(1995) 10 MP CK 0002

In the Madhya Pradesh High Court

Case No : M.P. No. 4904 of 1989

M.P. Electricity Board APPELLANT

Vs

M.P. Madhyastham Adhikaran and Another RESPONDENT

Date of Decision : 05-10-1995

Acts Referred:

Electricity (Supply) Act, 1948 — Section 5
Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983 — Section 16, 2(1), 7, 7A

Citation : (1996) 1 MPJR 162 : (1996) 41 MPLJ 629 : (1996) MPLJ 629

Hon'ble Judges : U.L. Bhat, C.J;S.K. Dubey, J

Bench : Division Bench

Advocate : Ravindra Shrivastava, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Dubey, J.

By this petition under Articles 226/227 of the Constitution of India, the petitioner seeks for quashment of the order dated 7-9-1988 (Annexure-B) passed in reference case No. 11 of 1988 by the M. P. Arbitration Tribunal, Bhopal (for short the ''Tribunal'') and further seeks a declaration that the petitioner is not amenable to jurisdiction of the Tribunal under the provision of M. P. Madhyastham Adhikaran Adhiniyam, 1983 (for short the Adhiniyam'')

Facts giving rise to this petition are these :

The petitioner Madhya Pradesh Electricity Board (for short the ''Board'') is a statutory body corporate constituted and established u/s 5 of the Electricity (Supply) Act, 1948 (for short the ''Act of 1948''). The respondent No. 2 is an Engineering Company who carries on civil construction work. An agreement of construction of 45 meter high masonry-cum-earthen Dam and saddle across river Johialla was entered into. A dispute arose between the petitioner and respondent No. 2 relating to Rs. 1,37,38352/-, towards the claim of escalation in wage rates, cost of material and some other items. The Board did not agree to the claim, therefore the respondent No. 2 made a reference u/s 7 of the Adhiniyam to Tribunal by a petition u/s 7-A of the Adhiniyam in the manner prescribed. On receipt of the reference petition, the Tribunal having been satisfied that the reference is a fit case for adjudication, admitted the reference and issued notice to the Board. The Board after notice appeared and raised a preliminary objection about the entertainability of the reference petition on the ground that the Board is not a "Public Undertaking" owned and controlled by the State Government, as defined u/s 2(l)(g) of the Adhiniyam therefore, the Tribunal has no jurisdiction to decide the dispute arising out of the "works contract". The Tribunal after applying the five determinative tests as laid down in case of Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, , held that the Board is an authority under Article 12 of the Constitution. The Tribunal on consideration of the various provisions of the Act, held that the Board is not only an authority under Article 12, but, undoubtedly is a "Public Undertaking" owned and controlled by the State Government within the contemplation of clause (g) of sub-section (1) of Section 2 of the Adhiniyam, therefore, the Tribunal has the exclusive jurisdiction to determine the dispute arising out of the "Works contract" entered into between the petitioner and respondent No. 2.

Shri Ravindra Shrivastava, learned counsel for the petitioner contended that the Board is independent statutory body invested by statute with the powers of promoting, coordinating development, generation, supply and distribution of electricity, etc., in accordance with provisions and scheme of the Act. It is also invested by the Act with extensive power of control over electricity undertakings. It can make rules and regulations to administer its functioning in accordance with the provisions of the Act. The Board for all purposes has got its own functional autonomy and is not owned or controlled by the State Government. The State Government has no say in its functions, business, internal management and discipline etc., the Board has got its own autonomy, therefore, it is not a "Public Undertaking" wholly or substantially owned by the State Government within the meaning of Section 2(l)(g) of the Adhiniyam, as it stood prior to its amendment by M. P. Act No. 9/90 with effect from 24-4-1990. Placing reliance on the observations of Shah, J. in case of Rajasthan State Electricity Board, Jaipur Vs. Mohan Lal and Others, and on the decision of the Supreme Court in case of Chander Mohan Khanna Vs. The National Council of Educational Research and Training and other[OVERRULED], , it was also contended that Article 12 should not be overemphasised so as to bring in every autonomous body which has some nexus with the Government within the sweep of the expression "State" as in the modern concept of the welfare State, independent institutions, corporations and agencies are generally subject to State control. The State control however vast and pervasive is not determinative. The financial contribution by the State is also not conclusive, therefore, looking to the Board''s functional autonomy, the Board cannot be treated as a public undertaking within the sweep of Section 2(l)(g) of the Adhiniyam. It was also pointed out that in case of Administrative Municipal

Corporation, Durg v. Jainco Designers and Executors, Durg 1991 MPLJ 352 a difference of opinion was recorded by B. C. Verma, J. (as he was then) on one hand and D. M. Dharmadhikari, J. on the other, Verma, J. held that the Arbitration Tribunal has no jurisdiction to decide the dispute as Financial Corporation, which is a statutory body is not squarely covered by the expression and language of Section 2(l)(g) of the Adhiniyam, while Dharmadhikari, J. held otherwise, and that difference of opinion in fact was not resolved. The opinion of Verma, J. supports the contention of the petitioner. Counsel also cited the decision : K.S. Ramamurthi Reddiar Vs. The Chief Commissioner, Pondicherry and Another, ; A. M. Mani v. State Electricity Board, AIR 1968 Kerala 76; Andhra Pradesh State Electricity Board v. N. R. Rao, AIR 1964 A.P. 328.

After hearing counsel we are of the opinion that it is not necessary for us to delve into the various provisions of the Adhiniyam because if the Board falls within the expression of "Public Undertaking", the provisions of the Adhiniyam will apply and the Arbitration Tribunal will have jurisdiction to decide the reference petition for passing an award u/s 16 of the Adhiniyam in accordance with law. However, it would be appropriate to refer the definition of "Public Undertaking" u/s 2(l)(g) as it stood prior to 24-4-1990 and after its substitution :-

"2. Definitions. - (1) In this Act, unless the context otherwise requires, -

(a)................

(b).................

(C).................

(d).................

(e).................

(f).................

(g) "Public Undertaking" means a Government company within the meaning of Section 617 of the Companies Act, 1956 (No. 1 of 1956) and includes a Corporation or other statutory body by whatever name called in each case owned or controlled by the State Government."

After substitution, the definition clause (g) reads thus :-

"(g) "Public undertaking" means a Government Company within the meaning of Section 617 of the Companies" Act, 1956 (No. 1 of 1956) and includes a Corporation or other statutory body by whatever name called in each case, wholly or substantially owned or controlled by the State Government."

It is not disputed that before the constitution and establishment of the Board the State Government was carrying on the activity of supply of electricity. The Board was constituted after the dissolution of the old M. P. Electricity Board on 1-4-1957. The Board took over all the assets and liabilities of the integrating units of the Madhya Pradesh, Vindhya Pradesh, Bhopal and Madhya Bharat etc. which merged after reorganisation of the States in the new State of Madhya Pradesh. The net capital was provided by the State Government to the Board at the time of its constitution by way of cash loans u/s 64 of the Act as detailed in paragraph 11 of the order of the Tribunal. Besides subsidy was also granted. The State Government was the principal financier of the Board from its very inception having real, substantial, deep, pervasive and plenary financial control of unusual degree. In fact the supply of electricity which was attended to by the State was made over to the Board after its constitution. Board in fact is agency of the State Government in respect of production, distribution and sale of energy. State Government gave its power to the Board with functional autonomy so that the State Government be not burdened with that. Applying the tests for considering whether a statutory body is an authority within Article 12 of the Constitution, it cannot be disputed that it is an instrumentality or agency of the Government and is an authority under Article 12. The Supreme Court in the case of Rajasthan State Electricity Board, Jaipur Vs. Mohan Lal and Others, , has held that the Board constituted under the Act is a public administrative agency or corporate body having quasi governmental powers and is authorised to administer a revenue- producing public enterprise functioning within its territory under the control of the Government and is an authority under Article 12. In view of the law declared by the Supreme Court in respect of the statutory Board constituted u/s 5 of the Act, it is not necessary for us to delve deep into the question of Board being an authority under Article 12 any further.

However, to consider the contention of the petitioner that there is functional autonomy and independence, therefore, there is no control of the State Government, let us have a cursory look at the provisions of the Act.

Section 5 of the Act provides for constitution and composition of the State Electricity Board by the State Government of which the Chairman and Members of the Board are appointed by the State Government. Section 10 deals with the powers of the State Government to remove or suspend members of the Board. Sub-section (5) of Section 15 lays down that if the Board fails to carry out its functions, or refuses or fails to follow the direction issued by the State Government under this Act, the State Government may remove the Chairman and the members of the Board and appoint a Chairman and members in their places. Section 15 deals with the appointment of the staff to the Board to carry out its functions under the Act, Proviso to this section fixes a rider on appointment of Secretary which shall be subject to the approval of the State Government. Section 16 speaks of the constitution of the State Electricity Consultative Council by the State Government. Section 17 speaks of Local Advisory Committees which are constituted from time to time by the State Government. Chapter IV deals with the powers and duties of the State Electricity Boards and generating Companies. Chapter V deals with the work and trading procedure of the Board and the generating company. Section 59 to Section 69 of chapter VI deal with Board''s finances, accounts and audit. A reading of these sections shows that the Board has to function in respect of audit, account and finance under the control of the State. There is a restrictive provision in Section 62 on unbudgeted expenditure. u/s 63, the State Government may, with the approval of the State Legislature from time to time make subventions to the Board on such terms and conditions as may be determined by the State Government. Section 64 speaks of advance and loans to the Board by the State Government. Section 65 gives power to the Board to borrow money with previous sanction of the State Government. Section 66 speaks of guarantee of loans by the State Government of the loans which may be raised by the Board. Section 66A deals with conversion of the amount of loans into capital account, Section 69 lays down that the Board has to cause proper accounts and other records in relation thereto to be kept, prepare an annual statement of account, including the profit and loss account and the balance sheet in such form as the Government may by notification in the Official Gazette prescribe by rules made in this behalf in consultation with the Comptroller and Auditor General of India which are to be placed by the State Government before the State Legislature. Chapter VI deals with Miscellaneous. Section 75 casts a duty on the Board that after the end of each financial year to submit to the State Government in such form as may be prescribed its accounts giving the details during the financial year and all the activities which are to be taken by the Board in the next financial year and also about the particulars of the existing scheme as the State Government may from time to time require. Section 78 gives power to this State Government to make rules to give effect to the provisions of the Act. Section 78A speaks of the directions by the State Government to the Board in the discharge of the functions. The Board shall be guided such directions on the question of policy as may be given to it by the State Government. Section 79 gives power to the Board to make regulations in the matters enumerated in clauses (a) and (k) of the section which are not to be inconsistent with the Act and rules made thereunder. Other provisions from Section 79 to 83 are not relevant.

The functions which are being carried out by the Board are in the nature of public functions clearly related to the Governmental functions intended for the benefit of the public and for its social upliftment. Therefore, the conclusion is irresistible that the Board which is a statutory Corporation is not only an instrumentality or agency of the State Government, but, is a public agency falling within Section 2(1)(g) of the Adhiniyam in as much as it is wholly or substantially owned or controlled by the State Government. The expression ''Company'' used in Section 2(1)(g) has been used in its general legal sense and takes in any Government owned or controlled statutory corporation established by the State Government to discharge its functions which were being discharged by the Government. Therefore, even though the Board has got functional autonomy, it will not be out of ken of the expression "Public Undertaking" as defined in Section 2(l)(g) of the Adhiniyam.

The Board is a "Public Undertaking" is also supported by the reasoning observations made in an unreported decision of the Division Bench of this Court rendered at Indore Bench in M. P. 312 of 1978, The Everlasting Rubber Works Co. Ltd. v. M. P. Electricity Board and ors. on 23-8-1980 which dealt a case under M. P. Government Electrical Undertakings (Dues Recovery) Act, 1961, considered the definition of ''Government electrical undertaking'' defined in Section 2(d) of the Act, means an electrical undertaking run or controlled either by the State Government or by the Board. The Court observed that, when the Board chooses to supply electrical energy to the consumers, it is acting as an undertaking. The Board, which is a statutory body created by the State Government u/s 5 of the Electricity (Supply) Act, 1948, is controlled by the State Government. Section 78A of the Electricity (Supply) Act, 1948, provides that in the discharge of its functions, the Board shall be guided by such directions on questions of policy as may be given to it by the State Government. The Board is, therefore, a Government electrical undertaking.

Difference of opinion was recorded by 2 Judges of this Court as to whether Municipal Corporation is squarely covered u/s 2(l)(g) of the Adhiniyam or not. Full Bench of this Court dealt the question in the light of Section 423(2) of the M. P. Municipal Corporation Act and held that the Administrator and Municipal Corporation are fully under the control of the State Government u/s 423 of the Act. A dispute between the contractor and the administrator under a contract is squarely covered by language of Section 2(l)(g) of the Adhiniyam as the Administrator is statutory body controlled by the State Government. See Administrator, Municipal Corporation, Durg and Ors. v. Jainco Designers and Executors, Durg, 1991 MPLJ 352. The other decisions relied by the learned counsel for the petitioner are of no help and are distinguishable on facts.

Therefore, we are of the opinion that the Tribunal was right in holding that the Board is a "Public Undertaking" within the meaning of the expression in 2(l)(g) of the Adhiniyam and the Tribunal has jurisdiction to decide the dispute arising out the works contract on a reference made by the Tribunal u/s 7 of the Adhiniyam.

In the result the petition is dismissed with no order as to costs. Outstanding amount of security, if any, shall be refunded to the petitioner.