that the amended Article 31-C does not give protection to a law which has merely some remote or tenuous connection with a directive principle."

H

> "..... Even where the dominant object of a law is to give effect to a directive principle it is not every provision of the law which is entitled to claim protection ....."
> (P. 338)

> "..... it is not every provision of a statute which has been enacted with the dominant object of giving effect to a directve principle, that it entitled to protection, but only those provisions of the statute'which are basically and essentially necessary for giving effect to the directive principles are protected under the amended Article 31-C ....."
> (P. 339)
> (Emphasis Supplied)

13. The proposition of Sri Sorabjee, in principle, is, therefore, unexceptionable; but the question remains whether, upon the application of the appropriate tests, the impugned statute fails to measure-up to the requirements of the Constitution to earn the protection under Article 31-C. Learned counsel sought to contend that the Assam State Electricity Board having exercised the option of purchasing the undertaking of the Tinsukia Co., under Sectioin 6(1) of 1910 Act by the statutory notice dated 23.5.1972 requiring the company to sell the undertaking to the Board on the expiration of the period of the licence, the question of any further need to acquire the undertaking for the purpose of effectuating the objects envisaged in Art. 39(b) of the Constitution by the expedience of a separate and independent legislation was, indeed, unreal or non-existent. The real object, therefore, of the enactment of Assam Act X of 1973 it was urged, was not to enact a law for purposes of effectuating the objects envisaged by Article 39(b) of the Constitution which had already been accomplished by the exercise of the option to purchase; but was only to deprive the petitioner of its legitimate entitlements under the statutory-sale. What was sought to be acquired by the impugned law, it is contended, was not the undertaking but the difference between the 'Market-price' and the 'Book-value' which the impugned legislation envisaged. It is urged that the purpose of the impugned law is, therefore, something other than the effectuation of principles in Article 39(b). It is also urged that with the exercise of the option to purchase what remained to be acquired—and what really was sought to be acquired—was a mere actionable-claim or a chose-in-action. It is further urged that, at all events, since not all the provisions of a legislative enactment need necessarily qualify for protection of Article 31-C but only those provisions that have a direct nexus with the principles of Article 39(b), the

A provisions in the impugned legislation touching the determination of the quantum of the "Amount" are not so protected as they are intended merely to inter-dict and extinguish the vested rights of the Tinsukhia Co. under the intended statutory-sale. The object of the legislation, it was urged, was not the legitimate one of securing the objects envisaged in Article 39(b) but a less honourable and less B sanctimonious one of depriving the petitioner of the benefit of the statutory-contract for the sale of the undertaking pursuant to and in terms of the statutory notice dated 23.5.1972. The court, so goes the argument, is entitled to pierce the apparent veil under which the acquiring legislation masquerades as one for securing the object of Article 39(b).

C Dr. Shankar Ghosh and Sri G.L. Sanghi for the State of Assam and the Assam State Electricity Board, the contesting-Respondents, however, say that the Assam Act X, 1973, is entitled to the protection of Article 31-C as, indisputably, Electrical energy is a material resource of the community and any legislative measure to nationalise D the undertaking falls squarely within the ambit of Article 39(b). Any appeal by the petitioner to the doctrine of colourable legislation, they say, is wholly inapposite as, indeed, where, as here, legislative competence is undisputed, any speculation as to the motives of the legislative is impermissible. No *mala-fides* could be attributed to the Legislature. Respondents further submit that on the question of even the possible E 'illusory' nature, let alone the adequacy, of the "Amount" could not be agitated if the law has the protection of Article 31-C. They, however, assert that 'Book-value' is a well accepted accountancy concept of value and could never be characterised as illusory, even if the law did not come under Article 31-C.

F The questions that arise for consideration are, sequentially, whether the electrical-energy generated and supplied by the petitioner-companies is a "material resource of the community" within the meaning of Article 39(b); whether the impugned legislation has a reasonable and direct nexus to the objective of distributing this materials resource so as to subserve the common good and what are G the appropriate tests to ascertain this nexus. The incidental questions that arise on certain specific contentions centre around the effect of the option to purchase the undertaking exercised by the Assam State Electricity Board in the case of Tinsukia Co. and whether immediately upon the exercise of the option the proprietory rights respecting the undertaking of the company get transformed into a mere "actionable-H claim" or "chose in action", as contended for by the petitioners.

Apropos of the contention that, at all events, the provisions pertaining to the "amount" could have no reasonable or direct nexus to the principles envisaged in Article 39(b), but are merely intended to extinguish the legitimate rights of the petitioner-company to receive the price of the undertaking under the 1910 Act, as the law then stood, pursuant to the option exercised by the 'Board', it would, perhaps, be necessary to ascertain the composite-elements that make for a law of nationalisation and whether provisions touching the quantification of the "amount" payable for the acquisition are not an essential and integral part of such law.

On the contention urged by Shri Rangarajan as to what could be said to survive for consideration under Article 31(2), (as it then stood), if the law has the protection of Article 31-C the question that arises is whether anything at all survives for consideration under Article 31. The contention indeed, runs in the teeth of several pronouncements of this Court which lay down that when Article 31-C comes-in, Articles 14, 19 and 31 (the last mentioned article as it then stood) go out. This we will consider under point (c).

14. It is not disputed that the electricity generated and distributed by the undertakings of the petitioner-companies constitute "material resources of the community" for the purpose and within the meaning of Article 39(b).

In *Sanjeev Coke Manufacturing Company* v. *Bharat Coking Coal Ltd.*, [1983] 1 SCR 1000 this Court, referring to what constitute "material resources of the community" and whether resources produced by, or at the command of, private, as distinguished from the State agencies, constitute such resources as the resources of the community, noticed the contention urged in that case thus:

> "..... The submission of Shri A.K. Sen was that neither a coal mine nor a coke oven plant owned by private parties was a 'material resources of the community'. According to the learned counsel they woud become material resources of the community only after they were acquired by the State and not until then. In order to qualify as material resources of the community the ownership of the resources must vest in the community i.e. the State ..... A law providing for acquisition was not a law for distribution ....."
>
> (P. 1022)

A Repelling this argument which suggested a limited concept of "Material resources of the Community" the Court observed:

> ". . . . . We are unable to appreciate the submission of Shri Sen. The expression 'material resources of the community' means all things which are capable of producing
B wealth for the community. There is no warrant for interpreting the expression in so narrow a fashion as suggested by Shri Sen and confine it to public-owned material resources, and exclude private-owned material resources. The expression involves no dichotomy . . . . . "
>
> (P. 1022 & 23)

C It can, therefore, hardly be gain-said that the electrical energy generated and distributed by the undertakings of the petitioner constitutes "material resources of the community".

15. This takes us to the question whether the provisions of the
D impugned Assam Act X 1973 have any reasonable and direct nexus to the principles in Article 39(b) of the Constitution. It is true that if such a relationship is merely remote and tenuous the protection under Article 31-C may not be available. The idea of distribution of the material resources of the community in Article 39(b) is not necessarily limited to the idea of what is taken over for distribution amongst the intended
E beneficiaries. That is one of the modes of "distribution". Nationalisation is another mode. In *State of Tamil Nadu* v. *L. Abu Kavur Bai,* AIR 1984 SC 326 this Court had occasion to refer to this aspect. It was held:

> "In other words, the word 'distribution' does not
F merely mean that property of one should be taken over and distributed to others like land reforms where the lands from the big landlords are taken away and given to landless labourers . . . . . That is only one of the modes of distribution but not the only mode . . . . . "

> G "By nationalising the transport as also the units the vehicles would be able to go the farthest corner of the State and penetrate as deep as possible . . . . . "

> "This would undoubtedly be a distribution for the common good of the people and would be clearly covered
H by clause (b) of Article 39."

On an examination of the scheme of the impugned law the conclusion becomes inescapable that the legislative measure is one of nationalisation of the undertakings and the law is eligible for and entitled to the protection of Article 31-C.

16. It was then contended that not all the provisions of a law can and need be eligible for the protection of Article 31-C and that accordingly, in the present case the provisions as to the quantification of the "amount", which were meant to achieve an oblique motive of interdicting and extinguishing the vested rights of the petitioner-company to receive payment in accordance with the provisions of the 1910 Act, as they then stood, should not have the protection of Article 31-C. We are afraid this contention proceeds on an impermissible dichotomy of the components integral to the idea of nationalisation. The economic cost of social and economic reform is, perhaps, amongst the most vexed problems of social and economic change and constitute the core element in Nationalisation. The need for constitutional immunities for such legislative efforts at social and economic change recognise the otherwise unaffordable economic burden of reforms. The observations of Mathew J. in *Keshavananda* case on the point are worth recalling:

> "If full compensation has to be paid, concentration of wealth in the form of immovable or movable property will be transformed into concentration of wealth in the form of money and how is the objective underlined in Article 39(b) and (c) achieved by the transformation? And will there be enough money in the coffers of the State to pay full compensation?"
>
> ". . . . . I am unable to understand the purpose of substituting the word 'amount' for the word 'compensation' in the sub-Article unless it be to deprive the Court of any yard-stick or norm for determining the adequacy of the amount and the relevancy of the principles fixed by law. I should have thought that this coupled with the express provision precluding the Court from going into the adequacy of the amount fixed or determined should put it beyond any doubt that fixation of the amount or determination of the principle for fixing it is a matter for the Parliament alone and that the Court has no say in the matter." (1973 Supp. SCR 1 at page 846)

It is, therefore, not possible to divorce the economic considera-

A tions or components from the scheme of nationalisation with which the former are inextricably integrated. The financial cost of a scheme of nationalisation lies at its very heart and can not be isolated. Both the provisions relating to the vestiture of the undertakings in the State and those pertaining to the quantification of the "Amount" are integral and inseparable parts of the integral scheme of nationalisation and do B not admit of being considered as distinct provisions independent of each other.

17. The memorandum of the writ petition contains averments as to the efficiency and public-utility of the services rendered by the undertakings and that on the date of the take-over the market value of the Tinsukhia and Dibrugarh undertakings were Rs.55 lakhs and Rs.35 C lakhs respectively and that the undertakings were discharging their obligations to the consumers efficiently and satisfactorily. The case of the petitioners is that there was no justification at all for the nationalisation as the undertakings were efficient and fully catered to the needs of the consumers. It was also averred that it was the Government and D the Board the had come in the way of the expansion envisaged by the undertakings by withholding the requisite permission for the installation of additional capacity for generation of electricity. The Respondents have sought elaborately to traverse these grounds and to justify the measure for nationalisation.

E We are afraid, the debate whether nationalisation is by itself to be considered as fulfilling a public-purpose or whether the nationalisation should be shown to be justified by the actual effectuation of the avowed objectives of such nationalisation—the choice between the pragmatic and the doctrinaire approaches—is concluded and no longer available. In *Akadasi Padhan* v. *State of Orissa and Ors.*, AIR 1963 SC F 1047 this debate on the philosophy of nationalisation is concluded. It was held:

> ". . . . . Broadly speaking, this discussion discloses a difference in approach. To the socialist, nationalisation or State ownership is a matter of principle and its justification G is the general notion of social welfare. To the rationalist, nationalisation or State ownership is a matter of expediency dominated by considerations of economic efficiency and increased output of production . . . . .".

> ". . . . . The amendment made by the Legislature in H Art. 19(6) shows that according to the Legislature, a law

relating to the creation of State monopoly should be presumed to be in the interests of the general public ....." A

"..... In other words, the theory underlying the amendment in so far as it relates to the concept of State monopoly, does not appear to be based on the pragmatic approach, but on the doctrinaire approach which socialism accepts .....". B

Indeed, in the United States of America after the hey-days of the substantive due process, the Supreme Court in 1963 in *Ferguson* v. *Skrupa*, 372 US 726 said:

C

"We refuse to sit as a 'superlegislature to weigh the wisdom of legislation', *and we emphatically refuse to go back to the time when courts used the Due Process Clause 'to strike down state laws, regulatory of business and industrial conditions, because they may be unwise, improvident, or out of harmony with a particular school of thought'* ..... D Whether the legislature takes for its textbook Adam Smith, Herbert Spencer, Lord Keynes, or some other is no concern of ours."

(Emphasis Supplied)

18. Equally untenable is the contention based on the assumption E that immediately upon the exercise of the option to purchase, the proprietory-rights of the Tinsukhia Company in relation to the undertaking stood transformed into, and was crystalised in the form of, a mere actionable-claim or a "chose-in-action" and that, therefore, what was sought to be acquired by the present legislative-measure was merely a "chose-in-action". It was contended that no public purpose is F achieved by the acquisition of a "chose-in-action". This needs examination of the legal character and incidents of the consequences that flow from the exercise of the option to purchase under the 1910 Act. The contention presupposes that contemporaneous with the service of the notice on the licensee, the proprietory-rights of the licensee in relation to the undertaking, proprio-vigore, get transformed into a G mere "chose-in-action". This consequence does not flow from the provisions of 1910 Act. In *Fazilka Electric Supply Company Limited* v. *The Commissioner of Income-Tax, Delhi*, [1962] Supp. 3 SCR 496 this court, referring to the nature of the transaction emerging from the exercise of the option, said:

H

A "It merely provides for an option of purchase to be exercised on the expiration of certain periods agreed to between the parties, and section 10 further provides that in an appropriate case Government may even forego the option. *This section does not provide for a compulsory purchase or compulsory acquisition without reference to* B *and independently of any agreement by the licencee.*" (See Page 505).

(Emphasis Supplied)

In *Gujarat Electricity Board* v. *Shantilal*, [1969] 1 SCR 580 referring to the legal consequences that ensue by a mere exercise of the C option, it was held:

"....that the right *to purchase the undertaking accrues only at the expiration of the period of licence but for exercising that right,* the authority must make its election within the period prescribed in sec. 7(4) and issue a notice D as required by that sub-section ....."

(Emphasis Supplied)

That the right, title and interest of the licensee in the undertaking does not get transferred to the Board or the State, as the case may be, immediately upon the mere exercise of the option to purchase E is further clear from what is implicit in the observations of this Court in *Godra Electricity Company Limited and another* v. *The State of Gujarat and another,* [1975] 2 SCR 42 at page 54. The proposition contended for by the Learned Additional Solicitor General in that case was noticed thus:

F "In support of the contention that when once the notice exercising the option to purchase the undertaking has been served, the licensee has no further right to carry on the business, the learned Additional Solicitor General placed reliance on the decision of this Court in *Kalyan Singh* v. *State of U.P.* ....."

G

This Court held that the exercise of the option would have no such effect on the licensee's right to carry on his business until the undertaking was actually taken over and paid-for. It was held:

"A licensee cannot be told that he has no right to H carry on the business unless a valid purchase is made at the expiry of the period ....."

> ". . . . . Admittedly, the undertaking belonged to the licencee and if delivery of the undertaking is to be taken by the State Electricity Board, the purchase price must be paid before the delivery or, there must be a provision for payment of interest on the purchase price for the period during which payment is withheld. Otherwise, the licence will not cease to have operation and the licensee will be entitled to carry on the business." (See Page 54).

The contentions that immediately upon the exercise of the option, *ipso-facto,* the relationship between the parties get transformed into one as between a Debtor and a Creditor and that the interest of the licensee in the undertaking becomes an "actionable-right", or a "chose-in-action" and that no public-purpose could be said to be served by the acquisition of a "chose-in-action" are all out of place in this case.

19. It is not necessary, therefore, to go into the question whether a "chose-in action" can at all be acquired. Certain observations of this Court in *Madan Mohan Pathak* v. *Union of India and Ors.,* [1978] 3 SCR 334 do suggest that "chose-in-action" could also be acquired. It will also not be necessary to go into the legal concept of a "chose-in-action" in Indian law and its distinctiveness from the principles in English law.

Williams on "Personal-property" refers to "chose-in-action" thus:

> ". . . . . another important distinction exists among personal things. Such things are said to be in possession or in action; or they are called, in law French, choses in possession or choses in action. Choses in possession are movable goods, of which their owner has actual possession and enjoyment, and which he can deliver over to another upon a gift or sale; tangible things, as cattle, clothes, furniture, or the like . . . ."
>
> "The term choses in action appears to have been applied to things, to recover or realise which, if wrongfully withheld, an action must have been brought; things, in respect of which a man had no actual possession or enjoyment, but a mere right enforceable by action. The most important personal things recoverable by action only were

A money due from another, the benefit of a contract and compensation for a wrong; and these have always been the most prominent choses in action, though not the only things to which the term has been applied ....." (see page 29 and 30)

B Indeed, in English law the difficulties in the precise definition of chose-in-action arise out of the fact that the meaning attributed to the expression has been expanded from time to time by judicial decisions and the principles pertaining to the concept did not develop on any logical or scientific basis.

C W.S. Holdsworth also refers to this difficulty in apprehending the precise incidents of the concept of a "chose-in-action":

"It is sometimes difficult to ascertain the sense in which the legislature has used the term 'chose-in-action'—we have seen that Bankruptcy Act affords one illustration, D and, as we can see from the case of *Edwards* v. *Dicard* the modifications introduced by the Courts have some times occasioned a similar difficulty. Some of these difficulties might be perhaps mitigated by a codifying Act, for which there is plenty of material. *But, it is probable that a branch of the law which comes at the meeting place of the law of* E *property and the law of obligation can never be anything but difficult to formulate and apply*."

(Emphasis Supplied)

(See: "The History of the treatment of chose-in-action by the common law":- Vol. 33—Harvard Law F Review 997 at 1030).

20. Petitioners, however, placed strong reliance upon a decision of the Calcutta High Court in *Bihar State Electricity Board* v. *Patna Electricity Supply Co. Ltd.*, AIR 1982 Cal. 74 and in particular on the following observations of the Division Bench of the High Court in G para 22:

"..... The purported acquisition of part of the debt or chose in action by Sections 2(ii) and 3 of the Bihar Act 7 of 1976 with retrospective effect is, therefore, without any public purpose. Sections 2(ii) and 3 also do not provide for H payment of compensation. In the circumstances, it must be

held that Sections 2(ii) and 3 of the Bihar Act 7 of 1976 are *ultra vires* Art. 31(2) of the Constitution." A

It is not necessary to consider the correctness of this pronouncement in view of the circumstance that even to the extent the decision goes it is distinguishable. On 5.1.1973, the Electricity Board exercised its option to purchase the undertaking. On 2.2.1974, the Board paid a B sum of Rs.36,00,000 "on-account" to the licensee. On 6.2.1974, possession was taken. On 2.2.1974, Ordinance 50 of 1974 was promulgated amending Section 7A of the 1910 Act reducing the price payable under Section 7A to the book-value of the assets. This Ordinance was renewed by two successive ordinances No. 83 of 1974 and 123 of 1974. The last ordinance was replace by Bihar Act 15 of 1975. On 10.2.1976, C the Indian Electricity (Bihar Amendment) Act 7 of 1976 was brought into force validating the substitution of Section 6 and 7A, made by Bihar Act 15 of 1975 with retrospective effect from 2.2.1974. The Validating Act sought to affect the rights and obligations of the parties retrospectively. The High Court was persuaded to the view that the purported acquisition, virtually, pertained to the debt or "chose-in- D action" and not the undertaking itself. It is, therefore, not necessary to consider the submissions of the learned counsel for the respondent that it does not lay down the law correctly in as much as the arguments based on Article 31-C were neither advanced nor considered in that case.

E

It requires, therefore, to be held that the impugned legislation viz., Assam Act X, 1973, was broughtforth for securing the principles contained in Article 39(b) of the Constitution and is protected under Article 31-C. The amendment made to the provisions of the Indian Electricity Act, 1910, by Assam Act IX of 1973, amending the basis for quantification of the amount payable in the case of a statutory pur- F chase pursuant to the exercise of the option in terms of the licence would apply to and govern cases of statutory-sales and would not assume any immateriality in this case as the Assam Act X of 1973 is itself—as we have held—a valid piece of legislation.

22. We find, therefore, no substance in the contentions (a) and G (b) urged by the petitioner.

23. *Re. contention (C):*

This pertains to the question whether the principles laid down in the Act for determination of the "amount" payable for the acquisition H

A are so arbitrary as to render the "amount" unreal and merely illusory. This contention would not, in law, be available to the petitioners inasmuch as the law providing for the acquisition has the protection of Article 31-C of the Constitution. The arguments of Shri Soli J. Sorabjee in regard to the alleged "illusory" nature of the "amount" presupposes and proceeds on the premise that the impugned law does B not have the protection of Article 31-C. Now that we have held that Article 31-C is attracted, the argument in regard to the alleged illusory nature of the amount does not survive at all.

24. Shri Rangarajan, however, contended that notwithstanding that a law has the protection of Article 31-C, the question would yet be C justiciable under Article 31(2), as it then stood, if the "amount" is illusory or the principles for its determination arbitrary. To support this, somewhat difficult, proposition Shri Rangarajan relied upon certain observations of Chandrachud, J. in the Keshavananda case; whose import and importance, according to the learned counsel, has not been fully and properly comprehended in subsequent cases. The D passages relied upon are:

> ".... But to say that an amount does not bear reasonable relationship with the market value is a different thing from saying that it bears no such relationship at all, none whatsoever. In the later case the payment becomes E illusory and may come within the ambit of permissible challenge." (See para 2137 at page 2051 of AIR 1973).
>
> "..... Courts would have the powers to question such a law if an amount fixed thereunder is illusory; if the principles, if any are stated, for determining the amount F are wholly irrelevant for fixation of the amount; if the power of compulsory acquisition or requisition is exercised for a collateral purpose; if the law offends Constitutional safeguards other than the one contained in Article 19(1)(f); or if the law is in the nature of a fraud on the Constitution". (See: para 2138 at page 2051 of AIR 1973).

G

These observations, Sri Rangarajan says, were intended to govern even a law which had the protection of Article 31-C. Shri Rangarajan also relied upon certain observations of Fazal Ali, J. in *State of Tamil Nadu* v. *L. Abu Kaur Bai* AIR 1984 SC 326 which say:

H "87. Thus, so far as this aspect of the matter is con-

cerned, two conclusions broadly emerge: A

(1) that in view of the express provisions of Article 31-C which excludes Art. 31(2) also where a property is acquired in public interest for the avowed purpose of giving effect to the principles enshrined in Art. 39(b) and (c), no compensation is necessary and Art. 31(2) is out of the B harm's way, and

(2) that even if the law provides for compensation, the courts cannot go into the details or adequacy of the compensation and *it is sufficient for the State to prove that the compensation was reasonable and not monstrous or illusory so as to shock the conscience of the court."* C

(Emphasis of counsel)

Sri Rangarajan would say that the observations emphasised would show that even if Article 31-C was attracted yet the State should show that compensation was reasonable and not illusory. D

We are afraid, these passages are quoted out of context and, if properly understood, were not intended to support the proposition now propounded by Shri Rangarajan. Indeed in the Keshavananda case itself Chandrachud J. referring to the effect of Article 31-C observed: E

"... In fact article 31C is a logical extension of the principles underlying article 31(4) and (6) and article 31A. ..... The true nature and character of article 31C is that it identifies a class of legislation and exempts it from the operation of articles 14, 19 and 31 ....." F

(1973 supp. SCR 1 at 995)

Khanna J. observed in that case:

Both articles 31A and 31C deal with right to property. Article 31-A deals with certain kinds of property G and its effect is, broadly speaking, to take those kinds of property from the persons who have rights in the said property. The objective of article 31C is to prevent concentration of wealth and means of production and to ensure the distribution of ownership and control of the material resources of the community for the common good. Article H

A 31C is thus essentially an extension of the principle which was accepted in article 31A ....." (page 743)

Beg, J said:

B "Article 31C has two parts. The first part is directed at removing laws passed for giving effect to the policy of the State towards securing the principles specified in clause (b) or clause (c) of Article 39 of the Constitution from the vice of invalidity on the ground that any such law "is inconsistent with or takes away or abridges any of the rights conferred by Articles 14, 19 and 31 of the Constitution." ..... the effect of invalidity for alleged violations of Arti-
C cles 14 or 19 or 31 would vanish so long as the law was really meant to give effect to the principles of Article 39(b) and (c) ....."

In *State of Karnataka* v. *Ranganath Reddy,* [1978] 1 SCR 641 this
D Court had occasion to observe:

"..... For the purpose of deciding the point which falls for consideration in these appeals, it will suffice to say that still *the over-whelming view of the majority of judges in Kesavandanda Bharati's case is that the amount payable for*
E *the acquired property either fixed by the legislature or determined on the basis of the principles engrafted in the law of acquisition cannot be wholly arbitrary and illusory. When we say so we are not taking into account the effect of Article 31-C* inserted in the Constitution by the 25th Amendment (leaving out the invalid part as declared by the majority)."
F (p. 653)

(Emphasis Supplied)

In *Sanjeev Coke Manufacturing Co.* v. *Bharat Coking Coal Company Lt.,* [1983] 1 SCR 1000 this Court said:

G "..... To accept the submission of Shri Sen that a law founded on discrimination is not entitled to the protection of Article 31-C, as such a law can never be said to be to further the Directive Principle affirmed in Art. 39(b), would indeed, be, to use a hackneyed phrase, to put the cart before the horse. If the law made to further the Direc-
H tive Principle is necessarily non-discriminatory or is based

on a reasonable classification, then such law does not need any protection such as that afforded by Art. 31-C. Such law would be valid on its own strength, with no aid from Art. 31-C. To make it a condition precedent that a law seeking the haven of Art. 31-C must be non-discriminatory or based on reasonable classification is to make Art. 31-C meaningless ....."

(p. 1019)

"We are firmly of the opinion that where Art. 31-C comes in Art. 14 goes out ...."

(p. 1021)

What applies to Article 14 would equally apply to Article 31 (as it then stood before its deletion by the Constitution Fortysecond (Amendment) Act, 1978).

In *State of Tamil Nadu* v. *L. Abu Kavur Bai,* AIR 1984 SC 326 on which Shri Rangarajan relied, Fazal Ali J. categorily said:

"It is manifest from a bare reading of the newly added Art. 31-C that any law effectuating the policy of the State in order to secure or comply with the directive principles specified in clauses (b) and (c) of Art. 39 would not be deemed to be void even if it is inconsistent with or violates Articles 14, 19 or 31 ....."

(P. 332)

In the same case Fazal Ali J. further said:

".... If, once the conditions mentioned in Article 31C are fulfilled by the law, no question of compensation arises *because the said Article expressly excludes not only Articles 14, and 19 but also 31* which, by virtue of the 25th amendment, had replaced the word 'amount' for the word 'compensation' in Article 31(2) ....."

(p. 334)
(Emphasis supplied)

Sri Rangarajan cannot, therefore, draw any sustenance from Fazal Ali J. for his argument.

Sri Rangarajan then placed reliance on the following observa-

tions of Krishna Iyer J. in *Gwalior* Rayon v. *UOI*, [1974] SCR 1 671.

> "... the legislature is expected except in exceptional socio-historical setting, to provide just payment for the deprived persons. To exclude judicial review is not to block out the beneficient provisions of Articles 14, 19 and 31."
>
> (p. 695)

But we see nothing in these observations which can lend support to justiciability of an alleged violation of Article 31 by a law protected under Article 31-C. Ideally, perhaps, it may not be just to deprive a recompence that is just and fair, in all cases. But that is not to say that even under a law which has the protection of 31-A or 31-C, the adequacy, or justness or fairness of the compensation would, yet, be justiciable.

The contention of Shri Rangarajan in our opinion, is wholly unsupportable. Indeed, the purpose of Article 31-C is, amongst others, to exclude Article 31, as it then stood. The effect of accepting Sri Rangarajan's contention would be to let in Article 31 by the backdoor, frustrating the very object of Article 31-C and to unsettle the law laid down in a series of authoritative pronouncements of this Court. The contention really, is not available to the petitioners at all.

26. Even if the impugned law did not have the protection of Article 31-C, a hypothesis on which contention (c) is based, the adequacy or inadequacy of the amount is not justiciable. The limitations of the courts' scrutiny explicit in Article 31(2), are referred to by Mathew J. in the Keshavananda case:

> "... the word 'amount' conveys no idea of any norm. It supplies no yard-stick. It furnishes no measuring rod. The neutral word 'amount' was deliberately chosen for the purpose. I am unable to understand the purpose in substituting the word 'amount' for the word 'compensation' in the sub-article unless it be to deprive the Court of any yard stick or norm for determining the adequacy of the amount and the relevancy of the principles fixed by law ....."
>
> (para 1765)

Referring to what might, yet, be open to judicial scrutiny, under

Article 31(b), Shelat and Grower, JJ observed in the Keshavananda case: A

> "But still on the learned Solicitor General's argument, the right to receive the amount continues to be a fundamental right. That cannot be denuded of its identity. The obligation to act on some principle while fixing the B amount arises both from Article 31(2) and from the nature of the legislative power for, there can be no power which permits in a democratic system an arbitrary use of power."

> "But the norm or the principle of fixing or determining the 'amount' will have to be disclosed to the Court. C It will have to be satisfied that the 'amount' has reasonable relationship with the value of the property acquired or requisitioned and one or more of the relevant principles have been applied and further that the 'amount' is neither illusory nor it has been fixed arbitrarily, nor at such a figure that it means virtual deprivation of the right under Article D 31(2). The question of adequacy or inadequacy, however, cannot be gone into."

Justice Chandrachud observed:

> "The specific obligation to pay an 'amount' and in the E alternative the use of the word 'principles' for determination of that amount must mean that the amount fixed or determined to be paid cannot be illusory. If the right to property still finds a place in the Constitution, you cannot mock at the man and ridicule his right. You cannot tell him: 'I will take your fortune for a farthing'." F

27. All the same, the concept of "Book-Value" is an accepted accountancy concept of value. It cannot be held to be illusory.

In *Eswari Khetan Sugar Mills* v. *State of U.P.*, [1980] 3 SCR 331 at page 359 it has been held that even the concept of "written down G value" which is more disadvantageous to the owner than the "Book-value" is not irrelevant:

> "..... This Court has in terms accepted that payment of compensation on the basis of written down value calculated according to the income-tax law for used H

A machinery is not irrelevant as a principle for determining compensation. That principle appears to have been adopted for valuing used machinery though the legislation fixes compensation payable to each undertaking in round sum . . . ".

B 28. Accordingly, even if the impugned law had no protection of Article 31-C and tests appropriate to and available are applied, in the circumstances of this case, it cannot be said that the principles envisaged in the impugned law lead to an "amount" which can be called unreal or illusory. Contention (c) is accordingly held and answered against the petitioners.

C 29. *Re: Contention (d):*

This point is again, available only if the impugned law is outside Article 31-C. The contention that "Service Lines" which are expressly excluded from the valuation do constitute the property of the licensee D and their exclusion from valuation would make the principles for determination of the 'amount' arbitrary does not have much to commend it. Learned-counsel for the petitioner placed reliance on the definition of 'works' in Section 2(n) of the 1910 Act and on the pronouncement of this Court in *Calcutta Electric Supply Corporation* v. *Commissioner of Wealth-tax*, [1972] 1 SCR 159. The question in that E case was whether in the computation of net wealth of the licensee, the "Service-lines" should be included. That was a converse case where the licensee relying upon the statutory provisions of the Electricity Act contended that "Service-lines" were not a part of his wealth. This Court negatived that contention for purposes of assessment to wealth-tax. Learned counsel placed some store by this pronouncement to F contend that the exclusion of this 'wealth' from valuation is arbitrary.

But, in our opinion, the pronouncement relied upon does not advance petitioners' case on the point. While it is true that the expression 'works' in Section 2(n) of the 1910 Act includes 'Service-lines', the reason why 'Service-lines' could justifiably be excluded from valuation G for purposes of determination of the 'amount' is indicated in page 166 of the report:

"It is true that in view of Sec. 7(A)(2) of the Electricity Act, in computing the market value of the undertaking sold under sub-section (1) of section 5 of that Act the value H of service lines which had been constructed at the expense

> of the consumers will not be taken into consideration. The reason for this provision is obvious. It will be the duty of the new licensee to not only maintain and repair those lines but also to replace them when they become unservice able."

Under the law when a requisition is made by an intending-consumer for electrical-energy, the licensee has an obligation to lay down Service-lines. But, according to the provisions the entire cost of service-line is not required to be borne by the licensee. The licensee is entitled to call upon the consumer to pay part of the cost of service-line—which may in a given case amount to a substantial part—in accordance with the provisions in the Schedule to the Electricity Supply Act.

Dealing with a similar provision the Gujarat High Court in *Dakor-Umreth Electricity Company Ltd.* v. *State of Gujarat*, (13 Gujarat Law Reporter 88 at page 106) held:

> "..... The question is whether the exclusion of such service lines from the valuation can be said to have rendered the principle of compensation irrelevant or inappropriate. We do not think so ..... The petitioner is not constituted the owner of these service lines for all purposes. More-over, even after the purchase, these service lines would continue to be utilised for supplying electrical energy to the consumers who paid for them. It would be most inequitable in these circumstances to provide for payment of compensation to the petitioner for these service lines. There is no reason in logic or principle why the petitioner should be allowed to make unjust and undeserved profit from transfer of these service lines for which it has paid nothing and which are not the product of its own labour ....."

This reasoning, if we may say so with respect, is sound and should be accepted. Contention (d) is, therefore, insubstantial and is answered against the petitioners.

30. *Re: Contention (e)*:

The apprehensions of the petitioners on this point is that while under Section 9(1)(i) of the impugned Act X of 1973, Government

would be entitled to deduct from the 'amount' such sums as remain in the "Tariffs and Devidend Control Reserve", "Continency-Reserve" and the "Development Reserve", in so far as such amounts have not been paid over by the licensees to the Government, the provision, however, does not take into account and provide for cases where such reserves are invested in 'fixed assets' and as such "fixed assets" vest in the Government under the Acquisition. There would, therefore, it is urged be, a duplication of the liability of the licensee on this score, in the sense that while the "Reserves" in the form of fixed-assets vest in the Government, the licensee is still exposed to the liability for the deduction of the amount shown in the accounts. Section 9(1)(i) provides:

> "Deductions from the Gross amount: The Government shall be entitled to deduct the following sums from the gross amount payable under this Act to the licensee.
>
> (a)
> (to)
> (h) Omitted as unnecessary
>
> (i) The amounts remaining in tariffs and dividends control reserve, contingencies reserve and development reserve, in so far as such amounts have not been paid over by licensee to the Government;
>
> (j)
> (k) Omitted as unnecessary

On a reasonable construction, the expressions 'amounts remaining' and 'in so far as such amounts have not been paid over' necessarily exclude any such duplication of the accountability of the licensee for these 'Reserves'. If any part of the reserves is invested in "fixed assets" and the reserves in the form of such "fixed assets" are taken-over by the Government pursuant to the acquisition, what remains to be accounted for by the licensee is only the 'amounts remaining' in the pertinent accounts. The liability of the licensee for deduction of the 'Reserves' from the 'amount' would arise only if the balance remaining in those accounts are not paid. Indeed, Dr. Shankar Ghosh, learned counsel for the State of Assam, submitted that this is the correct interpretation to be placed on Section 9(1)(i) of the Act. With this construction of the provision, the contention of the petitioner-company on this point, does not survive.

31. The other contention raised under this point is that the property of the licensees represented by the unexpired portion of the licence has not been taken into account in computing the amount payable for the acquisition. As already indicated, the law having the protection of Article 31C the contention is not available at all.

Section 7(3) of the impugned Act provides:

> "In the case of an undertaking which vests in the Government under this Act, the licence granted to it under Part II of the Electricity Act shall be deemed to have been terminated on the vesting date and all the rights, liabilities and obligations of the licensee under any agreement to supply electricity entered into before that date shall devolve or shall be deemed to have devolved on the Government:
>
> Provided that where any such agreement is not in conformity with the rates and conditions of supply approved by the Government and in force on the vesting date, the agreement shall be voidable at the option of the Government."

This provision is a part of a scheme of nationalisation and is protected by Article 31C.

32. Contention (e) is accordingly held and answered against the petitioners.

33. *Re: Contention (f)*:

This contention pertains to the liability of the licensee under Section 11(3) of the Act in respect of the amounts payable to employees retrenched by the Government or the 'Board' as the case may be, within one year from the vesting-date after the take-over. Section 11(3) provides that if the Board or the Government, as the case may be, retrenches any employee within a period of one year from the vesting-date, the liability for the amounts payable to the retrenched employee shall be deducted from the 'amount'. This provision, it is contended, imposes a liability which is arbitrary. Dr. Shankar Ghosh submitted that this point is purely academic inasmuch as there has been no such case of retrenchment. Dr. Ghosh further submitted that the provision is not unreasonable because in the case of employees so

A retrenched, the amounts payable would substantially relate to the period during which the employment subsisted under the licensee and that it is not unreasonable to take this circumstances into account in continuing the licensee's liability which would, even otherwise, be substantially be that of the licensee. On a consideration of the matter, we are inclined to the view—even if this question is justiciable—that
B the provision is not unreasonable or arbitrary as it envisages the continuance of a liability which was, otherwise, substantially that of the licensee. There is no merit in this contention (f) either.

34. *Re: Contention (g)*:

C The grievance of the petitioners on this aspect, we are afraid, proceeds on a total misconception of the effect of the statutory provisions. The contention, in substance, is that while certain liabilities of the licensee arising out of its Quondam business-operations are not expressly taken-over by the Government and are declared to be the subsisting and continuing liabilities of the licensee, however, Section
D 9(7) authorises the deduction of some of those very liabilities from the 'amount' without a corresponding statutory obligation on the part of the Government, in turn, to pay the same to the creditors on whose account and for whose benefit the deductions are made and without providing an express statutory discharge to the petitioners in that behalf.

E

There is no substance in this contention. The legislative intention is plain and manifest. Though some of the liabilities arising out of the conduct of the licensees' business prior to vesting are not taken over by Government, some of those liabilities are, yet, authorised to be deducted from the amount. The purpose of this provision is too obvi-
F ous to require any statutory declaration of the obligations that arise in law and are attendant upon these sums coming to the hands of and retained by the Government. Quite obviously, the provision is not intended for an unjust enrichment in the hands of Government. The purpose is obviously to facilitate recovery of certain types of debts owing to public institutions etc., and the deduction is for the benefit of
G those creditor-institutions. Government would, plainly, be under a legal obligation to pay the sums so deducted to the concerned creditors. The provisions of the Statute must be read along, and in consonance, with the general principles of law which import such obligations on the part of the Government and an implied corresponding discharge to the petitioners to the extent of such deductions in their
H liabilities. There is a resulting, statutory-trust in the hands of the Gov-

ernment to pay the sums so deducted to the respective creditors, even in the absence of express provisions in this behalf in the Statute the general principles of law operate. As a matter of construction it requires to be held that these obligations and consequences follow. There is really no justifiable grievance on this score. Contention (g) is, accordingly, held and answered against the petitioners.

35. *Re: Contentions (h) and (i)*:

These two contentions pertain to the machinery envisaged by and set up under the impugned law for resolution of disputes on questions essential for the determination of the amount in accordance with the provisions of the Act. The contention of the petitioners, in substance, is that there is no machinery set up under the Act to determine the amounts under Section 9(c), (d) and (e) and to assess the loss referred to in Section 8.

The other contention on the point is that the arbitration clause is a limited one and is confined only to disputes in four areas specifically enumerated in clauses (a) to (d) of sub-section (1) of Section 20 of the Act.

These lacunae in the Statute, it is contended, render the scheme of the Act for the determination of the 'Amount' unreasonable and the scheme of the 'Act' in relation to the determination of the 'Gross Amount', the deductions to be made therefrom and the assessment of the 'amount' payable for the acquisition, unworkable.

36. The Courts strongly lean against any construction which tends to reduce a Statute to a futility. The provision of a Statute must be so construed as to make it effective and operative, on the principle "*ut res majis valeat quam periat*". It is, no doubt, true that if a Statute is absolutely vague and its language wholly intractable and absolutely meaningless, the Statute could be declared void for vagueness. This is not in judicial-review by testing the law for arbitrariness or unreasonableness under Article 14; but what a Court of construction, dealing with the language of a Statute, does in order to ascertain from, and accord to, the Statute the meaning and purpose which the legislature intended for it. In *Manchester Ship Canal Co.* v. *Manchester Racecourse Co.*, [1904] 2 Ch. 352 Farwell J. said:

> "Unless the words were so absolutely senseless that I could do nothing at all with them, I should be bound to find

A some meaning and not to declare them void for uncertainty." (See page 360 and 361)

In *Fawcett Properties* v. *Buckingham Country Council,* [1960] 3 All ER 503 Lord Denning approving the dictum of Farwell, J. said:

B "But when a Statute has some meaning, even though it is obscure, or several meanings, even though it is little to choose between them, the Courts have to say what meaning the Statute to bear rather than reject it as a nullity." (Vide page 516)

C It is, therefore, the Court's duty to make what it can of the Statute, knowing that the Statutes are meant to be operative and not inept and that nothing short of impossibility should allow a Court to declare a Statute unworkable. In *Whitney* v. *Inland Revenue Commissioner,* [1926] AC 37 Lord Dunedin said:

D "A Statute is designed to be workable, and the interpretation thereof by a Court should be to secure that object, unless crucial omission or clear direction makes that end unattainable." (vide page 52)

37. On consideration of the Statute on hand, it is not possible to E subscribe to the view that the impugned law has not envisaged any machinery for the due ascertainment of the sums referred to in clauses (c), (d) and (e) of Section 9 which require, on such ascertainment and quantification, to be deducted from the gross amount. Section 10 enjoins upon the Government to appoint a person having adequate knowledge and experience in matters reling to accounts "to *assess* the F net amount payable under this Act by the Government to the licensee after making the deductions mentioned in Section 9". Sub-Section (2) of Section 10 provides that the Special Officer may call for the assistance of such Officer and staff of the Government or the Board or the undertaking as he may deem fit "*in assessing the net amount payable*". These provisions, contemplate the determination by the Special G Officer, who is constituted as a statutory authority under the Act, of the net amount payable. The functions of the Special Officer include an examination of the correctness of all the determinations made by the Government in the matter of the deductions, except where Government is statutorily specially constituted as an appellate authority in respect of certain matters under the Act.

H The Proviso to Sections 8 and 9 envisages prior notice to be

issued to the licensee by the Government to show cause against any deduction proposed to be made under Section 8 or 9, as the case may be, within the period specified in the Provisos. Even after the Government so makes such determination of the amounts which, according to it, are deductible from the gross amount, such determination would not be final. The assessment of the net amount payable to the licensee will have to be made by the "Special Officer". It is reasonable to construe that the decision of the Government both under Sections 8 and 9 arrived at, even after giving an opportunity to the licensee of being heard, would not be final, but the final determination will have to be made by the "Special-Officer" appointed under Section 10 of the Act. Section 10(1) and (2) of the Act must be so construed as to enable the "Special-Officer" to take into account the determinations respecting the deduction under Section 9 and 10 of the Act made by the Government and take a decision of his own in the matter. The power to "assess" the net amount by necessary implication takes within its sweep the power to examine the validity of the determination made by the Government in the matter of deductions from the gross amount. This power to determine and assess the 'net-amount' payable by necessary implication cover matters envisaged in Sections 8 and 9. Though only Section 9 is specifically referred to in sub-section (1) of section 10, the language of sub-section (1) and (2) which enable the Special Officer to "assess" the net amount payale would, by necessary implication, attract the power to decide as to the validity and correctness of the deduction to be made under Section 8 as well. So construed, the provisions of Section 10 would furnish a reasonably adequate machinery for the assessment of the "net-amount" payable to licensee.

38. So far as Arbitration is concerned, even after the decision of the "Special-Officer", there is the further Arbitral forum to decide disputes in respect of the specific areas in which disputes are rendered arbitrable under Section 20.

In view of these circumstances, we think the grievance of the petitioners on these points questions are not substantial. The points (h) and (i) are also, accordingly, held and answered against the petitioners.

39. In the result, for the foregoing reasons all the contentions urged by the petitioners in support of their challenge to the impugned legislations fail. The Writ petitions are, accordingly, dismissed; but in the circumstances, there will be no order as to costs.

G.N. Petitions dismissed.