

(2014) 09 SC CK 0133
In the Supreme Court Of India
Case No : Civil Appeal No. 6307 of 2010

Govt. of U.P.

APPELLANT

Vs

Preetam Singh

RESPONDENT

Date of Decision : 23-09-2014

Acts Referred:

Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965 — Section 15, 3, 59(2), 7, 7(2)

Uttar Pradesh State Control Over Public Corporations Act, 1975 — Section 2(1)

Citation : AIR 2015 SC 481 : (2015) 1 ALJ 569 : (2014) 107 ALR 460 : (2014) 6 AWC 6358 : (2014) 4 ESC 477 : (2015) 144 FLR 438 : (2014) 4 LLJ 513 : (2014) 12 SCALE 11 : (2015) 5 SCJ 637 : (2014) 4 SCT 661 : (2015) 1 UPLBEC 15

Hon'ble Judges : J.S. Khehar, J;Arun Mishra, J

Bench : Division Bench

Advocate : P.N. Misra, Sr. Advocate, Abhisth Kumar and Som Raj Choudhury, Advocates for the Appellant; Rakesh Dwivedi, Adv., Jaideep Gupta, Sr. Adv., Vishwajit Singh, Pankaj Singh, Abhindra Maheshwari, Ajit Sharma, Upander Mishra, Advs., and Temple Law Firm, Advocates for the Respondent

Final Decision : Allowed

Judgement

J.S. Khehar, J.—The Uttar Pradesh Avas Evam Vikas Parishad (hereinafter referred to as the "Vikas Parishad") is a corporate body. It came into existence, consequent upon the promulgation of the Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965 (hereinafter referred to as the "1965 Act"). The employees of the Vikas Parishad were members of a Contributory Provident Fund Scheme. The Vikas Parishad desired to grant its employees better retiral benefits. A proposal was made, to extend pensionary benefits to the employees of the Vikas Parishad, in place of the existing Contributory Provident Fund Scheme. In furtherance of the aforesaid objective, a resolution dated 21.2.1995 was passed, proposing to replace the existing Contributory Provident Fund Scheme, to the Pension/Family Pension and Gratuity Scheme. Before implementation of the resolution dated 21.2.1995, the Vikas Parishad considered

it expedient to consult the State Government. In response to the aforementioned consultation, the State Government through a communication dated 16.5.1996 approved the afore-stated substitution conditionally. The conditions depicted in the aforesaid approval dated 16.5.1996, are being extracted hereunder:

Kindly refer to your letter No. 213/P-1 dated 24.4.1995 on the aforesaid subject. In this regard, I have been directed to say that State Government has no objection to the proposal of implementing Pension/Family Pension & Gratuity Scheme in place of C.P.F. Scheme in Uttar Pradesh Avas Evam Vikas Parishad. But subject to condition that no financial assistance will be given by the State Government for implementation of this Scheme and this Scheme will be run by the Board itself from the revolving funds created by it.

(Emphasis is ours)

2. Consequent upon the receipt of the aforesaid approval from the State Government, the Vikas Parishad circulated a letter dated 9.7.1996 requiring its employees to submit their options, as to whether they were desirous of shifting to the Pension/Family Pension and Gratuity Scheme, in place of the existing Contribution Provident Fund Scheme.

3. At the instant juncture, a very vital letter came to be issued by the State Government on 30.09.1997. Relevant extract of the aforesaid letter is being reproduced hereunder:

I have been directed to say that in order to implement the subject scheme, it is not necessary to initiate any proceedings required Under Clause (c) of the Employees Provident Fund & Miscellaneous Provisions Act, 1952 of the Central Government. Because Avas Evam Vikas Parishad is governed by the provisions of Uttar Pradesh Avas Evam Vikas Parishad Act. 1965 and specific provisions to this effect have been laid down in Section 95 of the said Act. 1965 according to which necessary proceedings are to be initiated for obtaining option from the employees for accepting and/or not accepting the proposed Pension Scheme.

(Emphasis is ours)

A perusal of the aforesaid letter reveals, that even though the State Government had granted conditional approval to the Pension/Family Pension and Gratuity Scheme, through its communication dated 16.5.1996, the State government expressed the opinion, that the Vikas Parishad did not need the approval of the State Government for the implementation of the Pension/Family Pension and Gratuity Scheme. Insofar as the instant aspect of the matter is concerned, the State Government in its letter dated 30.09.1997 clearly informed the Vikas Parishad, that it had the power to deal with the above issue of its own, Under Section 95 of the 1965 Act.

4. Based on the conditional approval granted by the State Government through its communication dated 16.5.1996, and also the clarificatory letter issued by the

State Government on 30.09.1997, the Vikas Parishad passed a resolution on 5.11.1997 approving the Pension/Family Pension and Gratuity Scheme. In granting the aforesaid approval, the Vikas Parishad followed the pensionary scheme applicable to civil servants of the State of Uttar Pradesh.

5. Before the resolution dated 5.11.1997 could be implemented, the Director General of Bureau of Public Enterprises addressed a communication dated 19.11.1997 to the State Government, informing it, that the Vikas Parishad had not sought its approval before the implementation of the Pension/Family Pension and Gratuity Scheme. In sum and substance, the Director General of Bureau of Public Enterprises informed the State Government, that the action taken by the Vikas Parishad in implementing the above scheme without its approval, was not in consonance with law. On the receipt of the letter from the Director General of Bureau of Public Enterprises, the State Government by its order dated 26.11.1997 stayed the implementation of the Pension/Family Pension and Gratuity Scheme. Whilst taking the above action, the State Government constituted a Sub-Committee to examine the variety and viability of the conversion of the Contributory Provident Fund Scheme to the Pension/Family Pension and Gratuity Scheme, not only with reference to employees of the Vikas Parishad, but with reference to employees of other Statutory Corporations, Development Authorities and Nigams in the State of Uttar Pradesh. The aforesaid Sub-Committee, under the Chairmanship of the Chief Secretary of the State, held a meeting on 3.10.1998. In the above meeting, Sub-Committee arrived at the conclusion, that there was no justification for the implementation of the Pension Scheme in any Statutory Corporations, Development Authorities or Nigams in the State of Uttar Pradesh. It was also the view of the Sub-Committee that the existing Contributory Provident Fund Scheme, should be continued for all the employees, for the time being.

6. Even though the above recommendation was made by the Sub-Committee, yet the Sub-Committee on 2.2.1999 expressed the view, that the aforesaid general determination recorded in its meeting dated 3.10.1998, should not be made applicable to the Vikas Parishad. Taking into consideration the excellent financial condition of the Vikas Parishad, the Sub-Committee observed that the Vikas Parishad should be permitted to take steps to introduce the Pension/Family Pension and Gratuity Scheme. It was however clearly indicated, that the Pension/Family Pension and Gratuity Scheme if introduced, for employees of the Vikas Parishad, the same would not create any financial liability on the State Government.

7. Based on the recommendations of the sub-Committee (in its meeting dated 2.2.1999), the State Government passed an order dated 14.9.1999, withdrawing its ban/restriction on the implementation of the Pension/Family Pension and Gratuity Scheme. Relevant extract of the letter dated 14.9.1999 is being reproduced below:

In this regard, I have been directed to say that government after due

consideration in the matter has decided to withdraw its bar/restriction imposed on the implementation of the subject Pension Scheme for the employees of the Board, subject to following conditions -

(1) Implementation of the Pension Scheme in the Board will be completely different from the pension being given to the employees of the State Government and this Scheme will be developed in the form of a distinct/separate trust based on C.P.F. and such a trust will be run and operated by a Third Party Pension Fund Manager. This Pension Scheme shall not have any connection/relation with the Pension Scheme of the government servants in any manner whatsoever. This pension scheme will be completely autonomous and will depend on the financial condition of the Pension funds;

(2) Money which will be deposited on this head/count, will not be spend for any other count/head meaning thereby that money so deposited on this count will be irreversible for any other purposes and it will be operated by the Trust;

(3) Pension Scheme will be maintained financially on the basis of contributions made by the Board towards C.P.F. and no money, apart from above, will be paid either by the Board or by the State Government. Please note that if this Scheme closes down due to any reason or due to non-availability of pension funds, then in that eventuality neither the Government nor the Board will be responsible for such a closure:

(4) Trust will be fully responsible for all the financial and economical aspects of the funds of this Scheme, based upon arrangements made with the Third Party Pension Fund Manager and Government/Board will not be responsible for any loss whatsoever;

(5) Representatives nominated by the Secretary, Housing and Secretary, Finance, will be amongst members of the Trust which will be created for the implementation of the Pension Scheme of the Board;

(6) Commissioner, Housing and Financial Controller of the Board will be personally responsible for ensuring strict compliance of the aforesaid conditions; and

(7) These orders are being issued on the basis of consent accorded by the Finance Department vide its D.O. No. 140/99-C-Ten (1) dated 9.8.199.

(emphasis is ours)

8. The aforesaid position was sought to be endorsed by the State Government on 7.5.2003, wherein the State Government reiterated the position, that no financial assistance will be provided by the State Government to the Vikas Parishad for implementation of the Pension/Family Pension and Gratuity Scheme.

9. All of a sudden, the State Government issued yet another letter dated 13.9.2005 staying the earlier Government order dated 7.5.2003 (relevant extracts wherefrom have been reproduced hereinabove). Thereupon, through a

further communication dated 12.7.2007, the State government withdrew its approval altogether. Through the above letter dated 12.7.2007, the State Government clearly informed the Vikas Parishad, that it could not implement the Pension/Family Pension and Gratuity Scheme. It further informed the Vikas Parishad, that employees of Public Enterprises, Statutory Corporations, Development Authorities and Nigams, who are covered by the Employees Provident Fund and Miscellaneous Pensions Act, 1952 of the Central Government, and those to whom different Contributory Provident Fund Schemes were already applicable, were liable to be governed by the said provisions and schemes.

10. The denial of permission by the State Government, as also, the incorporations of the conditions mentioned above, was sought to be assailed by the employees of the Vikas Parishad, before the High Court of Judicature at Allahabad (Lucknow Bench)(hereinafter referred to as the "High Court"), by filing Writ Petition No. 582(SB) of 2000. The aforesaid writ petition was allowed by the impugned judgment dated 16.1.2009. The orders issued by the State Government dated 13.9.2005 and 12.7.2007 were expressly quashed. A writ in the nature of mandamus was issued by the High Court to the Vikas Parishad, requiring it to implement the Pension/Family Pension and Gratuity Scheme. In compliance with the aforesaid direction, the Vikas Parishad implemented the Pension/Family Pension and Gratuity Scheme, through a notification dated 19.5.2009. Relevant extract of the aforesaid notification is being reproduced hereunder:

Now therefore, the U.P. Avas Evam Vikas Parishad, in exercise of the power Under Clause (f), (i) & (n) of Sub-section (1) of Section 95 of U.P. Avas Evam Vikas Parishad Adhiniyam, 1965 (U.P. Act 1 of 1996) has decided that the Pension/Family Pension and Gratuity admissible to the officers and employees of State Government, which is governed by the following rules, schemes and Government orders shall also be admissible (excluding Pension commutation) to the officers and employees of the U.P. Avas Evam Vikas Parishad:

The orders with respect to the Pension/Family Pension/Gratuity issued time to time by the State Govt. shall also be applicable to the officers and employees of U.P. Avas Evam Vikas Parishad.

It would be pertinent to mention, that the aforesaid notification was expressly extended to such employees of the Vikas Parishad, who were in service on 1.1.1996. The Pension/Family Pension and Gratuity Scheme in terms of the aforesaid notification, would be applicable only till the introduction of the newly defined Contributory Fund Rules framed by the State Government, as were applicable to employees of the Vikas Parishad who had entered its service w.e.f. 1.4.2005.

11. In raising a challenge to the impugned judgment rendered by the High Court on 16.1.2009, it was the vehement contention of the learned Counsel for the State of Uttar Pradesh, that the scheme could not have been formulated, and

given effect to in the absence of an express approval by the State Government. Insofar as the instant contention is concerned, learned Counsel for the Appellant placed reliance on the Uttar Pradesh State Control Over Public Corporations Act, 1975. Our pointed attention was invited to Section 2(1) thereof, which is being extracted hereunder:

2(1) Every statutory body (by whatever name called), established or constituted under any Uttar Pradesh Act. excepting Universities governed by the Uttar Pradesh State Universities Act, 1973, as re-enacted and emended by the Uttar Pradesh University (Re-enactment and Amendment) Act, 1974, shall, in the discharge of its functions, be guided by such directions on questions of policies, as may be given to it by the State Government, notwithstanding that no such power has expressly been conferred on the State Government under the law establishing or constituting such statutory body.

(Emphasis is ours)

Based on the aforesaid provisions, it was the submission of the learned Counsel for the Appellant, that the State of Uttar Pradesh, through its communications dated 13.9.2005 and 12.7.2007, must be deemed to have issued directions to the Vikas Parishad, restraining it from implementing the Pension/Family Pension and Gratuity Scheme. The aforesaid directions, according to the learned Counsel, were binding on the Vikas Parishad.

12. We have given our thoughtful consideration to the first contention advanced at the hands of the learned Counsel for the Appellant. There can be no doubt that it is open to the State Government to issue directions of questions of policy to all Public Corporations in the State of Uttar Pradesh, in furtherance of the mandate contained in Section 2(1) of the 1975 Act. It would however be pertinent to mention that the above directions could be issued only in respect of questions of policy having a nexus to the "discharge of its functions". Insofar as the Vikas Parishad is concerned, we are of the view that the functions of the Vikas parishad are relatable only to the functions stipulated in Section 15 of the 1965 Act. Section 15 afore-mentioned is being reproduced hereunder:

15. Functions of the Board.-(1) Subject to the provisions of this Act and the rules and Regulations, the functions of the Board shall be-

- a) to frame and execute housing and improvement schemes and other projects.
- (b) to plan and co-ordinate various housing activities in the State and to ensure expeditious and efficient implementation of housing and improvement schemes in the State;
- (c) to provide technical advice for and scrutinise various projects under housing and improvement schemes sponsored or assisted by Central Government or the State Government;
- (d) to assume management of such immovable properties belonging to the State

Government as may be transferred or entrusted to it for this purpose;

(e) to maintain, use, allot, lease, or otherwise transfer plots, buildings and other properties of the Board or of the State Government placed under the control and management of the Board.

(f) to organise and run workshops and stores for the manufacture and stockpiling of building materials;

(g) on such terms and conditions as may be agreed upon between the Board and the State Government, to declare houses constructed by it in execution of any scheme to be houses subject to the U.P. Industrial Housing Act, 1955 (U.P. Act No. XXIII of 1955);

(h) to regulate building operations;

(i) to improve and clear slums;

(j) to provide roads, electricity, sanitation, water supply and other civic amenities and essential services in areas developed by it;

(k) to acquire movable and immovable properties for any of the purposes before mentioned;

(l) to raise loans from the market, to obtain grants and loans from the State Government, the Central Government, local authorities and other public corporations, and to give grants and loans to local authorities, other public corporations, housing co-operative societies and other persons for any of the purposes before mentioned;

(m) to make investigation, examination or survey of any property or contribute towards the cost of any such investigation, examination or survey made by any local authority or the State Government;

(n) to levy betterment fees;

(o) to fulfill any other obligation imposed by or under this Act or any other law for the time being in force; and

(p) to do all such other acts and things as may be necessary for the discharge of the functions before mentioned.

(2) Subject to the provisions of this Act and the rules and Regulations, the Board may undertake, where it deems necessary, any of the following functions, namely -

(a) to promote research for the purpose of expediting the construction of and reducing the cost of buildings;

(b) to execute works in the State on behalf of public institutions, local authorities and other public corporations, and departments of the Central Government and the State Government;

(c) to supply and sell building materials;

(d) to co-ordinate, simplify and standardise the production of building materials and to encourage and organise the prefabrication and mass production of structural components;

(e) with a view to facilitating the movement of the population in and around any city, municipality, town area or notified area, to establish, maintain and operate any transport service, to construct, widen, strengthen or otherwise improve roads and bridges and to give financial help to others for such purposes;

(f) to do all such other acts and things as may be necessary for the discharge of the functions before mentioned.

In our view, the State of Uttar Pradesh, had the right to issue directions only in respect of the functions assigned to the Vikas Parishad Under Section 15 of the 1965 Act. The conditions of service of employees, in our considered view, do not constitute the functions of the Vikas Parishad, and as such, we are satisfied that the directions contemplated Under Section 2(1) of the 1975 Act, do not extend to the directions issued by the State of Uttar Pradesh in the impugned orders dated 13.9.2005 and 12.7.2007. We therefore find no merit in the first contention advanced by the learned Counsel for the Appellant.

13. Insofar as the second contention is concerned, it was the vehement contention of the learned Counsel for the Appellant, that the State of Uttar Pradesh is to shoulder the financial liabilities of the Vikas Parishad, in the event of its dissolution. Insofar as the instant aspect of the matter is concerned, learned Counsel for the Appellant placed reliance on Section 93 of the 1965 Act. The said provision is being extracted hereunder:

93. Dissolution of the Board.-(1) If the State Government is of opinion that the Boards has failed to carry out its functions under this Act or that for any other reason, it is not necessary to continue the Board, it may, by notification in the Gazette, dissolve the Board from such date as may be specified in the notification.

(1) Upon the publication of a notification under Sub-section (1) dissolving the Board-

(a) the Adhyaksh, the Housing Commissioner and all members of the Board shall, as from the date of dissolution, vacate their offices;

(b) all the powers and functions which may, by or under this Act, be exercised and performed by or on behalf of the Board or the Housing Commissioner shall, as from the date of dissolution, be exercised and performed by, and all subsisting contracts, agreements and other instruments to which the Board or the Housing Commissioner is a party or which are in favour of the Board or the Housing Commissioner may be enforced or acted upon, and all suits, appeals and other legal proceedings pending by or against the Board or the Housing Commissioner

may be continued, prosecuted or enforced, by or against the State Government or such authority or person as it may appoint in this behalf;

(c) the fund of and other properties vested in the Board shall vest in the State Government; and

(d) all liabilities, legally subsisting and enforceable against the Board, shall be enforceable against the State Government to the extent of the fund and properties of the Board vested in it.

(3) Nothing in this section shall affect the liability of the State Government in respect of debentures guaranteed by it under Sub-section (2) of Section 59.

(4) Notwithstanding anything contained in the foregoing provisions of this Action, the State Government may at any time again establish a Board Under Section 3 and appoint a Housing Commissioner Under Section 7, and thereupon-

(a) the powers and function as well as the rights and liabilities in relation to contracts, agreements and other instruments, and suits, appeals and other legal proceedings referred to in Clause (b) of Sub-section (2) shall re-vest in the Board or the Housing Commissioner, as the case may be;

(b) the fund and other properties referred to in Clause (c) of Sub-section (2) remaining with the State Government after meeting any liabilities referred to in Clause (d) thereof shall re-vest in the Board.

Having perused Section 93 of the 1965 Act, we are satisfied, that Under Clause (d) of Section 93(1), the financial liability transferable to the State Government in the event of dissolution of the Board, is limited of the fund and properties of the Board vested in it. In other words, the State of Uttar Pradesh in case of dissolution of the Board, would only bear the responsibility of discharging the liabilities, to the extent of the properties of the Board which stand transferred to it. Thus viewed, we are of the opinion that no financial liability would stand transferred to the State Government, even in the event of the dissolution of the Vikas Parishad. Accordingly, we find no merit even in the second contention advanced at the hands of the learned Counsel for the Appellant.

14. Despite the objections raised by the learned Counsel for the Appellant, we shall also venture to determine, whether the Vikas Parishad was competent to frame Regulations, whereby it could extend the Pension/Family Pension and Gratuity Scheme to its employees. In this behalf, it is relevant to examine Section 95 of the 1965 Act. The aforesaid provision is being produced hereunder:

Section 95. Power to make Regulations.-(1) The Board may, by notification in the Gazette, make Regulation providing for-

(a) the time and place of, and the manner of convening, the meeting of the Board and its committees and Avas Samitis and their postponement and adjournment;

- (b) the procedure and the conduct of business at meetings of the Board and of its committees and Avas Samitis;
- (c) the appointment, constitution and procedure of committees;
- (d) the delegation of powers by the Housing Commissioner and officers of the Board;
- (e) the duties of officers and servants of the Board;
- (f) the conditions of services of officers and servants of the Board;
- (g) the preparation of plans and estimates for works;
- (h) the preparation of budgets and estimates;
- (i) the authority on which moneys may be paid from the Board's fund;
- (j) the manner of publication of public notices;
- (k) the stamping of facsimile of signatures of the Housing Commissioner and officers of the Board on notices, bills and other documents;
- (l) the fees payable for copies of documents, estimates and plans issued by the Board;
- (m) the management, use and allotment of buildings constructed under any housing or improvement scheme; (n) any other matter which is to be or may be provided for by Regulations under this Act or the rules.

(2) If any Regulations is repugnant to any rule then the rule whether made before or after the Regulations shall prevail and the Regulation shall to the extent of the repugnancy be void.

A perusal of Clause (f) of Section 95(1), with Clause (I) of Section 95(1) would reveal, that the Vikas Parishad is vested with the right to make Regulations, so as to extend to its employees a scheme in the nature of Pension/Family Pension and Gratuity Scheme i.e., a scheme similar to the one framed by the Vikas Parishad on 19.5.2009.

15. For the reasons recorded hereinabove, we find no merit in this appeal, and the same is accordingly dismissed.

16. It is also necessary for us to determine the consequence of the State of Uttar Pradesh, having approached this Court, to assail the impugned judgment dated 16.1.2009. This Court having entertained the petition filed by the Appellant, passed interim directions on 7.8.2012, which had the effect of staying the implementation of the directions issued by the High Court, namely, of staying the implementation of the notification dated 19.5.2009. As a result, employees governed by the notification dated 19.5.2009, were paid their retiral dues under the Contributory Provident Fund Scheme. Since we have now affirmed the impugned judgment of the High Court, dated 16.1.2009, it is apparent that all/

oil the eligible employees of the Vikas Parishad will be governed by the notification dated 19.5.2009. They will therefore be entitled to pensionary benefits from the date of their retirement. Undoubtedly, they have been denied the said retiral benefits, consequent upon the interim orders passed by this Court, at the behest of the State of Uttar Pradesh. In the above view of the matter, we direct the Vikas Parishad to release the pensionary benefits to the retired employees governed by the notification dated 19.5.2009, within three months from today. While determining the pensionary benefits payable to the eligible retired employees up to date, if it is found that any of the retired employees is entitled to financial dues in excess of those already paid under the Contributory Provident Fund Scheme, the said employee(s) will be paid interest on the said amount at the rate of 9% per annum. The burden of the aforesaid interest component on the differential amount, will be discharged by the Vikas Parishad, in the first instance. The same shall, however, be recovered from the State of Uttar Pradesh, who is solely responsible for the interest ordered to be paid to the concerned employees.