

(2017) 07 OHC CK 0035

In the Orissa High Court

Case No : 8401 of 2016

Digambar Behera

APPELLANT

Vs

State of Odisha and others

RESPONDENT

Date of Decision : 27-07-2017

Acts Referred:

[Industrial Disputes Act, 1947](#), [Section 2\(n\)](#)
[Section 2\(n\)](#), [Section 2\(n\)](#) -
Definitions - Definitions - Definitions
[Companies Act, 1956](#), [S](#)

Citation : (2017) 07 OHC CK 0035

Hon'ble Judges : B.R. Sarangi

Bench : SINGLE BENCH

Advocate : B. Mohanty, B. Tripathy, B. Samatray, B. Senapati, ?B.K. Dash, M.P. Debanath, A.B. Mishra, S.R. Dash

Judgement

1. The petitioners, in all these writ petitions, are the employees of Orissa Renewable Energy Development Agency (for short "OREDA"). They have approached this Court seeking for a common relief. Therefore, these writ petitions were heard together and are being disposed of by this common judgment.

2. The background facts, for which the petitioners have been constrained to approach this Court, are succinctly stated as follows: 2.1. OREDA is an agency registered under the Societies Registration Act, 1860. It has been functioning under the administrative control of Science and Technology Department of the Government of Odisha, which provides financial assistance in the shape of grant-in-aid. With a view to streamlining the matters relating to recruitment and conditions of service in respect of posts of OREDA, its Governing Body formulated the Rules called "Orissa Renewable Energy Development Agency Service Rules, 1997 (in short "OREDA Rules, 1997)". As per Rule 51 (1) and (2), the employees shall have to retire from service on attaining the age of 58 years. In consonance with the OREDA Rules, 1997, the petitioners were to retire at the age of 58

years. Consequentially, notices were issued to them to be retired from their services on attaining the age of superannuation, i.e., 58 years as per Rule-51(2) of the OREDA Service Rules, 1997. 2.2. By the time such notices were issued, the Government in its Finance Department had passed resolution on 28.06.2014 and by amending Rule-71 of the Orissa Service Code, as well as Orissa Civil Services (Pension) Rules, 1992 (in short "OCS (Pension) Rules, 1992") extended the retirement age from 58 to 60 years. Pursuant thereto, the Government of Orissa in Department of Public Enterprises issued resolution dated 02.08.2014 enhancing the age of superannuation of the employees of the State PSUs from 58 to 60 years subject to fulfilling the conditions stipulated therein. It was also stipulated therein that the PSUs would prepare a detailed proposal which should be approved by the Board of Directors of the said PSU concerned and the proposal approved by the Board should be concurred by the Administrative Department and the Administrative Department should obtain appropriate Government approval before giving effect to the enhancement proposal.

2.3. Following the same, the Employees' Association of OREDA claimed for extension of the said benefit to its employees which was acceded to by the authority concerned and, accordingly, the Administrative Department of OREDA, namely, Science and Technology Department by its order dated 30.03.2016 extended the benefit of enhancement of the age of superannuation from 58 to 60 years to the employees of OREDA. As all the petitioners were supposed to retire in between 28.02.2015 and 28.02.2016, that is to say within 30.03.2016, they claim that, in view of the resolution passed by the Government of Orissa in its Public Enterprises Department and approval made by the OREDA on 30.03.2016, the benefit of enhancement of retirement age from 58 to 60 years be extended to them with effect from the date, i.e. 28.06.2014 when decision was taken by the State Government to enhance the retirement age of its employees, or from the date, i.e., 02.08.2014 from which all the employees of PSUs have been extended with such benefits, or at best from the date, i.e., 27.11.2014 when the move was made by the Workers' Union of OREDA.

2.4. For the purpose of convenience and easy reference the details of the petitioners are set out in the chart hereunder:

Sl. No. Name of the petitioner Writ Petition Made to retire on superannuation

1 Balaram Patra WP(C) No. 5684 of 2015 31.03.2015

2

Arjuna Maharana WP(C) No. 18981 of 2015 31.10.2015

3 Harihar Panda WP(C) No. 18982 of 2015 30.04.2015

4

Muralidhar Panda WP(C) No. 18983 of 2015 31.03.2015

5 Thabir Mohan Nayak WP(C) No. 18985 of 2015 31.08.2015

Digambar Behera WP(C) No. 8401 of 2016 28.02.2015

7 Krushna Chandra Maharana WP(C) No. 8402 of 2016 28.02.2016

8 Umesh Chandra Nayak WP(C) No. 8404 of 2016 30.06.2015

3. Mr. R.K. Rath, learned Senior Counsel appearing along with Mr. J.P. Behera, learned counsel for the petitioners at serial no.6 to 8 of the above table specifically urged that since the State Government in its wisdom decided to enhance the retirement age of its employees from 58 to 60 years, pursuant to resolution dated 28.06.2014, by amending the Rule 71(a) of the Orissa Service Code and also OCS (Pension) Rules, 1992 and, consequentially, pursuant to resolution dated 02.08.2014, the State Government in its Public Enterprises Department decided to extend such benefits to the employees of the PSUs which was implemented immediately and, such policy decision having been communicated to the Science and Technology Department which is the administrative department of OREDA, the non-extension of such benefit to the employees of the OREDA from the date, i.e., 02.08.2014 the Government in Public Enterprises Department decided by passing a resolution to extend such benefits to the PSUs amounts to arbitrary and unreasonable exercise of power and also discriminatory. It is contended that although OREDA has not been included in the list of PSUs maintained by the Government, for which apparently the resolution dated 02.08.2014 passed by the Government in Public Enterprises Department issuing direction to the PSUs to enhance the retirement age from 58 to 60 years has not been made applicable to it, as the nature of work discharged by OREDA categorically constitute "public utility service", it should have been treated as a PSU and the benefits should have been extended from the date of passing of resolution by the State Government, i.e., with effect from 02.08.2014, as the similar benefits have already been extended by the State Government to the employees of PSUs. Considering the matter in proper perspective, non-extension of such benefit in the name of nonamendment of the service rule applicable to the OREDA employees and non-receipt of administrative approval from the Administrative Department is absolutely a fallacy and, as such, is contrary to the provisions of law and hit by Article 14 of the Constitution of India. To substantiate his contention, he has relied upon the judgments in *The Oil & Natural Gas Commission v. The Association of Natural Gas Consuming Industries of Gujarat*, AIR 1990 SC 1851; *Binny Ltd. v. V. Sadasivan*, (2005) 6 SCC 657; *Leelabai Gajanan Pansare v. Oriental Insurance Company Ltd.*, (2008) 9 SCC 720; *Hindustan Zinc Ltd. v. Rajasthan Electricity Regulatory Commission* (2015) 12 SCC 611; *State of Uttar Pradesh v. Dayanand Chakrawarty*, (2013) 7 SCC 595; *Premalata Panda v. State of Odisha* (2015) (II) OLR 214 and *Sukanta Kumar Das v. State of Odisha*, W.P.(C) No. 4024 of 2016 disposed of on 08.04.2016.

4. Mr. S.K. Dash, learned counsel appearing for the petitioners at serial nos. 2 to

5 of the above table urged that pursuant to 10th Governing Body meeting of OREDA held on 18.04.1987 in item no.10 it was decided that the facilities available to State Government employees should be automatically accorded by OREDA to its staff except when different conditions are specifically prescribed as per rules of the Organization framed and Governing Body resolutions made from time to time. Therefore, once the Government of Odisha in Finance Department passed resolution dated 28.06.2014 to extend the age of retirement of its employees from 58 to 60 years by amending Rule 71(a) of the Orissa Service Code, as well as OCS (Pension) Rules, 1992, and subsequent resolution was passed on 02.08.2014 by the Public Enterprises Department extending such benefits to all the PSUs, even though OREDA has not been notified as one of the PSUs of the State Government, the duty discharged by OREDA being in the nature of "public utility service", which is akin to the duty discharged by the PSUs, in view of the resolution passed in the 10th Governing Body meeting dated 18.04.1987, the Government resolutions are applicable ipso facto and, as such, in case of Sukanta Kumar Das (supra) the similar benefits having already been extended, the petitioners should not have been discriminated. More so, the Governing Body of OREDA in its 36th meeting dated 12.03.2015 having already taken a decision for enhancement of age of superannuation from 58 to 60 years, the same should have been extended, though subsequently the administrative approval has been received from the Government. In reply to the submissions made by learned counsel for the opposite parties, he further contended that so far as reference made to the case of Sarat Chandra Tripathy v. Odisha Forest Development Corporation, (2015) 120 CLT 1047 is concerned, in that case no resolution was passed by OFDC to extend such benefits and as such is distinguishable from the present one. However, applying the principle laid down by the apex Court in Dayanada Chakrabarty (supra) and by this Court in Premalata Panda (supra), the petitioners are entitled to get enhancement of retirement age from 58 to 60 years at par with their counterparts of the State Government and also PSUs. He further contended that Science and Technology Department is the Administrative Department of OREDA, as well as Odisha Hydro Power Corporation and Odisha Power Transmission Corporation. The employees of Odisha Hydro Power Corporation Ltd. and Odisha Power Transmission Corporation LTD. having been extended with the benefit of enhancement of retirement age with effect from 28.06.2014, even though the proposal for enhancement of age of retirement from 58 to 60 years had been taken by the Governing Body of OREDA on 12.03.2015 and it was kept pending for months together and approved subsequently on 30.03.2016, it cannot be said that it should be applicable prospectively with effect from 30.03.2016. It is further contended that the very same Administrative Department having granted concurrence on 28.06.2014 so far as employees of Odisha Power Transmission Corporation Ltd. and on 01.06.2014 so far as employees of Odisha Power Generation Corporation Ltd. are concerned, i.e., prior to 02.08.2014, the date of issuance of resolution by the Government in its Public Enterprises Department to extend the benefit to the employees of PSUs even prior to the date of submission

of proposal, so far as the employees of OREDA are concerned they cannot be discriminated and should be extended with benefits at par with their counterparts of Odisha Power Generation Corporation and Odisha Power Transmission Corporation with effect from 28.06.2014.

5. Mr. B.B. Mohanty, learned counsel appearing for the petitioners at serial no.1 of the above table, while adopting the arguments advanced by Mr. R.K. Rath, learned Senior Counsel and also Mr. S.K. Dash, learned counsel appearing for the petitioners in other writ applications, stated that as a matter of policy decision if the Government has extended the benefit of enhancement of retirement age of its employees by resolution dated 28.06.2014, and the employees of the PSUs by resolution dated 02.08.2014 of the Public Enterprises Department, the OREDA, even though is an agency, having been controlled by the State authority, is also guided by the said resolutions. Consequentially, the benefit of enhancement of retirement age from 58 to 60 should be granted to the petitioners and, as such, the ratio decided in the case of Premalata Panda (*supra*) is fully applicable to the present context. Even though the grievance of the petitioners have been considered on the basis of the claims made by the employees union, merely an administrative decision has been taken subsequently, it cannot have any application rather it should be related back to the date the Government in Public Enterprises Department issued resolutions extending the benefit of enhancement of retirement age from 58 to 60 years, i.e., from 02.08.2014.

6. Mr. B. Senapati, learned Addl. Government Advocate appearing for State-opposite parties no. 1 and 2 although admitted that by virtue of the resolution passed by the Government on 28.06.2014 its employees have been extended with the benefit of enhancement of retirement age from 58 to 60 years by amending Rule 71 (a) of the Odisha Service Code and also OCS (Pension) Rules, 1992, and that the said benefit has also been extended to the PSUs of the State Government pursuant to resolution dated 02.08.2014, yet stated that OREDA is not a PSU nor governed by Department of Public Enterprises and, as such, it having been functioned under the administrative control of Science & Technology Department, which approved the proposal for enhancement of retirement age of its employees on 30.03.2016, the benefit claimed in the writ applications by the petitioners from the date of issuance of resolution by the Government applicable to PSUs, is not admissible. He further stated that the decision having been taken by the Board of Directors of the OREDA to enhance the retirement age and financial approval having been made by the Administrative Department, i.e., Science & Technology Department on 30.03.2016, it may have some prospective application but it cannot have any retrospective application so as to facilitate the petitioners to get the benefit from the date their counterparts in the PSUs of Government of Orissa pursuant to resolution dated 02.08.2014. To substantiate his contention, he has relied upon the judgment of this Court in *Sarat Chandra Tripathy v. Odisha Forest Development Corporation and others*, (2015) 120 CLT 1047.

7. Mr. B.K. Dash, learned counsel appearing for OREDA endorsed the contention raised by Mr. B. Senapati, learned Addl. Government Advocate for the State that OREDA is not a PSU but an agency registered under the Societies Registration Act, 1860 and, as such, to regulate the service conditions of its employees, the Governing Body of the OREDA has framed a Rule called the Orissa Renewable Energy Development Agency Service Rules, 1997. Under Rule 51(2), the petitioners are to retire on attaining the age of superannuation at the age of 58 years. So far as enhancement of retirement of age is concerned, it has only been resolved by the Governing Body of OREDA in its 36th meeting by sending a proposal on 12.03.2015, which was communicated to the Government in its Administrative Department, namely, Science and Technology Department on 20.03.2015 and request letter of Chief Executive, OREDA to the Additional Secretary to Government of Odisha, Science and Technology Department for necessary approval of enhancement of superannuation age of OREDA employees from 58 to 60 years along with expenditure statement was made on 05.11.2015. After complying with the requirement, the request was made by the OREDA on 24.02.2016 to place the matter before Government and to communicate the Governmental approval. Accordingly, the concurrence of Finance Department was made on 04.03.2016. The Government of Orissa on 30.03.2016 communicated to the Chief Executive of OREDA with regard to approval of the proposal for enhancement of superannuation age of the employees of OREDA from 58 to 60 years. Therefore, it is contended that since the Government approval was received on 30.03.2016 with regard to enhancement of retirement age of the employees of OREDA, it should be extended prospectively and it would not have any retrospective effect. Since the petitioners are not entitled to get such claims with retrospective effect, the writ applications are liable to be dismissed.

It is further contended that so far as applicability of judgment of Sukanta Kumar Das (*supra*), who is one of the employees of OREDA, to the present case is concerned, in the said case hearing was concluded on 30.03.2016 and the judgment was delivered on 08.04.2016 and, as he was continuing by virtue of the interim order passed by this Court, he was allowed to continue in service, even though his retirement age was 31.03.2015. But on the same day, i.e., 30.03.2016 the OREDA had issued office order allowing its employees to retire on attaining the age of 60 years instead of 58 years after approval from the Finance Department and Science and Technology Department of the Government and thus he got the benefit of Government order dated 30.03.2016. It is further contended that the ratio decided in the case of Premalata Panda (*supra*) has no application to the present case and the same is distinguishable. More so, the resolution dated 02.08.2014 issued by the Government in Department of Public Enterprises has no application to OREDA, as the same is only applicable to the statutory Corporations including PSUs registered under the Companies Act, 1952.

8. This Court by order dated 20.07.2017 directed learned counsel appearing for OREDA to produce the relevant files dealing with resolution passed with regard to enhancement of retirement age from 58 to 60 years. In compliance of the same,

on 21.07.2017, learned counsel appearing for OREDA produced the relevant files for perusal of this Court.

9. Having heard learned counsel for the parties and after perusing the records, since pleadings between the parties have been exchanged, with the consent of learned counsel for the parties, this writ petition is being disposed of finally at the stage of admission.

10. On the above factual backdrop of the case, the following questions emerge for consideration: (1) Whether OREDA is a PSU and, if so, whether resolution dated 02.08.2014 of the Government in Public Enterprises Department is applicable to it? (2) Whether the petitioners should be extended with the benefit of retirement age from 58 to 60 years at par with their counterparts in similarly situated organizations under the administrative control of the Science and Technology Department?

(3) If so, what relief the petitioners are entitled to?

11. Question No.1. Whether OREDA is a PSU and, if so, whether resolution dated 02.08.2014 of the Government in Public Enterprises Department is applicable to it- 11.1. Admittedly, OREDA has been registered under the Societies Registration Act, 1860 and is a society. The Memorandum of Association of OREDA clearly indicates in Clause-3 the objectives for which it has been established. The objective mentioned in sub-clause (a) of Clause-3, being relevant for the purpose of the case, is extracted hereunder: "3.(a) to identify small canal hands and drops in streams and thereafter generate power through Mini/Micro Hydel Projects with a view to augmenting the energy sources of the State and for making power available in the rural areas." Section 86(1)(e) of the Electricity Act, 2003, which is also of relevance to note at this juncture, reads thus: "86. Functions of State Commission. - (1) The State Commission shall discharge the following functions, namely:- Xx xx xx

(e) Promote cogeneration and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee;" The objective of opposite party no.3 vis-?-vis the provisions contained under Section 86(1)(6) of the Electricity Act, 2003, as referred to above, clearly state that the nature of duty discharged by it is a "public utility service" as it is indulged in generation of power through Mini/Micro Hydel Projects with a view to augmenting the energy sources of the State and for making powers available in the rural areas. Once it is indulged in public utility service, it is discharging public functions. A body is performing "public function" when it seeks to achieve some collective benefit for the public or a section of public and is accepted by the public or that section of the public as having authority to do so. Bodies therefore, exercise public functions when they intervene or participate in social or economic affairs in the public interest. 11.2.

In *Binni Ltd.* (supra), the apex Court has taken into consideration a book on *Judicial Review of Administrative Action* (5th Edn.) by de Smith, Woolf & Jowell, in Chapter 3, para 0.24 it is stated thus:

"A body is performing a "public function" when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. Bodies therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest. This may happen in a wide variety of ways. For instance, a body is performing a public function when it provides "public goods" or other collective services, such as health care, education and personal social services, from funds raised by taxation. A body may perform public functions in the form of adjudicatory services (such as those of the criminal and civil courts and tribunal system). They also do so if they regulate commercial and professional activities to ensure compliance with proper standards. For all these purpose, a range of legal and administrative techniques may be deployed, including rule making, adjudication (and other forms of dispute resolution); inspection; and licensing." 11.3. In *Hindustan Zinc Ltd.* (supra), the apex Court held that Regulations framed by Rajasthan Electricity Regulatory Commission in exercise of power under Section 86(1)(e) read with Section 181 of the Electricity Act, 2003 provides for promotion and cogeneration of electricity from renewable source of energy in the area and are reasonable restrictions within Article 19(6) of the Constitution. Thereby, the renewal energy is dealing with public field. Therefore, the development of transmission and sub-transmission infrastructure for evacuation from generating stations based on renewable energy sources are to be done in accordance with law. In view of the aforementioned provisions, and law discussed above, it is made clear that OREDA is discharging "public utility service".

11.4. In *Corpus Juris Secundum*, Volume 73 page 990, the "public utility" has been mentioned as follows: "Public utility. A public utility has been described as a business organization which regularly supplies the public with some commodity or service, such as electricity, gas, water transportation or telephone or telegraph service. While the term has not been exactly defined, and, as has been said, it would be difficult to construct a definition that would fit every conceivable case, the distinguishing characteristic of a public utility is the devotion of private property by the owner or person in control thereof to such a use that the public generally, or that part of the public which has been served and has accepted the service, has the right to demand that the use or service, as long as it is continued shall be conducted with reasonable efficiency and under proper charges. The term is sometimes used in an extended sense to include a great many matters of general welfare to the State and its communities." The above meaning has been taken note of in *Earth Builders v. State of Maharashtra*, AIR 1997 Bom 148.

11.5. In *Bharat Bhawan Nirman Sahakari Samiti v. State of Rajasthan*, AIR 1979

Raj 209, the Rajasthan High Court held: "Public utility means any work, project which is going to be useful to members of the public at large. The public benefit aided at or intended to be secured need not be to whole community but to a considerable number people." 11.6. Section 2(n) of the Industrial Disputes Act, 1947 elaborately deals with "public utility service", which means as follows: " (i) any railway service or any transport service for the carriage of passengers or goods by air; (ia) any service in, or in connection with the working of any major port or dock.

(ii) any section of an industrial establishment, on the working of which the safety of the establishment or the workmen employed therein depends;

(iii) any postal, telegraph or telephone service; (iv) any industry which supplies power, light or water to the public;

(v) any system of public conservancy or sanitation;

(vi) any industry specified in the First Schedule which the appropriate Government may, if satisfied that public emergency or public interest so requires, by notification in the Official Gazette, declare to be a public utility service for the purposes of this Act, for such period as may be specified in the notification. Provided that the period so specified shall not, in the first instance, exceed six months but may, by a like notification, be extended from time to time by any period not exceeding six months, at any one time if in the opinion of the appropriate Government public emergency or public interest requires such extension." 11.7. Section 22A(b) of Legal Service Authorities Act, 1987 deals with "public utility service", which means as follows: "Public utility service" means any (i) transport service for the carriage of passengers or goods by air, road or water; or

(ii) postal, telegraph or telephone service; or (iii) supply of power, light or water to the public by any establishment; or

(iv) system of public conservancy or sanitation; or

(v) service in hospital or dispensary; or

(vi) insurance service. [Legal Services Authorities Act (39 of 1987), S 22A(b)]"

11.8. In Oil and Natural Gas Commission (supra), the apex Court ruled that "public utility undertaking" includes any industry which supplies power, light or water to the public. 11.9. In view of the connotations, as discussed above, vis-à-vis the objectives of the Memorandum of Association and the provisions contained in the Electricity Act, 2003, an inference can safely be drawn that public utilities are those facilities without which life would be impossible, such as water-supply, electricity, sewerage and so on. Opposite party no.3 indulged in generation of power which essentially a "public utility service" and useful to the members of the public at large. The public benefit aided at or intended to be secured need not be to whole community but to a considerable number people.

11.10. Now coming to the concept "Public Sector Undertaking", explanation to Section 2(1)(ii) of the Building and other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 states "public sector undertaking" means any corporation established by or under any Central, State or Provincial Act or a Government company as defined in Section 617 of the Companies Act, 1956 which is owned, controlled or managed by the Central Government. Except this, there is no other meaning or definition of "public sector undertaking" prescribed anywhere.

11.11. Meaning of "public sector undertaking" had come up for consideration in *Leelabai Gajanan Pansare* (supra). In paragraph 63, 64 and 65 of the judgment, the apex Court observed as follows: "63. One point may be noted at this stage. The concept of PSU and the concept of government company became relevant after introduction of economic reforms in 1991. With the said reforms, market orientation was given to our economy. It is around this time that the role of PSU became important. Both, the PSU as well as the government company, were given autonomy and flexibility in commercial sectors. Annexure-1 to the Report of the Study Team on PSUs dated 10-6-1967 indicates clearly that government companies stood covered under the concept of PSUs. In the present matter, the High Court has taken a view that government companies stand excluded from PSUs under Section 3(1)(b) as government companies are separate and distinct entities from PSUs, and since government company is not in the enumerated items in Section 3(1)(b) one cannot include the said entity within the meaning of the word "PSU". This view of the High Court is erroneous for the simple reason that the word "PSU" is not defined under any Act. The word PSU is indicated in various parliamentary committees on administrative reforms so that in financial, employment and in policy matters, the Central/State Government could evolve norms/standards. 64. It is no doubt true that the public character of the functions performed by the undertaking determine the character of that undertaking. It is the public character of the functions of the undertaking which makes it a PSU. However, there is no conclusive test for determining the status of an undertaking as a PSU. In judging the character of an entity, the court has to keep in mind the context in which the word PSU is used in a given enactment. There are a number of tests which could be applied in judging the character of an entity, namely, the test of origin, the test of agency or instrumentality of the State, the functional test, the monopolistic status of an entity, test concerning areas of operations, the test of economies of scale, the test of control, the role of the entity in the priority sector etc. Therefore, there is no one conclusive test applicable to decide the character of an entity. For example, nationalized banks have been held to fall within the State by this Court on an application of the test of control. Similarly, the test of "agency or instrumentality" that came to be laid down brought the government companies, as defined under Section 617 of the 1956 Act, to be included within the concept of State for the purpose of Article 12 of the Constitution (see *Som Prakash Rekhi v. Union of India*, (1981) 1 SCC 449). Therefore, none of the above tests is conclusive in itself. Suffice it to state

that government companies under Section 617 are understood by the legislature to be a part of PSUs. Therefore, even on the website of the Central Government undertakings under the caption of PSUs/PSEs, we find government companies and State-owned government companies being listed under the caption of PSUs/PSEs. These items have been enumerated on the basis of legislative understanding.

65. According to the book titled Growth of Trade, Commerce and PSUs written by Shri Suresh Prasad Padhy, PSUs may be in the form of departmental units, corporations, government companies, autonomous bodies or authorities. Corporate governance, according to Geeta Gouri, is one of the major processes for putting PSEs and PSUs on the right track. In the list of PSUs published on the website of Central Government, BPCL is shown as a PSU. Similarly, MTNL and BSNL are government companies which are also shown as PSUs." In view of the law laid down by the apex Court, as discussed above, it is no doubt true that the public character of the functions performed by the undertaking determine the character of that undertaking. It is the public character of the functions of the undertaking which makes it a PSU. PSUs may be in the form of departmental units, corporations, government companies, autonomous bodies or authorities. All the important forms of organization for PSUs have certain advantages and certain limitations. A majority of PSUs in this form has been mainly that of autonomy. Similar is the case of statutory corporations which are also created to mitigate the drawbacks of departmental administration.

11.12. In view of such position, the OREDA may not be classified as PSU, as has been notified by the Government, but looking at its functioning, it can be safely inferred that it has all characteristics of a PSU and is discharging the "public utility service" for the benefit of public at large. If the functioning of OREDA is akin to the functioning of statutory PSUs and is discharging the public utility service, even though it has not been enlisted or notified as a PSU of Government, taking into consideration the characteristics of its functioning, an inference can be drawn that, since it functions for the benefit of public at large and the administrative control lies with the State Government, the rules and regulations applicable to the State Government employees and its PSUs are also applicable to it.

12. Question No.(2). Whether the petitioners should be extended with the benefit of retirement age from 58 to 60 years at par with their counterparts in similarly situated organizations under the administrative control of the Science and Technology Department- 12.1. The reason for enhancement of retirement age from 58 to 60 years is based on significant improvement in average life expectancy in recent years. As the Central Government enhanced the retirement age of its employees by revising it to 60 years, consequently some of the State Governments also followed the principle adopted by the Government of India in enhancing the retirement age of their employees. Therefore, the Government of Odisha in its Finance Department issued resolution on 28.06.2014, pursuant to

which superannuation age of its employees were extended from 58 to 60 years by amending Rule 71(a) of the Odisha Service Code, as well as the Orissa Civil Services (Pension) Rules, 1992. Consequent upon the enhancement of the age of superannuation of the State Government employees from 58 to 60 years, on the demand of various service associations of the State PSUs, the State Government in Public Enterprises Department by resolution dated 02.08.2014 enhanced the age of superannuation of the employees of the State PSUs from 58 years to 60 years subject to fulfillment of the conditions mentioned therein. 12.2. Allured by the same, the OREDA Workers' Union moved the authorities on 27.11.2014 requesting to take immediate steps, by calling a Governing Body meeting, for amendment of Rule-51(2) of OREDA Service Rules, 1997 so that the employees of OREDA would be benefited for enhancement of the retirement age from 58 years to 60 years at the fag-end of their service career. It was categorically mentioned that OREDA was established in the year 1983 as an agency under the administrative control of Science and Technology Department, Government of Odisha. The aim and objectives of the agency were to popularize and promote the renewable energy in the different corners of the State of Odisha.

12.3. It is of relevance to mention here that the Governing Body of OREDA in its 10th meeting held on 18.04.1987 resolved as follows: "Item No. 10

Facilities available to State Government Employees should be automatically accorded by OREDA to its staff except when different conditions are specifically prescribed as per rules of the Organisation framed and Governing Body resolutions made from time to time. For this reference to Governing Body every time is not needed." Subsequently, OREDA Service Rules, 1997 were enacted and came into force with effect from 05.09.1997. Certain provisions of the said Rules, which are necessary for the purpose of the present case, are extracted hereunder: "3(a) "Administrative Department" means the Department of the State Government of Orissa (Presently, the Department of Science and Technology) to which the affairs of the Orissa Renewable Energy Development Agency are entrusted by the State Government."

"51. Tenure of Appointment:- (1) An employee is normally expected to be in service till attainment of the age of superannuation.

(2) OREDA employees other than those specified in sub-rule (3) shall retire from the service of the OREDA in the afternoon of the last day of the month when they attain the age of fifty eight years." The said Service Rules of OREDA were subjected to amendment, pursuant to a single line proposal floated by the Governing Body of OREDA in its 33rd meeting held on 02.06.2010 to the following effect: "Service Rules applicable to the employees of the Government of Odisha shall be made applicable to all employees of OREDA". Thereafter, in the 34th Governing Body meeting of OREDA, it was clarified that the Governing Body would prepare specific proposal to adopt different Chapters of Orissa Service Rules, for its applicability to the employees and to submit the same before the Administrative Department, for necessary examination and concurrence. In the

wake of enhancement of the age of superannuation for the employees working in the State Government, the Governing Body of OREDA in its 36th meeting decided as follows: "As regards enhancement of retirement age from 58 years to 60 years of OREDA employees, it is decided by the Governing Body that a proposal will be placed before the Finance Department, Government of Odisha through Science & Technology Department for enhancement of retirement age from 58 years to 60 years. In this connection, the receipt and expenditure position of the Organization of last 5 years are required to be produced with the proposal. Also it is decided that the detailed financial implication for enhanced two years along with undertakings to the effect that it will not pose any burden to the financial position of the State Exchequer." In compliance of the said resolution, communication was also made enclosing the receipt and expenditure statement from 2010-11 to 2014-15 and financial implication statement from 2015-16 to 2019-20, as to if the age of superannuation of OREDA employees would be enhanced for 2 years more, OREDA could able to meet the additional requirement of fund from its own source and undertook to shoulder the liability without any Government assistance for enhancement of the age of superannuation from 58 to 60 years of its employees. Consequentially, the administrative approval was received from the Administrative Department on 30.03.2016. In *Purshottam Lal v. Union of India* (UOI), AIR 1973 SC 1088, the apex Court held that the Government cannot make any discrimination in the matter of payment of emoluments between the Central Government employees and Union Territories employees.

12.4. Keeping in view the principles laid down by the apex Court in the aforementioned judgment and applying the same to the present case, as the State Government employees and PSU employees have already received the benefit of enhancement of retirement age from 58 to 60 years pursuant to the Government resolutions dated 28.06.2014 and 02.08.2014, merely because the resolution passed by OREDA on 12.03.2015 took a long time for administrative approval, which was admittedly accorded on 30.03.2016, that ipso facto cannot deprive the petitioners of getting the benefit of enhancement of retirement age with retrospective effect from 02.08.2014, since in answering question no.1 this Court has already held that, OREDA even though is not enlisted as a PSU but it functions for the benefit of public at large and administration lies with the State Government and the rules and regulations application to State Government employees and its PSUs are applicable to it and, therefore, its employees stood on the same footing like that of the State PSUs for whom such benefit has already been extended. Nonextension of such benefits to the present petitioners amounts to arbitrary and unreasonable exercise of power and violates Article 14 of the Constitution of India, and OREDA, being a model employer, cannot make such discrimination.

13. So far as the case of *Sarat Chandra Tripathy* (supra) is concerned, the petitioner in that case was an employee of Odisha Forest Development Corporation and he had approached this Court before any decision was taken or

resolution being passed by the management of the said Corporation, for which this Court did not entertain the said writ application. In the facts and circumstances, the said case is clearly distinguishable from the present one.

14. So far as the case of Sukant Kumar Das (*supra*) is concerned, this Court decided to extend the benefit to him pursuant to resolution dated 02.08.2014 of the Government in Public Enterprises Department, by specifically holding in paragraph 10 of the judgment as follows: "10. Pursuant to the resolution dated 02.08.2014 of the Government of Odisha, vide Annexure-1, the Governing Body of OREDA, which has been constituted by the State Government in its Science and Technology Department to regulate the affairs of the agency, in its 36th meeting held on 12.03.2015, has decided to send proposal to the Finance Department through S & T Department for enhancement of age of retirement on superannuation of employees of OREDA from 58 to 60 years. A decision was taken that OREDA shall meet the additional requirement of fund from its own source. Accordingly, the proposal was submitted by OREDA. The proposal has been concurred by the government of Odisha in its Finance Department. Thus there is no impediment on the part of opposite party no.3 to amend the Rule so as to give benefit to its employees".

15. In addition to above, since as a matter of principle, the Governing Body of the OREDA has already taken a decision in its 10th and 33rd meeting respectively held on 18.04.1987 and 02.06.2010 that the facilities available to the State Government employees should be automatically accorded by OREDA to its staff except when different conditions are specifically prescribed as per rules of the Organization framed and Governing Body resolutions made from time to time and that the service rules applicable to the employees of the Government of Odisha shall be made applicable to the employees of OREDA, so far as enhancement of retirement of age of the employees of OREDA is concerned, the same has to be in consonance of the decision of the Governing Body in its 10th and 33rd meeting, as discussed above.

16. In order to buttress the above view of this Court, it is apposite to refer to the judgment of the apex Court in *Harwindra Kumar v. Chief Engineer, Karmik*, AIR 2006 SC 365, wherein their Lordships in paragraphs-9, 10 and 11 have held as follows: "9. Reference in this connection may be made to a decision of this Court in the case of *V.T. Khanzode and others v. Reserve Bank of India* and another, AIR 1982 SUPREME COURT 917. In that case, under Section 58(1) of the Reserve Bank of India Act, powers were conferred upon the Central Board of Directors of the Bank to make regulations in order to provide for all matters for which provision was necessary or convenient for the purpose of giving effect to the provisions of the Act which section in the opinion of their Lordships included the power to frame regulation in relation to service conditions of the bank staff. In that case, instead of framing regulations, the bank issued administrative circulars in relation to service conditions of the staff acting under Section 7(2) of the Reserve Bank of India Act which was a general power conferred upon the bank

like Section 15(1) of the present Act. It was laid down that "there is no doubt that a statutory corporation can do only such acts as are authorized by the statute creating it and that, the powers of such a corporation cannot extend beyond what the statute provides expressly or by necessary implication." It was further laid down that "so long as staff regulations are not framed under Section 58(1), it is open to the Central Board to issue administrative circulars regulating the service conditions of the staff, in the exercise of power conferred by Section 7(2) of the Act." As in the said case, no regulation was at all framed under Section 58 of the Reserve Bank of India Act, as such, the administrative circulars issued by the Central Board of Directors of the Bank under Section 7(2) of the Reserve Bank of India Act in relation to service conditions were held to be in consonance with law and not invalid. 10. In the present case, as Regulations have been framed by the Nigam specifically enumerating in Regulation 31 thereof that the Rules governing the service conditions of government servants shall equally apply to the employees of the Nigam, it was not possible for the Nigam to take an administrative decision acting under Section 15(1) of the Act pursuant to direction of the State Government in the matter of policy issued under Section 89 of the Act and directing that the enhanced age of superannuation of 60 years applicable to the government servants shall not apply to the employees of the Nigam. In our view, the only option for the Nigam was to make suitable amendment in Regulation 31 with the previous approval of the State Government providing thereunder age of superannuation of its employees to be 58 years, in case, it intended that 60 years which was the enhanced age of superannuation of the State Government employees should not be made applicable to employees of the Nigam. It was also not possible for the State Government to give a direction purporting to Act under Section 89 of the Act to the effect that the enhanced age of 60 years would not be applicable to the employees of the Nigam treating the same to be a matter of policy nor it was permissible for the Nigam on the basis of such a direction of the State Government in policy matter of the Nigam to take an administrative decision acting under Section 15(1) of the Act as the same would be inconsistent with Regulation 31 which was framed by the Nigam in the exercise of powers conferred upon it under Section 97(2)(c) of the Act.

11. For the foregoing reasons, we are of the view that so long Regulation 31 of the Regulations is not amended, 60 years which is the age of superannuation of government servants employed under the State of Uttar Pradesh shall be applicable to the employees of the Nigam. However, it would be open to the Nigam with the previous approval of the State Government to make suitable amendment in Regulation 31 and alter service conditions of employees of the Nigam, including their age of superannuation. It is needless to say that if it is so done, the same shall be prospective."

In *Dayanand Chakrawarty (supra)*, the apex Court taking note of the *Harwinder Kumar (supra)* held that so long as Regulation-31 is not amended, 60 years which is age of superannuation of the Government employees shall be applicable to the employees of the Nigam. It is further held that it was not possible for the

Nigam to take an administrative decision pursuant to the direction of the State Government in the matter of policy issued under Section 89 of the Act and directing that the enhanced age of superannuation of 60 years applicable to the Government servants shall not apply to the employees of the Nigam. In view of such finding of the apex Court, the Nigam cannot act on the basis of the State Government orders on 29.09.2009 providing uniform age of superannuation as 58 years. Accordingly, the apex Court allowed the age of employees of Nigam to continue till the age of superannuation in view of the Regulation 31 and ordered that no recovery shall be made from those who continued till the age of 60 years. It was further observed by the apex Court that the employees who had not been allowed to continue after completing age of 58 years by virtue of the erroneous decision taken by the Nigam for no fault of theirs, they would be entitled to payment of salary for the remaining period up to the age of 60 years.

In *Chairman, Uttar Pradesh Jal Nigam v. Radhey Shyam Gautam*, 2007 (11) SCC 507, following the decision of *Harwindra Kumar* (supra) the apex Court also held that the employees of the Nigam would be entitled to full salary for the remaining period up to the age of 60 years.

17. Taking into consideration the above law laid down by the apex Court and this Court, while considering the case of *Cuttack Development Authority in Premalata Panda* (supra), this Court came to a conclusion that the petitioner therein was entitled to get the benefit of extension of retirement age from 58 to 60 years and also directed how to implement such benefit in respect of employees working under the CDA. In view of such position, and law discussed above, there is no iota of doubt that the petitioners are entitled to get the benefit of enhancement of retirement age from 58 to 60 years at par with their counterparts in the State Government and also PSUs pursuant to resolution dated 28.06.2014 passed by the Government in Finance Department, as well the resolution dated 02.08.2014 passed by the Government in Public Enterprises Department together with the decision taken by the Governing Body of OREDA in its 10th meeting dated 18.04.1987 and 33rd meeting dated 02.06.2010.

18. Question No.3. What relief the petitioners are entitled to- Since this Court has already answered questions no.1 and 2 in affirmative, in view of the analysis made above, the petitioners are entitled to the following reliefs:

(a) The petitioners, who had approached this Court before completion of 58 years of age and during pendency of the writ petition were made to retire on attaining the age of 58 years, as well as who had approached this Court after retirement on attaining 58 years of age, the opposite party no.3-OREDA is directed to bring them back into service forthwith, if they have not attained the age of 60 years, and allow them to continue till they attain the age of 60 years and grant all the consequential service and financial benefits as due and admissible to them in accordance with law.

(b) The petitioners, who had approached this Court after retirement on attaining

the age of superannuation and in the meantime have attained the age of 60 years, shall not be entitled for arrears of salary. However, they will be deemed to be continuing in service up to the age of 60 years. In their case, the OREDA shall treat their age of superannuation as 60 years, fix the pay accordingly and re-fix the retirement benefits like pension, gratuity etc. On such calculation, they shall be entitled to arrears of retirement benefits after adjusting the amount already paid.

(c) Needless to say that the arrears of salary and arrears of retirement benefits should be paid to such employees within a period of six months from the date of receipt of copy of the judgment.

19. With the aforesaid observation and direction, the writ petitions are allowed. No order as to cost.