(2003) 06 KAR CK 0011

In the Karnataka High Court

Case No : Writ Petition No''s. 27495 of 2002 and 19413 to 19431 and 19550 to 19565 of 2003

Karnataka Electricity Board Engineers Association APPELLANT

Vs

State of Karnataka and Others RESPONDENT

Date of Decision : 30-06-2003

Acts Referred:
Karnataka Electricity Reforms Act, 1999 — Section 14, 14 (2), 14 (3), 14 (5), 15

Citation : (2003) 3 KCCR 2257

Hon'ble Judges : H.L. Dattu, J

Bench : Single Bench

Advocate : K. Raghavendra Rao, in W.P. No. 27495 of 2002, K. Gopala Hegde, in W.P. No. 19413-19431 of 2003 and D.N. Nanjunda Reddy, in W.P. No. 19550 -19565 of 2003, for the Appellant; Srinivasamurthy, Government Advocate for Respondent 1 in W.P. No. 27495 of 2002 for Respondent 1 in W.P. No. 19413-19431 of 2003 and for Respondent 1 in W.P. No. 19413-19431 of 2003, Ramdas. Sr. Advocate for Respondent 2 to 6 in W.P. No. 27495 of 2002 for Respondent 2 in W.P. No. 19413-19431 of 2003 and for Respondents 2, 3 and 6 in W.P. No. 19550-19565 of 2003, for the Respondent

Final Decision : Allowed

Judgement

H.L. Dattu, J.—Question of law involved in all these writ petitions is identical. Therefore, all these writ petitions are clubbed together, heard and disposed off by this common order.

2. Petitioners in all these writ petitions belong to the State Wide Cadre of Graduate Engineers in the erstwhile Karnataka Electricity Board (''Board'' for short).

3. Some time in the year 1998-99, there was a proposal to initiate certain reforms in the functioning of the Board. In view of that, the State Government has promulgated an Act known as ''Karnataka Electricity Reforms Act, 1999'' (''Act'' for short). It has received the assent of the President on 28.8.1999

and it has come into force w.e.f. 1.6.1999.

3. The preamble of the Act gives out the purpose of the Reforms Act, 1999. The preamble reads as under:

An Act to provide for the constitution of an Electricity Regulatory Commission (The Commission) for the State of Karnataka, to provide for the restructuring of the electricity industry in the State, the corporatisation of the Karnataka Electricity Board and the rationalisation of the generation, transmission, distribution and supply of electricity in the State, to provide for avenues for participation of private sector entrepreneurs in the electricity industry in the State and generally for taking measures conducive to the development and management of the electricity industry in the State in an efficient, economic and competitive manner to provide reliable quality power and to protect the interest of the consumer including vesting in the Commission the powers to regulate the activities of the power sector in the State and for matters connected therewith or incidental thereto.

4. Chapter v. of the Act provides for Reorganisation of the Karnataka Electricity Board and the transfer of Board''s functions, transfer of assets, liabilities, etc.

Section 13 of the Act provides for constitution of Karnataka Power Transmission Corporation. The company is incorporated under the provisions of Companies Act, 1956, with the principal objects of engaging in the business of purchase, transmission, sale and supply of electrical energy. The Act authorises the Karnataka Transmission Corporation after obtaining a licence/licences from the Commission constituted u/s 3 of the Act, to establish in the State, number of subsidiary or associated transmission or distribution companies.

Section 14 of the Act provides for Reorganisation of the Karnataka Electricity Board. This Section authorises the State Government to prepare a transfer scheme to give effect to the object and purposes of the Act. With effect from the date the Transfer Scheme is published or such further date as may be prescribed, any property, interest in property, rights and liabilities which immediately before the effective date of first transfer belong to the Board shall vest in the State Government on such terms and conditions as may be agreed between the State Government and the Board.

Sub-section (2) of Section 14 of the Act authorises the State Government to revest any property, interest in property, etc., in the Karnataka Power Transmission Corporation or any Generating Company or Companies in accordance with the Transfer Scheme on such terms and conditions as may be agreed between the parties.

Sub-section (3) of Section 14 of the Act envisages that from the effective date of first transfer of assets and liabilities to Karnataka Power Transmission Corporation, the Board shall stand dissolved.

Sub-section (5) of Section 14 of the Act provides for establishment of ''transferee/

licensee'' by the Karnataka Power Transmission Corporation and further to draw up a transfer scheme to vest in the transferee/licensee any function including distribution function, any property, interest in the property, rights and liabilities which have been vested in the Karnataka Power Transmission Corporation and publish the same as the scheme of transfer under the Act. This would be the second transfer.

Section 15 of the Act provides for provisions relating to Personnel. The said Section requires to be noticed, for the reason, that the entire case of the Petitioners revolves round this Section. Therefore, it is extracted and it reads as under:

Section 15. Provisions relating to Personnel.-

(1) The State Government may provide in a transfer scheme framed u/s 14 of the transfer of the personnel from the Board to the KPTC or to the generating company or companies or from the KPTC to further transferee, as the case may be, on the vesting of properties, rights and liabilities in the KPTC or further transferee as provided u/s 14 and such transfers shall be effective in the same manner as in the case of transfers u/s 14.

Explanation.- For the purposes of this section and Section 16, the term "Personnel" shall mean all persons, who, on the effective date of the transfer, are the employees of the Board or KTPC, as the case may be.

(2) Upon such transfer scheme, the personnel shall hold office or service under the KPTC or generating company or companies or the transferee company on terms and conditions that may be determined, in accordance with the transfer scheme:

Provided that such terms and conditions on the transfer shall not in any way be less favourable than those which would have been applicable to them before the relevant transfer scheme and the continuity of service of the personnel shall be maintained:

Provided further that any such scheme under Sub-sections (1) and (2) shall be consistent with the tripartite agreements entered into between the State Government, Board or KPTC as the case may be and the employees.

(3) Notwithstanding anything contained in the Industrial Disputes Act, 1947 or any other law as is applicable and except for the provisions made in this Act, the transfer of the employment of the personnel referred to in Sub-section (1) shall not entitle such employees to any compensation or damages under this Act, or any other Central or State law or under the general law, save as provided in the transfer scheme.

5. In the transfer scheme that may be framed by the State Government u/s 14 of the Act, it may provide for the transfer of the personnel from the Board to the Karnataka Power Transmission Commission or to the Generating Company or

Companies or on the vesting of the properties, rights and liabilities in the Karnataka Power Transmission Commission to transferee/licensee. The term ''personnel'' means all persons who on the effective date of transfer are either employees of the Board or Karnataka Power Transmission Commission. On framing of such transfer scheme, the personnel of Karnataka Electricity Board shall hold office under Karnataka Power Transmission Corporation or Generating Company or Companies or the transferee company.

First proviso appended to the Sub-section provides that, on such transfer of the personnel, their conditions of service will not be in any way less favourable before the relevant transfer scheme and the continuity of service of the personnel shall be maintained.

The second proviso makes it abundantly clear that any transfer scheme framed under Sub-sections (1) and (2) of the Act shall be consistent with the tripartite agreements entered into between the State Government, Board or Karnataka Power Transmission Corporation and the employees.

6. Prior to the promulgation of the Reforms Act, since Engineers of Karnataka Electricity Board had expressed their apprehensions that their services would be privatised and that it would affect their service conditions, and retrenchment in the service resulting in loss of employment and to alleviate their unfounded apprehensions, a negotiation was held between the State Government, the Electricity Board and its employees. After such negotiation, a tripartite agreement has been entered into between the aforesaid three parties on 15.9.1999. Clause (5) of the agreement provides for the terms and conditions of service of inservice Engineers in the event of their absorption into two or more corporate entities.

Clause 5(j) of the agreement is relevant for the purpose of this case. Therefore, it is extracted and it reads as under:

(j) In the event of formation of two or more corporate entities all the in service Engineers shall be absorbed in these corporate entities which would be the successor bodies to the Board. However, one entity shall be termed as the main successor entity for all the service matters. As on the date of formation of these entities, the Engineers will continue on as-is-where-is-basis but their services would be maintained at the main successor entity and they would be treated as being on deputation to the other successor entities.

This clause in the agreement provides that in the event of re-organisation of Karnataka Electricity Board into two or more corporate entities, all the in-service Engineers of the Board shall be absorbed in those corporate entities, which would be successor bodies to the Board and out of them, one entity shall be the main successor entity for all the service matters and their services would be maintained at the main successor entity and they would be treated as being on deputation to the other successor entities.

7. To give effect to the provisions of the Electricity Reforms Act, 1999, the Karnataka Power Transmission Corporation, which is the successor in interest of the Board, has framed Rules known as ''Karnataka Electricity Reforms Rules in exercise of powers conferred by Sections 14 and 15 read with Section 57 of the Karnataka Electricity Reforms Act, 1999, and the Rules are called "Karnataka Electricity Reform (Transfer of undertaking of Karnataka Power Transmission Corporation Limited and its personnel to Electricity Distribution and Retail Supply Companies) Rules, 2002 (''Rules'' for short). The same is notified on 31st day of May, 2002.

Rule 2(i) of the Rules defines the meaning of the expression "effective date of second transfer" to mean the date as may be notified by an order made by the State Government for effecting transfer of assets, liabilities, posts, personnel, proceedings or undertaking from Karnataka Power Transmission Corporation Limited to BESCOM, MESCOM, GESCOM or HESCOM as the case may be, in accordance with these Rules and different effective dates of second transfer may be notified for different transfers.

Rule 2(za) of the Rules defines the meaning of the expression "personnel" to mean employees and officers of Karnataka Power Transmission Corporation Limited by whatever name called, including those on deputation from Karnataka Power Transmission Corporation Limited to other companies organisations, institutions and corporate entities.

Rule 2(mm) of the Rules defines the meaning of the expression "Tripartite Agreement" to mean the applicable agreements entered into by the State Government, the Karnataka Electricity Board, and the concerned Union or association of the personnel as set out in scheme E and as may be modified by the parties to such agreements from time to time.

Rule 4 of the Rules provides for transfer of specified personnel and posts. Sub-rule (5) of Rule 4 of Rules, 2002 is relevant for the purpose of this case. Therefore, the said provisions is extracted and it reads as under:

(5)(a). The Personnel of KPTCL belonging to the State-wide Cadre of KPTCL including the Specified Personnel of KPTCL, and all other Personnel of KPTCL belonging to the State Wide Cadre (hereinafter collectively called "State Wide Cadre Opting Personnel") Shall not later than ten months from the relevant Effective Date of Second Transfer of ESCOM to which such Specified Personnel are allocated submit an option to be absorbed in an ESCOM or to remain with KPTCL. A decision on such options shall be taken by KPTCL within one month from the date of exercising the option in accordance with the following principles.

(i) Where the number of such State Wide Cadre Opting Personnel exercising the option does not exceed the total number of posts available in an ESCOM or in KPTCL as the case may be, all State Wide Cadre Opting Personnel shall be deemed to be absorbed in that ESCOM or remain in KPTCL as the case may be, on such post with effect from the expiry of one month from the Option Date or twelve months from the relevant Effective Date of Second Transfer of such Specified Personnel, as the case may be.

(ii) Where the number of such State Wide Cadre Opting Personnel exercising the option exceeds the total number of Posts available in an ESCOM or in KPTCL, the selection of the State Wide Cadre Opting Personnel to be absorbed in an Escom or to remain in KPTCL on such Post shall be done on the basis of the seniority of the concerned State Wide Cadre Opting Personnel as at the relevant Effective Date of Second Transfer of such Specified Personnel according to seniority list as maintained by KPTCL in respect of the such State Wide Cadre Opting Personnel.

(b) Where a State Wide Cadre Opting Personnel does not submit on option in accordance with Clause (a) of this Sub-rule (5) or is not absorbed in an ESCOM pursuant to his option, he/she shall be deemed to be in the service of KPTCL and shall not be entitled to be absorbed in an ESCOM.

It is the validity or otherwise of the aforesaid sub-rule is the subject matter of these writ petitions.

8. Sriyuths Gopal Hegde, Sri Nanjunda Reddy and Sri Raghavendra Rao, learned Counsels appearing for the Petitioners would submit that the aforesaid sub-rule is contrary to the tripartite agreement and the provisions of Reforms Act, 1999. Therefore, they are of the view that the said sub-rule is ultra vires of the provisions of Karnataka Electricity Reforms Act, 1999 and the covenants stipulated in the tripartite agreement. They further contend that the said sub-rule virtually compels an employee officer to exercise his option for absorption in any one of the ESCOM and that cannot be done in view of the specific understanding between the parties which is reflected in the tripartite agreement.

9. Sri Ramdas, learned Senior Counsel appearing for the second Respondent - The Karnataka Power Transmission Corporation Limited would submit that the memo of understanding of the parties to the agreement gets obliterated once the personnel of Karnataka Electricity Board is transferred to Karnataka Power Transmission Corporation and in the second transfer namely, when Karnataka Power Transmission Corporation forms separate companies or ESCOM, the personnel, who are absorbed in Karnataka Power Transmission Corporation can be directed to exercise their option for absorption in any one of the ESCOM and therefore, Petitioners are not justified in contending that in view of the tripartite agreement, which has been given a statutory force by incorporating the same u/s 15 of Karnataka Electricity Reforms Act, 1999, the employer cannot compel an employee officer to exercise his option for absorption in any one of the ESCOM. The learned Senior Counsel would further contend that the directions contained in the sub-rule is only optional and if for any reason, the employee/officer does not exercise his option for absorption in any one of the ESCOM, his services would be continued in Karnataka Power Transmission Corporation and no penal action will be initiated against him and therefore, the sub-rule cannot be characterised as either arbitrary or contrary to the tripartite agreement or

Section 15 of the Act.

10. To appreciate the contentions canvassed by learned Counsels appearing for the Petitioners and the second Respondent, the tripartite agreement that was entered into between the State Government, the Board and the employees of the Board requires to be noticed.

Clause (j) of the said agreement would indicate that, if for any reason, the Board forms two or more corporate entities all the Engineers in the Board shall be absorbed in those corporate entities. The said corporate entity would be the successor of the Board. It further states that one corporate entity would be the main successor entity for all service matters. Further, it states that on the date of formation of the aforesaid entity, the services of the Engineers working in the Board would be maintained at the main successor entity an they could be treated as being on deputation to the other successor entities.

11. Section 15 of the Act, as I have already stated, provides for provisions relating to the transfer of personnel from the Board to Karnataka Power Transmission Corporation or to the generating company or companies or from Karnataka Power Transmission Corporation to further transferee company.

Proviso to Sub-section (2) of Section 15 of the Act mandates that any scheme prepared under Sub-sections (1) and (2) of Section 15 of the Act shall be in consistent with the tripartite agreement entered into between the State Government, the Board or the Karnataka Power Transmission Corporation as the case may be and the employees. Therefore, any scheme that would be framed u/s 15 of the Act cannot be contrary to the terms of tripartite agreement entered into between the parties.

12. Sub-rule (5)(a) of Rule 4 of Rules, 2002, apart from others, compels the employee officers of Karnataka Power Transmission Corporation belonging to State Wide Cadre to exercise their option not later than ten months from the effective date of second transfer of ESCOM to which specified personnel are absorbed in ESCOM or to remain with Karnataka Power Transmission Corporation Limited.

The next limb of sub-rule mandates that Karnataka Power Transmission Corporation Limited shall take a decision within one month from the date the employee officer exercises his option.

Sub-clauses in the sub-rule provides the principles that requires to be followed by Karnataka Power Transmission Corporation Limited while considering the option for absorption exercised by employee officer of Karnataka Power Transmission Corporation Limited.

The sub-rule also says that if for any reason, an employee officer does not exercise his option, his services would be continued in the Karnataka Power Transmission Corporation Limited itself.

13. The tripartite agreement between the parties was that the Board shall form two or more corporate entities and the Engineers working in the Board shall be absorbed into those corporate entities. In one corporate entity out of two or more corporate entities that may be formed out of the Karnataka Electricity Board, the services of the employees would be retained by the main successor entity. In the present case, the main successor entity is the Karnataka Power Transmission Corporation Limited. The provision also provides for deputing the services of the Engineers of the Karnataka Power Transmission Corporation Limited to the other successor entities.

14. This tripartite agreement has been incorporated in the proviso to Sub-section (2) of Section 15 of the Act. By that process, the tripartite agreement has attained the statutory force.

15. The Rules framed by the Karnataka Power Transmission Corporation Limited has the force of law and that should be consistent with the provisions of the Act. Breach if any, can be subject matter of judicial review. It is settled principles that the rule making authority cannot travel beyond what the statutory provisions authorise it to do. The rules in order to be valid must be backed by guidelines provided in the statute itself.

The impugned Rules directs the Petitioners and similarly placed inservice Engineers, to exercise their option for absorption in any of its ESCOMS within a particular time frame and such of those employees, who would not exercise their option for absorption, continue to remain in the rolls of the Karnataka Power Transmission Corporation Limited. Since Respondents have not stated the purpose and object for framing such a Rule in their statement of objections filed before this Court, I repeatedly asked the learned Senior Counsel for Respondents, the purpose and object behind the impugned Rules. The learned Senior Counsel was "silent".

In my view, there must be an object and reason to justify the enactment of law. Where there is no object or reason behind while framing the Rules, framing of such Rule would amount to abuse of power conferred by the statute on the rule making authority.

Secondly, a Rule or Regulation made under a statute must be intra vires and consistent with the statute under which it is framed. The conferment of rule making power by a statute does not enable the Rule making authority to make a Rule which travels beyond the scope of the enabling statute or which is inconsistent therewith or repugnant thereto. This concept is explained by the Apex Court in the case of General Officer Commanding-in-Chief v. Subhash Chandra Yadav (Dr.) reported in AIR 1988 SC 878, wherein the Court was pleased to observe:

It is well settled that rules framed under the provisions of a statute form part of the statute. In other words, rules have a statutory force. But before a Rule can have the effect of statutory provision, two conditions must be fulfilled, namely,

(i) It must conform to the provision of the statute under which it is framed, and (ii) it must also come within the scope and purview of the rule making power of the authority framing the rule. If either of these conditions is not fulfilled, the rule so framed would be void.

16. In testing the validity or otherwise of the Rules, one will have to consider the true scope and effect of the Rule itself and the decision of the question will have to be confined to the relevant considerations in respect of the Rule and no more. The impugned sub-rule directs the personnel of Karnataka Power Transmission Corporation Limited belonging to State Wide Cadre of the Karnataka Power Transmission Corporation Limited, including the specified personnel of the Karnataka Power Transmission Corporation Limited, who have been allotted to the specified ESCOM to exercise their option to be absorbed in an ESCOM or to remain with the Karnataka Power Transmission Corporation Limited. This Rule framed by the rule making authority in exercise of its powers primarily u/s 15 of the Act, only provides that any scheme framed under Sub-sections (1) and (2) of Section 15 shall be consistent with the tripartite agreements entered into between the State Government, Board or Karnataka Power Transmission Corporation as the case may be and the employees. Therefore, any rule or scheme providing for service conditions of the aforesaid employee officers should be in consonance with the tripartite agreement between the parties, which specifically provides that in the event the State Government restructuring Karnataka Electricity Board into two or more corporate entities, all the in-service Engineers shall be absorbed in those corporate entities, which would be successor bodies to the Board and there would be one entity as the main successor entity for all the service matters and their services would be maintained at the main successor entity and they would only be treated as being on deputation to the other successor entities and the agreement did not provide for the employee officers exercising their option for absorption if they are allotted to any one successor entity of the Karnataka Power Transmission Corporation. Since the Rule made is in excess of the power conferred by Sub-section (2) of Section 15 of the Act and since the rule nullifies the protection given under the statute, the same is ultra vires of the Act.

17. However, Sri Ramdas, learned Senior Counsel contends that after the formation of the Karnataka Power Transmission Corporation Limited, if there is any further transfer that would be the second transfer and the Petitioners cannot contend that in the second transfer, they cannot be asked to offer their option for absorption in any ESCOM. This submission of the learned Senior Counsel, in my opinion, has no basis whatsoever. As I have already stated, proviso to Sub-section (2) of Section 15 of the Act mandates, that there could be one successor entity and the services of the employees could be transferred to that successor entity and from that successor entity, the employees can be deputed to the other ESCOMS. Therefore, where the Karnataka Power Transmission Corporation Limited forms two or more corporate entities, even then also, the service conditions of the employees of the Karnataka Power Transmission Corporation

Limited cannot be altered in any manner whatsoever except as provided in the proviso to Sub-section (2) of Section 15 of the Act. A Rule made under a statutory provision will have the same effect as the provisions of the statute where-under they are made and therefore they cannot be inconsistent with the provisions of the Act. In that view of the matter, Sub-rule (5)(a) of Rule 4 of Rules, 2002 cannot be sustained by this Court.

18. Accordingly, the following:

ORDER

I. Writ petitions are allowed. Rule made absolute.

II. Sub-rule (5)(a) of Rule 4 of the Karnataka Electricity Reform (Transfer of undertaking of Karnataka Power Transmission Corporation Limited and its Personnel to Electricity Distribution and Retail Supply Companies) Rules, 2002 is struck down as ultra vires of Section 15 of the Reforms Act, 1999.

III. In the facts and circumstances of the case, parties are directed to bear their own costs. Ordered accordingly.

