

(2002) 08 DEL CK 0010
In the Delhi High Court
Case No : CWP 5884 of 2000

Association Engineering Staff (E) and Others	APPELLANT
Vs	
Union of India (UOI) and Others	RESPONDENT

Date of Decision : 21-08-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 311
Prasar Bharati (Broadcasting Corporation of India) Act, 1990 — Section 11(1), 11(3), 12, 16(1)

Citation : (2002) 08 DEL CK 0010

Hon'ble Judges : S.B. Sinha, C.J.; A.K. Sikri, J

Bench : Division Bench

Advocate : Rajesh K. Gogna and Sunil Ojha, for the Appellant; Maninder Singh and Kirtiman Singh, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, C.J.—In this writ petition, the petitioners have inter alias prayed for the following reliefs:

- (a) Issue an appropriate writ, order or orders, directing the respondents to implement the provisions of the Prasar Bharati (Broadcasting Corporation of India) Act, 1990;
- (b) Issue an appropriate writ, order or orders, directing the respondents to transfer the civil works along with the workload to Prasar Bharati and to direct the Respondent No. 1 to do so, after taking into consideration the functions which the Akashvani or, as the case may be, Doordarshan, has ceased or ceases to perform and the area in which such functions have been or are performed.
- (c) Issue an appropriate writ, order or orders, directing the respondents not to implement SIU recommendation, being contrary to Sub-sections (3) & (1) to Section 11, Section 12 and Sub-section (1) of Section 16 all read together.
- (d) Issue an appropriate writ, order or orders, directing the respondents to

inquire into the affairs of respondent No. 6, details of which are given in this petition.

(e) Pass such other order or orders as may be deemed just and expedient in the circumstances of the case."

2. Akashvani and Doordarshan had been functioning as different organisations till 1990. Prasar Bharati (Broadcasting Corporation of India) Act, 1990 was enacted by the Parliament. All civil works including construction, installation and maintenance till 1971 were being carried out by the Central Public Works Department.

3. With a view to doing all civil works including planning and designing in the Ministry of Information and Broadcasting, a separate unit known as Civil Construction Wing (CCW) was constituted. All such civil works such as planning, designing, construction, installation, maintenance besides works like accosting, air-conditioning etc. were exclusively being handled by CCW. All assets and properties of Akashvani and Doordarshan were transferred to the Broadcasting Corporation of India after Prasar Bharati came into existence. Civil works, inter alia, it is stated, falls within the exclusive control and functioning of Prasar Bharti.

4. For discharging their respective functions, the Engineering staff serving in Akashvani and Doordarshan were to exercise their options. It is contended that in terms of Sub-sections (1) and (3) of Section 11, the Central Government was required to take into consideration the functions which the Akashvani or, as the case may be, Doordarshan had ceased to perform and the area in which such functions had been and were being performed.

Section 11(1) of the Act reads thus:

"11. Transfer of service of existing employees to Corporation --(1) Where the Central Government has ceased to perform any functions which u/s 12 are the functions of the Corporation, it shall be lawful for the Central Government to transfer, by order and with effect from such date or dates as may be specified in the order, to the Corporation any of the officers or other employees serving in the Akashvani or Doordarshan and engaged in the performance of those functions:

Provided that no order under this sub-section shall be made in relation to any officer or other employee in the Akashavani or Doordarshan who has, in respect of the proposal of the Central Government to transfer such officer or other employee to the Corporation intimated within such time as may be specified in this behalf by the Central Government, his intention of not becoming an employee of the Corporation.

5. It is contended that in the years 1982 and 1988, both All India Radio and Doordarshan were expanded massively. A large number of employees were also recruited. The staff strength was also determined.

6. The petitioners have contended that although all civil works were to be transferred but no action in this regard has been taken. The petitioners' further contention is that such transfer was to take place in terms of the SIU report which had not been taken recourse to.

7. Mr. Rajesh K. Gogna, learned counsel appearing on behalf of the petitioners has drawn our attention to the letters dated 22nd April 1996 wherein it has been accepted that the Ministry has not so far implemented SIU report which had recommended the cuts in the number of posts as also the minutes of the meeting dated 5th August 1996 held under the Chairmanship of Secretary I&B to discuss various problems of CCW:AIR, wherein decision has been taken regarding implementation of the SIU report in the following terms:

"CE-II, CCW contended that it was not correct. AIR stations/DDKs are getting the work done as a routine and not in emergent cases. AS&FA pointed out that only those items of work, which are done through their own staff, could be they should not award any contract for which CCW would be the proper agency. After further deliberations, it was decided to constitute a Committee to identify and demarcate works to be allotted to CCW and the stations. The composition of the Committee will be as under :-

1. Shri S.K. Kapoor, DG, AIR -Chairman 2. Shri Mahesh Chandra, CE, AIR - Member 3. Lt. Col D.S. Manchanda, CE, CCW -Member 4. Shri L.V. Sharma (E), DDn -Member 5. Shri J.D. Kukreja, Ch. Architect -Member 6. Shri K.P. Pandian, DS (Fin) -Member 7. Shri S.D. Kumar, DS (BA) -Member Secretary

The staff Association of CCW, AIR and Doordarshan would, if they SE desire, present their views before the Committee.

As regards SIU Report, it was decided:

"As regards SIU, the Chairman felt that the Committee appointed to consider various aspects of work allotment /distribution would also assess staff strength based on category of works as per CPWD norms vis-a-vis requirement of funds. AS&FA was of the view that a strong case could be made before SIU and, if need be Committee of secretaries against the steep cut in staff strength by SIU. Secretaries against the steep cut in staff strength by SIU. The Association was assured that till such time the report of the Committee is submitted, SIU report will be implemented."

8. Our attention was further drawn to a letter dated 22nd June 1998 wherein the views of all concerned as regards implementation of SIU report had been discussed. It has further been submitted that even on 1st January 1999, a decision was taken by the Chief Engineer to form a Committee for the purpose of assessing staff strength in civil construction works based on the workload for 1999-2000 by including the workload of various works within the scope of CCW but presently being looked after by Zonal Office of the Administration. Yet again, in a meeting held on 9th December 1999, the following decision, had been taken:

"AS (E) welcomed the participants and stated that implementation of the SIU Report on the Civil Construction Wing, All India Radio was pending since March, 1995. he also stated that Since the Report has identified a large surplus of 1570 posts, is important that the Report be implemented at the earliest.

2. The various issues were then discussed at length. The following conclusion/decisions were reached:-

(1) Since the issue of the SIU Report the work of maintenance of stations, transmission towers etc. which had earlier been transferred out of the CCW has been transferred back to the CCW; orders for this purpose have already been issued;

(2) The said orders would be enforced strictly;

(3) The civil construction works scattered all over the country, necessitating larger requirements of manpower; this aspect needs special attention by SIU; and

(4) SIU will make a quick review of the changed scenario and see whether there is any scope for altering the recommendation regarding the surplus in CCW to be abolished; the review may be completed by 29.2.2000."

9. The learned counsel would contend that in terms of the said policy decisions, all works, which used to be done by CCW including the maintenance works were required to be transferred back to it. It further appears that in its letter dated 22nd December 1999, all concerned were asked that the fresh SIU be conducted as regards working of CCW and in the meantime allocation of work to CCW was to be implemented. But despite the same, from a perusal of the Circular letter dated 17th July 2000, it would appear that information had been received as regards implementation of the SIU report, as regards maintenance of stations, transmitting towers etc. which had earlier been transferred out of CCW to be transferred back to it. It was contended that non-implementation of the aforementioned policy decision would attract the wrath of Article 14 of the Constitution. Strong reliance in this connection has been placed on *Gurmail Singh and Others Vs. State of Punjab and Others*, .

10. The respondents, however, in their counter-affidavit would submit that CCW was created on the pattern of CPWD and its yardsticks and norms were required to be followed. As regards reduction of staff strength recommended by SIU report, it was contended that the procedure of creation of various field and planning units in CCW which is in line with the procedure adopted by other departments had been taken into consideration. It has been contended that after the expansion targets of AIR and Doordarshan were achieved, the workload of CCW started reducing every year and thus, a decision had been taken in the year 1993 by the Ministry of Information and Broadcasting to entrust the staff studies of CCW: AIR to Staff Inspection Unit of Ministry of Finance to assess the staff admissible as per the reduced budgeted workload being handled and financial yardsticks invoked. It has been contended:

"11. Whereas, normally only financial yard sticks are applied for assessing the field and planning unit of any construction department the SIU team was impressed upon by the department to also give due weightage to other factors like remoteness of the areas, essentiality of posting of maintenance staff at various stations irrespective of the maintenance work load to ensure uninterrupted recordings and transmissions besides more technical nature of work based on which Ministry of Finance had relaxed the corresponding financial yard sticks adopted by CPWD by 10% during the strengthening from 1981 to 1988. The budgeted work load of CCW during the SIU studies was around Rs. 70 crores per annum. Though as per the work load yard sticks the existing staff strength should have handled the annual work load of more than 180 crores during 1995 necessitating reduction of about 60% of staff. SIU had given due weightage to other factors as raised by the department and the final reduction suggested by the SIU is only about 41.6%. Since the SIU report was found to be very balanced and also to the advantage of the department as the financial yard sticks were further reduced as against only 10% relaxation actually approved by Ministry of Finance by strengthening CCW during various strengthening of CCW from 1981-1988, the report was considered acceptable.

12. Unfortunately the work load of the department got further reduced and the present annual work load is merely Rs. 40-45 lakhs per annum whereas even to sustain the staff strength as justified by SIU in their reports of March, 1995 CCW need only a minimum of 150 crores per annum. Separately Ministry of I & B vide their orders No. 310/20/96 - B(D) dated 24.7.97 (Annexure A-5) directed for transfer of various works to CCW. However, these orders were deferred subsequently as also brought out by the applicants. The matter of implementation of these orders was referred to Prasar Bharati after its inspection and a decision on the same is yet to be taken. Since the petitioners have relied much on the shifting of these works to CCW for the purpose of justifying the staff strength it is here brought out that even after transfer of works in compliance of these orders dated 24.7.97 the total work load of CCW will still be within the range of 65-70 crores per annum as against 150 crores required for sustaining the staff strength after the SIU cut. Under these circumstance a conscious decision was taken not to go for any further review by SIU team as the same might have resulted into further cut in the staff over and above the reduction recommended by SIU report of March, 1995. The implementation of the report of March, 1995 has Therefore, been considered as fully justified and decision accordingly has been taken by Prasar Bharati to implement the SIU report and the matter has already been referred to Ministry of I & B for appropriate directions."

11. It was submitted that the implementation of the report has a direct nexus with the work that is available for execution by CCW. It is contended that even the present workload does not justify the staff strength as recommended by SIU in the report. It is stated that:

14 "...In this regard what merits particular mention here is the fact that the work

load of many field divisions is not only quite negligible but even less than annual establishment except for the divisional office. Normally, the establishment verses work load ratio of the construction department should not be more than 10% to justify its existence. The budgeted work load verses establishment expenditure of various offices of CCW have been corrected and the same is annexed herewith and marked as Annexure--R.1. It is shocking to note than in case of many field divisions the establishment verses work load ratio is even more than 100 per cent. Even CPWD executes the "deposit works" of other departments charging the departmental charges varying from 10% to about 23% depending on sliding scale for major works to minor/maintenance works copy of the same is annexed herewith and marked as Annexure--R-2..."

12. It appears that in the year 1994, total work force of 3620 was reduced by 1507 posts. Thus only 2113 posts had been retained. Having regard to the 10% economy cut, further 354 posts in the Civil Construction Wing were abolished in the year 1995. In the year 1997, 71 posts were abolished in the Ministry of Information and Broadcasting. in 2000, the report of the SIU was accepted and 605 more posts were abolished on 29th June 2000. Yet again, recently on 27th February 2002, 485 more posts were abolished and thus, total 1507 posts had been abolished.

13. According to the respondents, however, the posts which were abolished were vacant posts within a total strength of 3620. It has further been contended that there are 24 Civil Construction Divisions under Prasar Bharati as per CPWD norms, the continuation or establishment of a Division requires at least execution of works of Rs. 6 crores per annum. Thus, the minimum amount of work which is required for maintenance of 35 Divisions would be 180 crores per annum. But only works of 250-60 crores approximately each year are done by the aforementioned 35 Divisions. The respondents contend that even if maintenance works of 25 crores are added, the quantum of work which may be executed would not exceed Rs. 90 crores and thus, instead and in place of 35 Divisions, Prasar Bharti would require only 14-15 Divisions. Unless work worth Rs. 250 crores per annum is done, there cannot be any justification for maintenance of 35 Divisions.

14. Mr. Maninder Singh, learned counsel appearing on behalf of the respondents drawn out attention to the following:-

"In pursuance to the implementation of the report of the SIU, it is only 237 persons as technical staff and 93 persons in the administrative side who would be required to be re-deployed in some other place. For this purpose, the Surplus Cell at the Ministry of Information & Broadcasting has already started functioning and the names of the surplus staff already stand identified and intimated to the Surplus Cell. The fact of surplus staff have become available to the Ministry of Information & Broadcasting stands intimated to the Ministry of Urban Development under whom the CPWD works. The CPWD has already made requisition for re-deployment of the surplus staff."

15. The short question, which arises for consideration in this writ petition is that as to whether in a case of this nature, this court should issue any writ or direction as has been prayed for in exercise of its jurisdiction under Article 226 of the Constitution. The question as to whether, having regard to the reduction in the quantum of work, posts are required to be abolished or not, is essentially a matter of policy decision. The court, having regard to the huge financial implication involved, cannot issue any direction despite the fact that contentious issues have been raised that in the event, all posts are directed to be kept alive, the same would not be economically viable.

16. Having regard to the fact that has now been implemented and keeping in view the volume of work, posts are being abolished, it is not for this court to thrust upon the employer a large number of employees who cannot be effectively deployed. In *BALCO Employees Union (Regd.) Vs. Union of India and Others*, , the Apex Court has clearly held that in the matter of enforcement of economic policy of the State, the court would not interfere. Surveying the case laws operating in the field, the Apex Court held:

"46. It is evident from the about that it is neither within the domain of the Courts nor the scope of the judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are our Courts inclined to strike down a policy at the behest of a petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical.

47. Process of disinvestments is a policy decision involving complex economic factors. The Courts have consistently refrained from interfering with economic decisions as it has been recognised that economic expediencies lack adjudicative disposition and unless the economic decision, based on economic expediencies, is demonstrated to be so vocative of constitutional or legal limits on power or so abhorrent to reason, that the Courts would decline to interfere. In matters relating to economic issues, the Government has, while taking a decision, right to "trial and error" as long as both trial and error are bona fide and within limits of authority. There is no case made out by the petitioner that the decision to disinvest in BALCO is in any way capricious, arbitrary, illegal or uninformed. Even though the workers may have interest in the manner in which the Company is conducting its business, inasmuch as its policy decision may have an impact on the workers' rights, nevertheless it is an incidence of service for an employee to accept a decision of the employer which has been honestly taken and which is not contrary to law. Even a government servant, having the protection of not only Articles 14 and 16 of the Constitution but also of Article 311, has no absolute right to remain in service. For example, apart from cases of disciplinary action, the services of government servants can be terminated if posts are abolished. If such employee cannot make a grievance based on part III of the Constitution or Article 311 then it cannot stand to reason that like the petitioners, non-government employees working in a company which by reason

of judicial pronouncement may be regarded as a State for the purpose of Part III of the Constitution, can claim a superior or a better right than a government servant and impugn its change of status. In taking of a policy decision in economic matters at length, the principles of natural justice have no role to play. While it is expected of a responsible employer to take all aspects into consideration including welfare of the labour before taking any policy decision that, by itself, will not entitle the employees to demand a right of hearing or consultation prior to the taking of the decision."

17. The decision of the Apex Court in *Gurmail Singh and Ors. etc. v. State of Punjab and Ors.* (supra), arises out of an award under the Industrial Disputes Act. The question which arose for consideration therein was transfer of employees taking place on transfer of tubewells in the Irrigation Branch to the Punjab State Tubewell Corporation. The said decision itself was in question and in the alternative, it was contended that in case the action of the State is upheld, the respondent Corporation should be held to be under an obligation to employ the petitioner therein with continuity in service.

18. In the facts and circumstances of that case, the apex court held that the State should show fairness in action but in the instant case, action has been taken by the Central Government.

19. Upon taking into consideration all aspects of the matter, we do not find that the action of the respondents is in any way unfair or mala fide.

20. For the reasons afore-mentioned, there is no merit in this writ petition which is accordingly dismissed but in the facts and circumstances of this case, there shall be no order as to costs.