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**(1997) 12 SC CK 0101**

**In the Supreme Court Of India**

**Case No : Civil Appeal No. 8876 of 1997**

Orissa Electrical Engineers' Service Association

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

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**Date of Decision : 19-12-1997**

**Acts Referred:**

Orissa Electricity Reforms Scheme Rules, 1996 — Rule 9(7)

**Citation :** AIR 1998 SC 760 : (1998) AIRSCW 464 : (1997) 10 JT 243 : (2000) 1 LLJ 1093 : (1997) 7 SCALE 757 : (1998) 2 SCC 563 : (1998) SCC(L&S) 666 : (1998) 1 Supreme 1 : (1998) 1 UJ 147

**Hon'ble Judges :** K. Venkataswami, J;G. T. Nanavati, J

**Bench :** Division Bench

**Advocate :** Rajeev Dhavan, A.P. Dhamija, S. K. Jain, Pradeep Aggarwal, N.B. Khatiwada and Umesh Bohara, for the Appellant; V.R. Reddy, A.S.G., G.L. Sanghi and Jayant Das, Senior Advs., R.K. Mehta, Manachakraborty, M.G. Ramachandran and Raj Kumar Mehta, for the Respondent

**Final Decision :** Disposed Of

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## Judgement

Nanavati, J.—Leave granted. Heard the learned counsel.

2. The Orissa Electrical Engineers' Service Association filed Original Application No. 576(C) of 1996 in the Orissa Administrative Tribunal, apprehending that some of the Electrical Engineers who are its members and Orissa State Government employees on deputation to the Orissa State Electricity Board (OSEB) are likely to be permanently transferred to the GRID Corporation of Orissa Ltd. or Orissa Hydro Power Corporation Ltd. on OSEB being abolished, under the Orissa Electricity Reform Act. In view of the provision of the Act and the decision of the State Government to privatise procurement and distribution of electric energy the appellant further apprehended that the services of such members may be ultimately transferred to private companies and that will lead to losing their status as civil servants and varying their service conditions adversely. The appellant, therefore, wanted Sections 23, 24 and 25 of the Act

and the Scheme Rules made thereunder to be declared ultra vires the Constitution.

3. The Tribunal held that it has no jurisdiction to judge the validity of the said provisions. It further held that the provisions regarding transfer of personnel appear to be reasonable. It was also of the view that the OA was rather premature. It, therefore, dismissed the OA.

4. Dr Dhawan, learned counsel for the appellant, submitted that Section 24 which empowers the State Government to forcibly transfer personnel from one employer to another without giving them an option or obtaining their consent, is ultra vires the relevant provisions of the Constitution of India. He has also raised some contentions in the alternative, including the contention that the State Government has failed to ascertain the willingness of the personnel of the State Government sent on deputation to OSEB in accordance with Sub-rule (7) of Rule 9 of the Orissa Electricity Reform Scheme Rules, 1996. As we are accepting this last contention, we do not think it necessary to decide correctness or otherwise of the other contentions.

5. By its letter dated 2-12-1996, addressed to the personnel of all the cadres on deputation to the OSEB the State Government called for their preferences for permanent absorption in GRIDCO/OHPC. It was stated in the said letter that:

"In the light of the above and in terms of Sub-rule (7) of Rule 9 (ibid), the Department of Energy, State Government invite the employees to send their preferences for absorption in GRIDCO or OHPC or in the State Government. The format in which the willingness and preference are to be given is enclosed. Please fill up the same and make sure that it is sent by post... In case your preference does not reach us by the stipulated date, your case will be decided on the assumption that your first preference is to remain in the organisation to which you were provisionally assigned by operation of the Transfer Scheme on 1-4-1996. The transfer of the personnel shall be decided on the criteria set forth in Rule 9(7) of the Transfer Scheme Rules...."

Relevant paragraphs in the format read as under:

"1. I have been provisionally assigned to work under OHPC/GRIDCO/State Government (strike out which is not applicable) by virtue of the Transfer Scheme framed under decision of the State Government. I understand that I have been given an opportunity to indicate my preference in the matter of my permanent absorption in OHPC, GRIDCO or the State Government before a final decision on this is taken. Accordingly, I am furnishing below my preferences:

... 1st preference

... 2nd preference

... 3rd preference

2. I understand that while due consideration will be given to my preferences, a

final decision on the matter will be taken on the basis of criteria set forth in the Transfer Scheme, which in addition to the preferences, will also include the ability and experience of the personnel, the number and nature of vacancies, seniority and necessity."

6. On a fair reading of this letter and the format it becomes apparent that what the State Government had thereby tried to ascertain was the preference and not the willingness of such employees to remain in the service of the State Government or to get permanently absorbed in GRIDCO or OHPC. The employees were told that their preferences in the matter of permanent absorption in OHPC, GRIDCO or the State Government would be considered before taking a final decision in the matter. The employees were not told in clear terms to express their willingness to be permanently absorbed in GRIDCO or OHPC or to revert to the service of the State Government. The fact that the State Government retained with it the power of taking a final decision in the matter clearly indicates that it wanted to ascertain preferences only. Otherwise, it having decided to go by the willingness of the employees on deputation as reflected in Rule 9(7), would not have stated so in its letter. The record also discloses that a large number of such employees had expressed their intention to revert to the State Service and yet they have not been taken back on the ground that only limited number of posts in the State cadre are available. We, therefore, hold that the State Government has failed to ascertain from the State Government Electrical Engineers on deputation with OSEB, the willingness contemplated by Rule 9(7) of the Rules. We also hold that further actions taken or orders passed on the basis of such ascertainment of willingness are bad and, therefore, of no effect.

7. We, accordingly allow this appeal and direct the State Government to consider willingness of the Electrical Engineers, who are State Government employees on deputation with OSEB, to revert to the State Service or to get permanently absorbed in GRIDCO or OHPC afresh. As a long time has elapsed and it would not be desirable to reopen the cases of all of such employees, we direct that those Electrical Engineers on deputation with OSEB who desire not to get absorbed in the services of GRIDCO or OHPC and to revert to the State Service shall write to the State Government through Principal Secretary, Deptt. of Energy to take them back in State Service according to their lien, before 15-1-1998 and we further direct the State Government to deal with their cases in accordance with law. In case no such intimation is given by any of those Electrical Engineers it will be open to the State Government to proceed on the basis that the employee concerned is willing to remain where he is and get absorbed in the services of GRIDCO or OHPC as the case may be.

8. The appeal is accordingly disposed of with no order as to costs.