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West Bengal Act V of 1981¹

THE BARAKAR ELECTRIC SUPPLY INSTALLATIONS ACQUISITION ACT, 1981.

[28th March, 1981.]

An Act to provide for the acquisition of the Barakar Electric Supply Installations for public purpose and for matters connected therewith or incidental thereto.

WHEREAS it is expedient to provide for the acquisition of the Barakar Electric Supply Installations for public purpose and for matters connected therewith or incidental thereto;

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

1. (1) This Act may be called the Barakar Electric Supply Installations Acquisition Act, 1981.

Short title
and
commence-
ment.

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

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

Definitions.

- (a) "appointed day" means the 12th day of February, 1981;
- (b) "area of supply" means the area specified as such in the Barakar Electric Licence, 1935;
- (c) "Barakar Electric Licence, 1935" means the licence, cited as the Barakar Electric Licence, 1935, granted to Babu Hariram Agarwalla (since deceased) of Barakar by the State Government under Part II of the Indian Electricity Act, 1910;
- (d) "Barakar Electric Supply Installations" means and includes any feeder, distributing main, service line, transformer station with all its connected machinery and apparatus, plant, workshop, generating station, electric supply line (whether overhead line or underground cable), land, building, machinery, apparatus, fixed assets and any other thing of whatever description acquired, erected or set up and any service line or other capital work or any part thereof constructed to supply energy within the area of supply under the Barakar Electric Licence, 1935 and to carry into effect the objects of such licence and all the books, documents and other papers relating to the said Barakar Electric Supply Installations.

Explanation.—"Generating station" shall have the same meaning as in the Electricity (Supply) Act, 1948;

9 of 1910.

54 of 1948.

¹For Statement of Objects and Reasons, see the *Calcutta Gazette, Extraordinary*, Part IV of the 7th March, 1981, page 574; for proceedings of the West Bengal Legislative Assembly, see the proceedings of meeting of that Assembly held on the 16th March, 1981.

*The Barakar Electric Supply Installations Acquisition
Act, 1981.*

[West Ben. Act

(Sections 3, 4.)

- (e) "Board" means the West Bengal State Electricity Board constituted under section 5 of the Electricity (Supply) Act, 1948; 54 of 1948.
- (f) "fixed assets" includes works, spare parts, stores, stocks, instruments, tools, motor and other vehicles, office equipments and furniture;
- (g) "notification" means a notification published in the *Official Gazette*;
- (h) "owner" means any person having right, title and interest in the Barakar Electric Supply Installations;
- (i) "prescribed" means prescribed by rules made under this Act;
- (j) "property" means the Barakar Electric Supply Installations and the right, title and interest of the owner in relation to such installations;
- (k) words and expressions used but not defined in this Act and defined in the Indian Electricity Act, 1910 or the Electricity (Supply) Act, 1948 shall have the meanings respectively assigned to them in that Act. 9 of 1910.

Barakar
Electric
Supply
Installations
to vest in
the State
Government.

3. (1) On and from the appointed day, the Barakar Electric Supply Installations and the right, title and interest of the owner in relation to such installations shall, by virtue of this Act, stand transferred to, and vest absolutely in, the State Government.

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

General
effect of
vesting.

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

(2) Any person in whose possession or custody or control the property as aforesaid or any part thereof may be, immediately before the appointed day, shall, on the appointed day, deliver the possession of such property or any part thereof, as the case may be, and all books of account, registers and all other documents of whatever nature relating to such property or any part thereof to the Board or to such other person as the Board may authorise in this behalf.

(3) The Board may take, or cause to be taken, such steps as it considers necessary for securing the possession of the property which has vested under section 3.

The Barakar Electric Supply Installations Acquisition
Act, 1981.

3

V of 1981.]

(Sections 5-7.)

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

Payment of
amount.

(2) The gross amount payable to the owner shall be the market value of the property on the appointed day.

(3) The market value of the property shall be deemed to be the value of all lands, buildings, works, materials, fixed assets and plants including others mentioned in clause (d) of section 2 of the owner suitable to, and used by him for, the purpose of the property, other than the service lines or other capital works or any part thereof which have been constructed at the expenses of the consumers, due regard being had to the nature and condition for the time being of such lands, buildings, works, materials, fixed assets and plants including others mentioned in clause (d) of section 2 and the state of repair thereof and to the circumstance that they are in such position as to be ready for immediate working and to the suitability of the same for the purpose of the property, but without any addition in respect of compulsory acquisition or of goodwill or of any profits which may be or might have been made from the property or of any similar consideration.

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

Effect of
transaction
not *bona
fide*.

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

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

Deduction
from the
gross
amount.

- (a) the amount, if any, due from the owner under any mortgage or charge;
- (b) the amount, if any, due on account of salary or wages, leave-salary or leave-wages, bonus, gratuity, retrenchment compensation, contribution to provident fund or on similar or other account from the owner to the employee employed in the affairs of the property immediately before the appointed day;

*The Barakar Electric Supply Installations Acquisition
Act, 1981.*

[West Ben. Act

(Section 7.)

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

Provided that before making any deduction under this section the owner 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.

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

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

*The Barakar Electric Supply Installations Acquisition
Act, 1981.*

5

V of 1981.]

(Section 8.)

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

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

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

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

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

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

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

Manner of
payment of
amount.

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

(3) If any dispute arises in the determination of the net amount payable to the owner under sub-section (1), the Board shall report the dispute to the State Government and the State Government shall refer the dispute to an Arbitrator to be appointed by the State Government for determination of the net amount payable to the owner. The Arbitrator shall be a person who is or has been a High Court Judge or a District Judge.

*The Barakar Electric Supply Installations Acquisition
Act, 1981.*

[West Ben. Act

(Section 8.)

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

- (a) Whether any property belonging, or any right, liability or obligation attaching, to the property vests under section 32.
- (b) Whether any fixed asset forms part of property?
- (c) Whether any hire-purchase agreement or other contract has been entered into *bona fide* or not?
- (d) What was the value of the property on the appointed day?
- (e) What amount, if any, is due from the owner to the employee under clause (b) of sub-section (1) of section 7 on adjustment of the amount, if any, due from such employee to the owner immediately before the appointed day?
- (f) What amounts, if any, have to be deducted under this Act from the gross amount payable to the owner?

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

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

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

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

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

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

V of 1981.]

(Sections 9-12.)

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

Duty to deliver possession of assets, etc.

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

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

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

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

Employment of employees of the property.

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

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

Power of entry.

12. (1) Any person who,—

Penalty.

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

(Section 13.)

- (b) wrongfully obtains possession of, or retains, any asset forming part of the property which has vested under section 3, or
- (c) wilfully withholds or fails to furnish to the Board or to any person authorised in this behalf by the Board any books, documents or other papers relating to the property which may be in his possession, custody or control, or
- (d) fails to deliver to the Board any assets, books of account or other documents in his possession, custody or control relating to the property, or
- (e) wrongfully removes or destroys any assets forming part of the property, or
- (f) wrongfully uses any assets forming part of the property, shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to ten thousand rupees, or with both:

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

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

Offence by
Companies.

13. (1) Where an offence punishable under this Act has been committed by a Company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the Company for the conduct of the business of the Company as well as the Company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

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

(2) Notwithstanding anything contained in sub-section (1), where any such offence has been committed by a Company and it is proved that the offence has been committed with the consent or the connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the Company, such director, manager, secretary or other officer shall be deemed to be guilty, of that offence and shall be liable to be proceeded against and punished accordingly.

*The Barakar Electric Supply Installations Acquisition
Act, 1981.*

9

V of 1981.]

(Sections 14-18.)

Explanation.—For the purposes of this section,—

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

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

Protection of
action taken
in good
faith.

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

Act to
override
other laws.

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

Power to
remove
difficulties.

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

Power to
make rules.

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

18. (1) The Barakar Electric Supply Installation (Acquisition) Ordinance, 1981, is hereby repealed.

Repeal and
savings.

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