

(1995) 08 AHC CK 0118

In the Allahabad High Court

Case No : C.M.W.P. No's. 4998 and 21017 of 1993

Nagar Palika and Another

APPELLANT

Vs

Executive Engineer, Electricity Distribution Division and
Others

RESPONDENT

Date of Decision : 23-08-1995

Acts Referred:

Uttar pradesh Government Electrical Undertakings (Dues Recovery) Act, 1958 —
Section 3

Citation : (1995) 08 AHC CK 0118

Hon'ble Judges : R.A. Sharma, J;I.M. Quddusi, J

Bench : Division Bench

Advocate : Ashok Bhushan, for the Appellant;

Judgement

R.A. Sharma, J.—In writ petition No. 21017 of 1993, Petitioner No. 1 is Municipal Board, Almora and Petitioner No. 2 is its Chairman. This Municipal Board was holding a licence known as the Almora Municipal, Electric Licence, 1950 under Indian Electricity Act, 1910, for supply of electrical energy to the consumers within Its territorial limits, in 1976, the U.P. State Electricity Board (hereinafter referred to as the Electricity Board) took over the electrical undertaking of the Municipal Board, Almora on January 1, 1976 and started supply of electrical energy In its place. Dispute regarding the apportionment of the rights and liabilities between Municipal Board and the Electricity Board is pending before this Court in the form of writ petitions No. 10512 of 1983 and 4360 of 1983. The Electricity Board has raised demand against Municipal Board and had Issued recovery certificate to the Collector, Almora, for recovering a sum of Rs. 17,26,671 as arrears of electricity dues with effect from January 1, 1976, for street light within the territorial limits of Municipal Board, Almora. Being aggrieved by it, the Petitioners have filed this writ petition. In this petition, the Petitioners have also laid a counter claim of Rs. 5,59,77,474.25 as rent and fee for use of Municipal land by the Electricity Board.

2. The other writ petition No. 4998 of 1993 has been filed by Municipal Board, Aligarh, challenging the letter dated November 12, 1992, Issued by the Superintending Engineer of the Electricity Board to the District Magistrate for recovering a sum of Rs. 179.95 lacs from it. This Municipal Board has also raised a counter-claim for Rs. 3, 94,86,319.63 against the Electricity Board. In this connection, this Municipal Board has requested the State Government in December, 1992 for recovering the aforesaid amount from the Electricity Board and the State Government, vide Its letter dated 31.12.1992 asked the District Magistrate Aligarh to recover the said amount of Rs. 3,16,97,838.41 from the Electricity Board. The District Magistrate, it appears, did not issue any recovery certificate against the Electricity Board, but has taken steps for recovering Rs. 1,97,95,000 from the Municipal Board at the instance of the Electricity Board. We have heard the learned Counsel for both the parties.

3. Learned Counsel for the Petitioners have raised three contentions in support of these petitions, viz., (i) the Electricity Board has to pay Rs. 5,59,77,474.25 and Rs. 3,16,97,838.41 to the Municipal Board of Almora and Aligarh respectively, as fee and rent for use of the Municipal land over which it has installed electric poles, transformers, etc. and unless these amounts are adjusted. It cannot recover Its dues from the Petitioners. It is also stated that after adjustment, there remains nothing to be paid by the Petitioners to the Electricity Board and on the other hand, the Electricity Board has to pay substantial amount to them ; (ii) when there is bonafide dispute about the claim and counter-claim, the amount cannot be said to be due and payable within the meaning of Section 3 of Uttar pradesh Government Electrical Undertakings (Dues Recovery) Act, 1958 ; and (UQ these petitions should be decided in terms of judgment of Division Bench of this Court in Nagar Palika v. State of Uttar Pradesh (Writ Petition No. 43593 of 1992) Decided On 29.09.1992. Learned Counsel for the Electricity Board have, however, disputed the above contentions and have requested for decision of these petitions in terms of two judgments of Division Bench of this Court in Town Area v. State of Uttar Pradesh (writ petition No. 782 of 1993) Decided On 17.3.1993 and Nagar Palika v. State of Uttar Pradesh (Writ Petition No. 96"6 of 1993) Decided On 26.10.1993.

4. Both, the Municipal Board and the Electricity Board, are statutory authorities. Both are required to discharge statutory obligations of rendering service to the public. Both are public undertakings of the State. Both are not in position to pay each other's dues.

5. Such a controversy as has been raised in the present petitions was also raised earlier in several writ petitions reference to some of which has been given hereinbefore. But issues raised therein were not finally decided by this Court. In Nagar Palika v. State of Uttar Pradesh (Writ Petition No. 43593 of 1992 (supra), which has been relied upon by the learned Counsel for the Petitioners, the plea raised herein was also noted therein, but the court disposed of that petition permitting the Petitioner therein to make application before the State of Uttar

Pradesh through Collector, Bijnor for adjustment of its claim against the dues sought to be recovered by the Electricity Board and till the claim was decided, the impugned recovery was stayed. In *Town Area v. State of Uttar Pradesh*. (Writ Petition No. 782 of 1993 (supra)), this Court rejected the contention of the Petitioners to the effect that till its representations are decided, the Electricity Board cannot recover its dues on the ground that no regulation has been pointed out under which the Electricity Board is required to decide any objection before initiating the recovery proceeding. In the third case of *Nagar Palika v. State of Uttar Pradesh* (Writ Petition No. 966 of 1993 (supra)), also, the contention of the Petitioner therein for adjustment of the dues which the Electricity Board is to pay, was rejected on the ground that such a claim has neither been decided by a court or a competent authority, nor can be substantiated by any statutory provision or any contractual obligation between the parties. Petitioner therein was, however, given liberty to get its claim adjudicated by a competent court or authority. From perusal of the aforesaid decisions, it is apparent that this court disposed of those petitions so as to enable the Petitioners therein to get their claim decided either by the State of Uttar Pradesh through Collector by making representations before it or by some other authority or the court.

6. Supreme Court in 1992 (61) ELT 3 (SC) , has provided the manner in which the dispute between the Government of India and its public sector undertakings and public sector undertakings in between themselves are to be solved. In this connection, Supreme Court has directed that such a dispute should first be examined by a committee to be constituted by the Government of India and till the matter is cleared by such a committee, no litigation should come to any court or to a Tribunal. It was further laid down that it shall be obligatory on every court and every tribunal where such a dispute has been raised thereafter to demand a clearance from the committee, in case it has not been pleaded. Relevant extract from the said judgment of Supreme Court is reproduced below:

3. We direct that the Government of India shall set up a committee consisting representatives from the Ministry of Industry, the Bureau of Public Enterprises and the Ministry of law, to monitor disputes between Ministry and Ministry of Government of India, Ministry and Public Sector Undertaking of the Government of India and Public Sector undertakings in between themselves, to ensure that no litigation comes to Court or to a Tribunal without the matter having been first examined by the committee and its clearance for litigation. Government may include a representative of the Ministry concerned in a specific case and one from the Ministry of Finance in the Committee. Senior Officers only should be nominated so that the Committee would function with status, control and discipline.

4. It shall be the obligation of every court and every Tribunal where such a dispute is raised hereafter to demand a clearance from the Committee in case it has not been so pleaded and in the absence of the clearance the proceedings would not be proceeded with.

5. The Committee shall function under the ultimate control of the "Cabinet Secretary but his delegate may look after the matters. This Court would expect a quarterly report about the functioning of this system to be furnished to the Registry beginning from 1st January, 1992.

6. Our direction may be communicated to every High Court for information of all the courts subordinate to them.

7. Although the aforesaid judgment was given by the Supreme Court in a matter of dispute between the Central Government and its public sector undertakings, but the same principles are liable to be applied when there is dispute between the State Government and its undertakings and public sector undertakings of the State in between themselves. Litigation of this nature is coming up frequently to this Court and it is desirable that the similar process and manner which has been laid down by Supreme Court for resolving dispute between the Central Government and its undertakings should also be adopted for resolving the dispute between the State Government and its undertakings and public sector undertakings in between themselves.

8. For the reasons given above, we dispose of these writ petitions In terms of judgment of Hon"ble Supreme Court in 1992 (61) ELT 3 (SC) , with the following directions:

The Government of Uttar Pradesh shall set up a Committee consisting of representatives from the department concerned, department of law and such other representatives as it may deem fit and proper within three months from the date of presentation of certified copy of this order before the Chief Secretary of the Government of Uttar Pradesh Every dispute between the State Government and its public undertakings and public undertakings in between themselves shall be referred to such a Committee by the Government at the instance of any of the parties to the dispute, within three months from the date such a request is made to it and the said Committee shall consider and take a decision after giving reasonable opportunity of being heard to both the parties, as far as possible, within further period of six months. In case it is not possible for the Committee to resolve the dispute, it shall give clearance to the contesting parties to take the matter to the appropriate court or the Tribunal.

9. The dispute between the present Petitioners and the Electricity Board shall be referred to that Committee within three months from the date a certified copy of this order is filed before the Chief Secretary of the State Government. The Committee shall, after giving reasonable opportunity of hearing to both the parties, resolve the dispute as far as possible within six months thereafter. Till the matter is decided by the Committee, the parties shall not enforce their claim demand against each other.