

(1967) 08 KL CK 0011
In the High Court Of Kerala
Case No : O.P. No. 2114 of 1967

A.M. Mani

APPELLANT

Vs

Kerala State Electricity Board and Others

RESPONDENT

Date of Decision : 24-08-1967

Acts Referred:

Constitution of India, 1950 — Article 226
Electricity (Supply) Act, 1948 — Section 27, 78A, 79

Citation : (1967) 2 LLJ 831

Hon'ble Judges : V.P. Gopalan Nambiyar, J; P.T. Raman Nayar, J; M.U. Isaac, J

Bench : Full Bench

Advocate : V.K.K. Menon, M. Ramchandran and C.J. Balakrishnan, for the Appellant; P. Subramanian Potti, V. Narayana Menon, K. Hrishiksan Nair and P. Sukumaran Nair, for the Respondent

Final Decision : Dismissed

Judgement

Gopalan Nambiyar, J.—At the time of the formation of the Kerala State Electricity Board on 1-4-1957, the petitioner was an Executive Engineer in the Electricity Department of the State. Along with other members of the said Department, he was transferred to the service of the Board, subject to certain guarantees as to conditions of service which were embodied in Ext. P-I G. P. dated 3rd April 19157. generally referred to as the "Guarantee G. P."

2. u/s 79(c) of the Electricity Supply Act, 1948, (referred to hereafter as the Act) the Board was entitled to make rules to provide inter alia for the salaries and other conditions of service of its Officers and servants. No such separate rules were framed; and the Board was content to adopt the Kerala Service Rules (compendiously referred to as the K. S. R.), framed under Article 309 of the Constitution and relating to the conditions of service of Government servants, as the Rules of the Board. It further ordered that the amendments to the K. S. R. already issued and to be issued from time to time and the clarifications thereto would apply to the Board, unless excluded by specific Order (vide Exts. P-I, R-I

and R-2).

3. The petitioner became Chief Engineer under the Board on 6-3-1965 and, according to the rules of superannuation as they then stood, was due to retire on the completion of 55 years of age on 19-7-1966. By Ext. P-4 proceedings, the Board ordered his retirement on that day. But before the date of retirement, the Government raised the age of superannuation of technical personnel from 55 to 58, with effect from 15-7-1966. The benefit was eventually extended to all Government Personnel and ultimately resulted in the amendment of Rule 60 of Part I of the K.S.R. raises the age of superannuation to 58. A directive to the Board was issued by the Government (copy Ext. P-5 dated 18-7-1966) u/s 78A of the Act, directing the Board to raise the age of retirement of technical personnel serving under it. The Board complied by Ext. P-8 dated 19-7-1966. By Ext. P-9 proceedings dated 26-8-1966 a similar benefit was extended to all other employees of the Board. The Board's order directing retirement of the petitioner was itself countermanded by Ext. P-6 dated 19-7-1966,

4. After the Government's directive Ext. P-5, and before the further developments noticed supra, the petitioner moved O.P. No. 2560 of 1966 in this Court, for a writ of mandamus to compel the Board to retain the petitioner till completion of 58 years of age as contemplated by the Government proceedings raising the age of superannuation of technical personnel. The writ petition was eventually dismissed as infructuous, presumably in view of the issuance of Ext. P-8 proceedings (vide Ext. R-4). By a G. O. dated 4-5-1967 (Ext. P-9). the Government reduced the age of retirement from 58 to 55 and the consequential amendment was again carried out to Rule 60 of Part I of the K S. R. with effect from 4-5-1967 (vide Ext. P-12). Before such amendment, a directive u/s 78A of the Act was again issued to the Board to effect a similar reduction in the age of superannuation of its employees. Ext. P-13 dated 3-6-1967 is a copy of the said directive. By Ext. P-14 proceedings dated 7-6-1967 the Board cancelled its earlier proceedings Exts. P-2 and P-9. The petitioner seeks to quash the Government's directive (Ext. P-13) and the Board's proceedings (Ext. P-14) and prays for a writ of mandamus, directing the Board not to take any action in pursuance of Ext. P-14

5. The main contention advanced before us is that the Government's directive Ext. P-13 is unwarranted by the provisions of the Act; and the Board's proceedings Ext. P-14, having been directed to or at least substantially influenced by the said directive, is also illegal. Section 78A of the Act introduced by the Amending Act 101 of 1956 reads as follows:

"78A (1) In the discharge of its functions, the Board shall be guided by such directions on questions of policy as may be given to it by the State Government.

2. If any dispute arises between the Board and the State Government as to whether a question is or is not a question of policy, it shall be referred to the authority whose decision thereon shall be final."

On the terms of the Section, the direction issued by the Government may appertain to the discharge of the Board's "functions". Chapter IV of the Act provides for the Powers and Duties of the Board. After defining what we may call its primary and essential functions it winds up with section 27 stating that the Board shall have "such further powers and duties as are provided in this Act". The primary functions of the Board are concerned with the generation distribution and utilisation of electricity, the development of water power etc. Notwithstanding this indication in Section 27 that the enumeration of the functions of the Board in the preceding provisions is not exhaustive, and the further indication to that effect available from Section 79(k) of the Act that the framing of rules and regulations u/s 79 of the Act is one of the functions of the Board, we are of the opinion that the amplitude of the power to issue directions u/s 78A must be a limited one.

The section itself contains a limitation that the directions must be on question of policy. We feel that it is also implicit in the nature and conception of the Board, and the purpose of its incorporation that its autonomy is not to be fettered, if not entirely destroyed, by all manner of directions issued by the Government. The word "functions" in its widest sense includes all powers and duties as implied by the marginal note to Section 27. But in its ordinary Sense, especially when used with reference to an authority, it generally means the functions which the authority was constituted to perform, what we might call its primary and essential functions, not incidental functions necessary for carrying on its essential functions. The expression "functions" in Section 78A of the Act can only have relation to the primary and essential functions of the Board. One of the meanings given to the term "function" in the Shorter Oxford Dictionary is "special kind of activity proper to anything". We feel this shade of meaning is quite appropriate to the expression in Section 78A of the Act.

We feel fortified in that conclusion from the provisions of Section 3 of the Act which constitutes the Central Electricity Authority, which is vested by Clause 2 of Section 78A with the jurisdiction to decide any dispute between the Board and the State Government as to whether any question relates to a matter of policy or not. From the various clauses of section 3 we discern that the Central Electricity Authority's jurisdiction has reference to what we describe as the primary and essential functions of the Board. We therefore feel that this limitation must be implied in Section 78A also. A direction under the section cannot extend to the framing of a rule by the Board regarding conditions of service of its employees.

6. In Writ Petn. No. 3389 of 1965 (Ker) Mathew, J. took the view that regulation of the conditions of service of its employees is not one of -- what he called -- the "statutory functions" of the Board (and what we have described as its primary and essential functions), to which a direction u/s 78A can extend. We feel that the view taken by the learned Judge was correct. Vaidialingam J. in O. P. No. 1182 of 1960 (Ker) was of the view, that directions u/s 78A cannot extend to fixing the rank and seniority of an employee of the Board. Our attention was also

called to Ext. P-15, award by Sri K. Sankaran, retired Chief Justice of this Court, and Ext. P-16 award by Sri. G. Kumara Pillai, a retired Judge of this Court, where a restricted view in regard to Section 78A has been taken.

7. It follows that Ext. P-13 direction was beyond the Government's powers u/s 78A. If the Board's decision in Ext. P-14 was substantially influenced by the Government's directive, the decision would also be vitiated. The learned Advocate General contended that Ext. P-14 was the result of the exercise of the Board's independent judgment and discretion and not one issued in slavish subservience to the Government's directive. We were referred to the present petitioner's affidavit in O. P. No. 2560 of 1966 (Ext R-3). Paragraph 15 thereof admitted that the meeting of the Board held to consider the Government's directive (Ext. P-5) decided by a majority not to extend the benefit of the same to the employees of the Board. Attention was called to Ext. R-V resolution of the Board dated 9-5-1967, resolving that Ext. P-11 G. O. reducing the age of superannuation from 58 to 55 be adopted by the Board. The inference was pressed home on us that the Board's Insistence on retirement at 55 which was manifest even after Ext. P-5 continued right upto Exts. P-13 and P-14.

We however find that Ex. P-14 proceedings of the Board not only do not refer to the Board's resolution (Ext. R-V) but expressly recite the Government's directive, Ext. P-13. We have also sufficient evidence in the counter-affidavit of the Board in this writ petition, that the Board bowed down to the Government's directive. The stand taken in the counter-affidavit is that the Government's directive is well within its powers and referred to matters of policy. That the Board was at least to some extent influenced by the directive is admitted (see paras 12, 14 and 30 of the counter). We cannot but be struck by the proximity of dates between the Government's decision on 4-5-1967 to lower the age of superannuation, the Board's Assistant Secretary's note on 6-5-1967 to consider adoption of the directive (Ext. R-VI), the Chairman's note dated 8-5-1967 that the Government order may be implemented (Ext. R-VII), and the Board's resolution dated 9-5-1967 (Ext R-V). In the circumstances, we feel that the Board was spurred to activity and stampeded into its decision by the Government's directive Ext. P-13.

8. This should ordinarily have entitled the petitioner to succeed; but the learned Advocate-General confronted us with the position that Ext. P-8 proceedings of the Board on which the petitioner's right to continue in service upto 58 years of age was founded, is also tarred by the same brush. We were referred to the petitioner's affidavit in O. P. No. 2560 of 1966, wherein he admitted that the Board by a majority decided not to extend the benefits of any increase in the age of superannuation to its employees. We understand paragraph 8 of the counter-affidavit filed by the Board in this writ petition, as a clear admission that Exts. P-8 and P-9 proceedings of the Board, were also issued under the influence of the Government's directive Ext. P-5. Such an admission is also contained in paras 11 and 12 of the Board's counter-affidavit in O. P. No. 2560 of 1966 (vide

Ext. P-17). If so, Exts. P-8 and P-9 proceedings are also tainted by the same illegality which taints Ext. P-14. The petitioner in such a case has no right or title to continue in service upto 58 years of age which alone will entitle him to maintain this writ petition. Nor can we issue the high prerogative writ sought for in this case, if the effect of doing so would be to perpetuate the illegal orders Ext. P-8 and P-9.

9. The petitioner's counsel attempted to get over the difficulty by drawing a distinction between the scope of the Government's directives under Exts. P-5 and P-13. According to him, Ext. P-5 direction fell squarely within clause 6 of the "Guarantee G P.", Ex. P-I, and by reason of Rule 66 of the Kerala State Electricity Board's Rules, 1951 (framed u/s 78 of the Act), the Government had the power to issue directions for the purpose of implementing the rights guaranteed by Ext. P-I. It was the petitioner's case that by reason of Ext. P-I and Rule 66 the Board was bound to extend all the benefits enjoyed by Government servants to the personnel transferred to the Board, and there was neither any right nor any obligation on the Board to transmit to its personnel the disadvantageous or unfavourable conditions of service in regard to Government servants. Ex hypothesi it was claimed that a Government directive cannot issue to implement such unfavourable terms of service.

We feel that this argument stems from a misunderstanding of the terms and scope of the Guarantee G. P. Clauses 2 and 6 of the said G. K may be extracted:

"2. The Board should guarantee continued employment to all such personnel in the same manner as Government would have done if the Electricity Department was to continue under Government. The Government guaranteed this to the staff in question."

X X X X X 6. The Board should extend to the personnel transferred and lent all the benefits such as pay and allowances and other conditions of service as enjoyed by them in Government service. The Board should also give them the benefits of increased emoluments which may be sanctioned by Government from time to time for similar officers in the Public Works Department and other Departments."

10. Clause 2 only guarantees continued employment in the same manner as Government servants under the Electricity Department. The second part of clause 6 extends the benefits of increased emoluments which may be sanctioned for Government Officers "from time to time". The difference in phraseology between the two parts of clause 6, makes it clear that the benefits of variation from time to time of conditions of service, other than increased emoluments is not vouchsafed to the personnel of the Board. Indeed, even Ext. P-5 direction of the Government recalled Clause 2 of Ext. P-I, and not clause 6 thereof. We are unable to agree with the petitioner's counsel that while Ext. P-5 direction was one which the Government had a right to issue and which the Board was bound to comply with. Ext. P-13 stood on a different footing.

11. We have proceeded on the assumption that the Kerala State Electricity Board Rules 1951, and in particular. Rule 66 thereof, are intra vires the powers of the Government u/s 78 of the Act. The vires of the rules were not challenged before us in the arguments. In our view, as Ext. P-8 and P-9 orders of the Board, were also the result of the Government's directive Ext. P-5, it must follow that the petitioner has no right or title to maintain this writ petition.

12. It is unnecessary to notice in detail the other arguments advanced by the petitioner's counsel. It was argued that on a construction of Rule 6 of the K. S. R. the petitioner was entitled to continue in service: that the Board was a statutory body in control of an industry and that the service conditions of its personnel cannot be altered retrospectively so as to affect those who joined service prior to the promulgation of Ext. P-14 Order. It was finally argued that the action was vitiated by mala fides. In our Judgment in O. Ps. 2119 and 2181 of 1967, we examined the validity of the Government's action in reducing the age of retirement from 58 to 55, and we have held that rule 6 is of no avail to the aggrieved petitioners. We are unable to see how the present petitioner's case stands on any better footing.

13. Nor are we impressed by the argument pressed into service, on the strength of certain observations of the Supreme Court in *Guest, Keen, Williams Private Ltd. Vs. P.J. Sterling and Others*, that the revision of the age of superannuation in the instant case must be regarded as having retrospective effect. The decision of the Supreme Court relied on lends no assistance to the petitioner's case. We have repelled a like argument as to the retrospective operation, in our Judgment in O. P. Nos. 2119 and 2181 of 1967.

14. An attempt was made to show that Ext. P-14 proceedings were vitiated by mala fides. We are wholly unable to understand or to appreciate the argument.

15. We dismiss this Writ Petition but make no order as to costs.