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assent. This provision also shows that the declaration made by the Act was intended to be prospective in operation and it would affect lawsmade after the commencement of the Act, and that clearly must mean that if a law had been passed prior to the commencement of the Act and it authorised the imposition of a tax on the sale or purchase of certain commodities its validity cannot be challenged on the ground that the said commodities have been subsequently declared by the Act to be essential for the life of the community. The impugned notification with which we are concerned and the Act under which it has been issued are thus outside the purview of s. 3 of the Act. That in substance is the finding made by the High Court on the second contention raised before it by the appellant. In our opinion, the conclusion of the High Court on this point is right.

In the result the appeals fail and are dismissed with costs.

Appeals dismissed.

THE AHMEDABAD MISCELLANEOUS INDUSTRIAL WORKERS' UNION

v.

THE AHMEDABAD ELECTRICITY CO. LTD.

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July 28.

(K.N. WANCHOO and K.C. DAS GUPTA, JJ.)

Bonus—Payable by electricity company—Depreciation—Mode of calculation—Indian—Income-tax Act (11 of 1922), Rules—Sch. VII—Electricity (Supply) Act, 1948 (54 of 1948).

The respondent, which is an electricity company, contested the claim of the appellant for three months' wages as bonus on the ground that if calculation was made on the Full Bench Formula evolved by the Labour Appellate Tribunal and approved by this Court in the *Associated Cement Companies Ltd.* v. *Its Workmen, (1959)* S. C. R. 925, there would be no surplus available to pay the bonus. The question which arose for decision was whether depreciation should be calculated according to the provisions of Income-tax Act and the

rules framed thereunder or in accordance with the provisions of the Seventh Schedule to the Electricity (Supply) Act, 1948.

Held, that the Income-tax rules should be applied in calculating depreciation under the Full Bench formula in preference to the provisions of the Seventh Schedule to the Electricity (Supply) Act, 1948 even in the cases of electricity companies.

U.P. Electric Supply Company Ltd. v. *Their Workmen*, (*1955*) (2) L. L. J. 431, *Shree Meenakshi Mills Ltd.* v. *The Workmen*, (*1958*) S.C.R. 878 and *Tinnevelly Tuticorin Electric Supply Co.* v. *Its Workmen*, (1960) 3 S.C.R. 68, considered.

The Mill Owners Association v. *Rashtriya Mill Mazdoor Sang, Bombay*, (1950) 2 L. L. J. 1247, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 479 of 1960.

Appeal by special leave from the Award dated August 13, 1959, of the Industrial Court Bombay in Ref. (I.C.) No. 159 of 1957.

C. T. Daru, E. Udayarathnam and *S.S. Shukla*, for the appellant.

D. Vimadalal, J. B. Dadachanji, Revinder Narain and *O. C. Mathur* for the respondent.

1961. July 28. The Judgment of the Court was delivered by

WANCHOO, J.—This is an appeal by special leave in an industrial matter. The appellant is the Ahmedabad Miscellaneous Industrial Workers' Union, and the dispute which went for adjudication before the Industrial Court Bombay was with respect to bonus for the year ending September 1956. The appellant claimed that three months' wages should be awarded as bonus by the respondent, which is the Ahmedabad Electricity Company Limited. The contention of the respondent was that if a calculation was made in accordance with the Full Bench Formula evolved by the Labour Appellate Tribunal and approved

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by this Court in *the Associated Cement Companies Ltd.* v. *Its Workmen* (1), there would be no available surplus from which any bonus could be awarded. The Industrial Court accepted the contention of the respondent and rejected the appellant's claim. The main dispute in the Industrial Court centred on three points namely—

(i) whether depreciation should be calculated according to the provisions of the Income-tax Act and the rules framed thereunder or in accordance with the provisions contained in the Seventh Schedule to the Electricity (Supply) Act, No. LIV of 1948 ;

(ii) whether any deduction should be allowed as a prior charge towards contingencies reserve created under the Electricity (Supply) Act ; and

(iii) whether any deduction should be allowed on account of income-tax.

The Industrial Court held against the appellant on all the three points and found that there was no available surplus from which any bonus could be awarded. Hence this appeal by special leave.

It is not in dispute between the parties that if depreciation is calculated in accordance with the rules framed under the Income-tax Act, there will be no available surplus, from which bonus could be awarded. The main question therefore that arises in this appeal is whether depreciation should be calculated according to the Rules framed under the Income-tax Act or in accordance with the Seventh Schedule to the Electricity (Supply) Act. If this question is decided against the appellant, it would be unnecessary to decide the other two points on which the parties were at variance in the Industrial Court.

(1) (1959) S.C.R. 925.

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What depreciation should be allowed in the case of electricity companies came up for consideration before the Appellate Tribunal in 1955 in the case of *U. P. Electric Supply Company Ltd.* v. *Their Workmen* (1), and it was pressed before it that in the case of electricity companies depreciation should be deducted in the manner specified in the Seventh Schedule to the Electricity (Supply) Act. The Appellate Tribunal pointed out that in the long run the result of the application of the two methods would be the same ; but it preferred to give as prior charge income-tax depreciation as it was in keeping with the Full Bench formula and was not likely to raise fresh problems. It appears that since then, as pointed out by the Industrial Court, various Industrial Tribunals have been allowing depreciation according to the income-tax rates and not according to the Seventh Schedule to the Electricity (Supply) Act in the case of electricity companies also. *The U.P. Electric Supply Company's case* (1) came up for consideration before this Court in *The Shree Meenakshi Mills Ltd.* v. *Their Workmen* (2) and was approved. This Court then approved the decision of the Appellate Tribunal disallowing initial and additional depreciation in calculating depreciation for purposes of the Full Bench formula but accepted that depreciation according to income-tax rates should be deducted. It is true that *The Meenakshi Mill's case* (2) was not dealing with an electricity company and this Court did not have occasion to consider the point directly ; even so, this Court approved the decision in *the U. P. Electric Supply Company's case* (1) with respect to depreciation and could not have been unaware of the fact that the Appellate Tribunal had applied the income-tax rules for purposes of depreciation to electricity companies in preference

(1) (1955) 2 L. L. J. 431.
(2) (1958) S. C. R. 878.

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to the provisions of the Seventh Schedule to the Electricity (Supply) Act.

Further in *The Tinnevelly-Tuticorin Electric Supply Co. Ltd.* v. *Its Workmen* (1), this Court dealt with the case of an electricity company directly. It had then occasion to consider *the U. P. Electric Supply Company's case* (2) again and pointed out that that case decided two questions of law. The first was in regard to the applicability of the Full Bench formula to electricity companies, and the second was with respect to the extent of statutory depreciation to be allowed under the Full Bench Formula. It was pointed out that the decision on the second point by which the income-tax rules were applied for purposes of depreciation to electricity companies with the exception of initial and additional depreciation was approved by this Court in *the Meenakshi Mill's case* (3). It is again true that in the *Tinnevelly-Tuticorin Electric Supply Company's case* (1) the question whether depreciation should be allowed in accordance with the income-tax rules or under the Seventh Schedule to the Electricity (Supply) Act for the purposes of the Full Bench formula was not directly raised ; but in effect the decision in *the U. P. Electric Supply Company's case* (2) where the Appellate Tribunal had applied the income-tax rules of depreciation in preference to the provisions of the Seventh Schedule to the Electricity (Supply) Act, was approved. In the circumstances it seems to us that it is not open to the appellant to raise the question that the provisions of the Seventh Schedule to the Electricity (Supply) Act should be applied for purposes of calculating depreciation in preference to the income-tax rates in working out the Full Bench formula.

(1) (1960) 3 S. C. R. 68. (2) (1955) 2 L.L.J. 431.
(3) (1958) S.C.R. 878. (4) (1960) 3 S.C.R.68.

But, assuming that the question is still open because it was never directly raised in this Court and specifically decided, we are of opinion that the income-tax rules should be applied in working out depreciation under the Full Bench formula in preference to the provisions of the Seventh Schedule to the Electricity (Supply) Act. It was pointed out in *Tinnvelly-Tuticorin Electric Supply Co.'s case* (1) that the provisions in the Electricity (Supply) Act contained in s. 57 and the Sixth and Seventh Schedules to the Act were for a special purpose, namely, to work out the charges to be recovered from consumers for the supply of electricity. It was also observed that the provisions of the Electricity (Supply) Act and its Schedules were meant for operation in the field covered by the Act and that the principles of industrial adjudication were wholly different and had to be worked out in their own way in the industrial field. It seems to us therefore that in working out available surplus according to the Full Bench formula, the same principle with respect to depreciation should be applied in the case of electricity companies as in the case of all other industrial concerns. As the Appellate Tribunal pointed out, the result in the long run would be the same, though there might be difference in some years. Besides, in the formula when it was evolved in 1950 (see *The Mill-Owners' Association* v. *The Rashtriya Mill Mazdoor Sangh Bombay* (2), the depreciation intended to be allowed was as provided in the rules under the Income-tax Act. The Appellate Tribunal pointed this out in the *U. P. Electric Supply Compan's case* (3) and said the Full Bench formula allowed depreciation according to income-tax rates. It seems to us therefore that in the field of industrial relations in connection with which the Full Bench formula was evolved

(1) (1960) 3 S. C. R. 68. (2) (1950) 2 L. L. J. 1247.
(3) (1955) 2 L. L. J. 431.

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it is proper that the formula should be worked out as it was evolved without injecting into it the provisions contained in the Seventh Schedule to the Electricity (Supply) Act. This will work for uniformity in all industrial concerns ; and as pointed out in the *Associated Cement Companies' case* (1), "the formula had on the whole worked fairly satisfactorily in a large number of industries all over the country, and the claim for bonus should be decided by tribunals on the basis of this formula without attempting to revise it". If the provisions of the Seventh Schedule to the Electricity (Supply) Act which, as we have pointed out, were evolved for a special purpose, were to be injected into this formula, the result would be that electricity companies would stand in a group by themselves when compared with other industrial concerns, and the uniformity that the formula had achieved in the matter of bonus would be destroyed. The consequence then will be that in identical situations electricity companies may have to pay bonus while other industrial concerns to which income-tax rates of depreciation would be applied may not have to do so. It seems to us that this is not desirable, particularly when we remember that electricity companies are public utility companies.

Another reason why we think that income-tax rates of depreciation should be applied for the purposes of the Full Bench formula in the case of electricity companies also is that income-tax rates provide for a quicker building up of the depreciation fund. This to our mind is all to the good in the case of public utility companies like those providing electricity so that they may be in a position to have funds at their disposal in case of unforeseen difficulties resulting in the necessity of replacing plant and machinery earlier than what is provided under the Seventh Schedule to the Electricity (Supply) Act.

(1) (1959) S. C. R. 925.

There is yet another reason which inclines us to approve the view taken by the Appellate Tribunal in *the U. P. Electric Supply Company's case* (1). That case settled the law in 1955 and has since been followed throughout the country. We feel that we should not disturb that decision, unless there are good reasons for doing so—and none has been shown. If anything, it appears to us that this is not the time to disturb that decision which has now been followed throughout the country for the last six years, for the whole question of bonus is under reference to a high-powered commission which will go into the matter afresh and will necessarily consider the question of the revision of the Full Bench formula. As this Court pointed out in *the Associated Cement Company's case* (2), the problem raised by the question of the revision of the Full Bench formula is of such a character that it could only be considered by a high-powered commission. That is now being done and it seems to us in the circumstances that we should not disturb the decision arrived at by the Appellate Tribunal in *the U. P. Electric Supply Company's case* (1) on this question.

It follows therefore that the Industrial Court was right in allowing depreciation in accordance with the rates prescribed under the Rules framed under the Income-tax Act. As we have already pointed out, if that is done, there will be no available surplus in this case, from which bonus could be awarded. In the circumstances we do not think it necessary to decide the other two points relating to the contingencies reserve and income-tax, which were raised before the Industrial Court. The appeal fails and is hereby dismissed. In the circumstances we pass no order as to costs.

Appeal dismissed.

(1) (1955) 2 L.L.J. 431.
(2) (1959) S.C.R. 925.