

(2007) 11 AHC CK 0092

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 14670 of 2006

Rajeev Kumar Jauhari and Ors.

APPELLANT

Vs

State of U.P.& Ors.

RESPONDENT

Date of Decision : 29-11-2007

Acts Referred:

Electricity (Supply) Act, 1948 — Section 79(c)
Uttar Pradesh Electricity Reforms Act, 1999 — Section 23(7)

Citation : (2007) 11 AHC CK 0092

Hon'ble Judges : S.Rafat Alam, J and Sudhir Agarwal, J

Final Decision : Dismissed

Judgement

Sudhir Agarwal, J.—Whether U.P. Rajya Vidyut Utpadan Nigam Limited Absorption Regulations, 2006 (hereinafter referred to as Regulations, 2006) framed by the U.P. Rajya Vidyut Utpadan Nigam is illegal, arbitrary and ultra vires is the question raised in the writ petition.

2. The facts are not in dispute, but, to appreciate the controversy, may be narrated in brief, as under.

3. In the State of Uttar Pradesh, generation, distribution and transmission of electrical energy upto 1989 was solely in the hands of the U.P. State Electricity Board (in short "UPSEB"), a statutory body constituted under Section 5 of the Electricity Supply Act, 1948 (in short "1948 Act"). With the expansion of the generation units, a Government company, namely, U.P. Rajya Vidyut Utpadan Nigam Limited (in short "UPRVUNL") was incorporated under the Companies Act, 1956 in the year 1980. It is wholly owned by the State Government of Uttar Pradesh. Similarly, in 1985, another company, U.P. Jal Vidyut Nigam Limited (in short "UPJVNL") was incorporated which was also wholly owned by the State Government of U.P. A major power reform was brought into force in the year 1999 by the Legislature enacting U.P. Electricity Reforms Act, 1999 (in short ? Reforms Act, 1999?) which was assented to by the President of India on 23/6/1999 and published in U.P. Gazette (Extraordinary) on 7/7/1999. Section 13 of Reforms

Act, 1999 provides for formation of a company namely U.P. Power Corporation Ltd. (in short "UPPCL") registered under the Companies Act, 1956, which is required to undertake planning and coordination in regard to transmission, to determine the electricity requirement in the State in consultation with the generation companies etc. and be a legal successor of UPSEB in relation to all power purchase and transmission agreements. Section 23(1) of Reforms Act, 1999 provides that on and from the date specified in the Transfer Scheme prepared by the State Government to give effect to the objectives of the Act, all properties, interest, right and liabilities of the Board shall be vested in the State Government and, thereafter, shall revest in the UPPCL and generating companies in accordance with the Transfer Scheme so specified, on such terms and conditions as may be determined, by the State Government. Subsection (7) of Section 23 relates to the transfer of the employees of UPSEB to UPPCL and other generating companies on notification of Transfer Scheme and reads as under :

?The State Government may provide in any of the Transfer Schemes framed under this section for the transfer of personnel to the Power Corporation or a company subsidiary to the Power Corporation or a generating company, on the vesting of properties, rights and liabilities in the Power Corporation or a company subsidiary to the Power Corporation or a generating company, as a part of the undertakings transferred under this section and on such transfer the personnel shall hold office or service under the Power Corporation or a company subsidiary to it or a generating company, as the case may be, on terms and conditions that may be determined in accordance with the Transfer Scheme subject however to the following, namely :

(a) terms and conditions of service of the personnel shall not be less favourable to the terms and conditions which were applicable to them immediately before the transfer;

(b) the personnel shall have continuity of service in all respect; and

(c) all benefits of service accrued before the transfer shall be fully recognized and taken into account for all purposes including the payment of any of all terminal benefits :

Provided that, notwithstanding anything contained in any other law for the time being in force, and except as provided in the Transfer Scheme and in this Act, the transfer shall not confer any right on the personnel so transferred to any compensation or damages :

Provided further that the posts in the Board of all the personnel whose services are to be so transferred shall stand abolished with effect from the date of transfer.

4. The State Government in exercise of the powers under Section 23 (1) & (2) of the U.P. Act of 1999 published U.P. Electricity Reforms Transfer Scheme, 2000 (hereinafter referred to as Transfer Scheme, 2000), which came into force on 14th January 2000. Under clause 4 and 5 of Transfer Scheme, 2000 all thermal

generating undertakings stood transferred to UPRVUNL, hydro generating undertakings transferred to UPJVNL and the undertakings forming part of transmission and, distribution to UPPCL. Clause 6 of the scheme provides for transfer of the personnel of UPSEB to the aforesaid three companies and the relevant subclauses 6, 7, 8, 9 and 10 of clause 6 of the Transfer Scheme, 2000 are reproduced as under :

(6) The personnel classified in Schedule "H" and Schedule "I" shall stand assigned to the service of UPRVUNL or UPJVNL and/or UPPCL on as is where is basis, namely, that they will continue to serve in the place where they are posted on the date of the transfer subject to the following terms and conditions :

(i) The assignment shall be on a provisional basis till they are absorbed in the service of UPRVUNL or UPJVNL or UPPCL, as the case may be, in accordance with the provisions of this Scheme.

(ii) UPPCL shall be the controlling employer in the case of all such personnel specified in Schedules "H" and Schedule "I" till their permanent absorption in UPRVUNL or UPJVNL or UPPCL, as the case may be, in accordance with this scheme.

(iii) UPPCL shall in consultation with UPRVUNL, UPJVNL and the State Government finalize the permanent absorption of the personnel specified in Schedules "H" and Schedule "I" in UPRVUNL or UPJVNL or UPPCL taking into account the suitability, ability and experience of the personnel, number and nature of the vacancies and other relevant factors and issue appropriate orders for such permanent absorption within the provisional period provided in clause 9.

(iv) For the purpose of item (iii) UPPCL shall, in consultation with UPRVUNL, UPJVNL and the State Government constitute a Committee within two months from the date of the transfer consisting of the nominees not below the rank of Chief Engineer of UPPCL UPRVUNL and UPJVNL to receive representation from the personnel specified in Schedules "H" and Schedule "I" in regard to their transfer and absorption in UPPCL, UPRVUNL or UPJVNL and to make recommendation on such transfer and absorption within such time as UPPCL may prescribe for the purpose.

(v) UPPCL shall in consultation with UPRVUNL, UPJVNL and the State Government take a decision on the transfer and permanent absorption of the relevant personnel listed in Schedule "H" and Schedule "I" to UPPCL, UPRVUNL and UPJVNL taking into account the recommendation of the Committee appointed for the purpose.

(7) Upon the finalisation and issue of orders in terms of the subclause (6), the personnel specified in Schedule "H" and Schedule "I" shall form part of the service of the Transferee concerned, namely, UPPCL, UPRVUNL and UPJVNL, as the case may be, in the post, scale of pay or seniority in accordance with the orders that may be issued by UPPCL

(8) The Committee appointed in accordance with subclause (6) shall also receive representations from the personnel listed in Schedule "E", Schedule "F" and Schedule "G" in regard to any grievance on the permanent absorption in UPRVNL, UPJVNL or UPPCL as the case may be and make recommendation to UPRVNL, UPJVNL and UPPCL and in regard to such matters.

(9) The transfer of personnel to the Transferee shall be subject to any orders that may be passed by the Courts or Tribunals in any of the proceedings pending on the date of the transfer.

(10) Subject to the provisions of the Act and this Scheme, the Transferee shall frame regulations governing the conditions of service of personnel transferred to the transferee under this Scheme and till such time, the existing service conditions of the Board shall mutatis mutandis apply.

5. Under Section 49(1) of Reforms Act, 1999, the State Government was empowered to issue orders, if any difficulty arises, in giving effect to the provisions of the Act for a period not extending beyond 12 months. Subsection (2) to Section 49 further provides that no order under subsection (1) shall be made after expiration of a period of two years from the commencement of the Act. The Reforms Act, 1999 was amended in 2003 and in subsection (1) of Section 49, the words "12 months" were substituted by "60 months" and under subsection (2), "two years" were substituted by "five years". This amendment, therefore, has the effect of empowering the State Government to issue orders under Section 49 for a period of 5 years from the date of enforcement of the aforesaid Act. The Transfer Scheme, 2000 was also amended by U.P. Electricity Reforms Transfer Scheme, 2003 published on 9th June, 2003 and clause 9 of Transfer Scheme, 2000 was substituted by following provision :

9.(1) The Classification and transfer of Undertaking including personnel under this Scheme, unless otherwise specified in any order made by the State Government, shall be provisional and shall be final upon the expiry of five years from the date of the transfer.

(2) At any time within a period of five years from the date of the transfer, the State Government may by order to be notified amend, vary, modify, add, delete or otherwise change terms and conditions of the transfer including items included in the transfer, and transfer such properties, interest, rights, liabilities, personnel and proceedings and forming part of an Undertaking of one Transferee to that of any other transferee or to the State Government in such manner and on such terms and conditions as the State Government may consider appropriate.

(3) On the expiry of the period of five years from the date of transfer and subject to any directions given by the State Government, the transfer of undertakings, properties, interests, rights, liabilities, personnel and proceedings made in accordance with the Scheme shall become final.

6. The petitioner Nos. 2 and 3 were appointed as Assistant Engineers in UPSEB.

On trifurcation, they opted for absorption in UPRVUNL. Accepting their option, UPPCL issued an office order dated 912001 notifying absorption of various employees in the three corporations and the petitioner Nos. 2 and 3 were shown to be absorbed in UPRVUNL. However, in view of the amendment of the Transfer Scheme vide notification dated 962003, the aforesaid absorption was treated to be provisional but after expiry of 5 years, another office order dated 24102005 was published notifying final absorption of various officers in the said three companies and as a result thereof, the petitioner Nos. 2 and 3 stood finally absorbed in UPRVUNL. The petitioner No. 2 is working as Assistant Engineer though the petitioner No. 3 has been promoted to the post of Executive Engineer in UPRVUNL in December, 2005. Petitioner Nos. 1 and 4 were directly recruited as Assistant Engineer in UPRVUNL in January, 2001 and April 2003 and are working presently on the said post.

7. The UPRVUNL despite the aforesaid exercise found a huge deficiency in generating staff for the reason that most of the persons had opted for absorption in UPPCL and, therefore, almost 50% to 75% posts in various cadres remained vacant due to want of officers causing serious functional difficulties for UPRVUNL. Faced with the aforesaid, Director Personnel of UPRVUNL sent a letter dated 21112005 to UPPCL extending a proposal inviting experienced engineering officials of UPPCL for absorption in UPRVUNL. The aforesaid proposal, it appears, was circulated by UPPCL to all concerned vide its letter dated 23112005. Some employees who were finally absorbed in UPRVUNL filed Writ Petition No. 76622 of 2005, Shatrughan Singh & Anr. v. State of U.P. & Ors., challenging the aforesaid orders dated 23112005 and 29112005. This Court passed an interim order on 2322006 staying operation of both the orders. In the meantime, subsequent to final absorption of Assistant Engineers in UPRVUNL, a tentative seniority list of Assistant Engineers in UPRVUNL was published on 14112005 (Annexure5 to the writ petition) which was finalized vide office order dated 26112005 (Annexure6 to the writ petition). Acting upon the aforesaid seniority list, some persons were also promoted as officiating Executive Engineers (Electrical & Mechanical) vide order dated 2122005. The petitioners claim that their seniority also stood finally determined pursuant to the officer order dated 26112005.

8. Thereafter, UPRVUNL promulgated Regulations, 2006 on 2422006 permitting absorption of the employees of other corporations of energy sector in UPRVUNL on certain terms and conditions provided thereunder.

9. Para 4.0 (A) & (B) of the Regulations, 2006 provide the terms and conditions for absorption, which reads as under :

4.0 Absorption :

?Absorption? of Servant Servants at different levels in the services of U.P. Rajya Vidyut Utpadan Nigam Limited shall be made under following terms and conditions :

(A) For ?Servants of other Corporations of Energy Sector? :

Permanent ?Absorption? of Servant Servants from amongst ?Savants of other Corporations of Energy Sector? in the services of U.P. Rajya Vidyut Utpadan Nigam Limited shall be made under following terms and conditions :

(1) The ?Servants Of Other Corporations of Energy Sectors? working on deputation in `Utpadan Nigam" at the time of enforcement of these regulations shall be eligible for ?Absorption?.

(2) ?Utpadan Nigam? shall issue appropriate orders inviting application for ?Absorption? in the services of ?Utpadan Nigam ? within a week from the date of enforcement of these regulations from those ?Servants of Other Corporations of Energy Sectors? who shall be working on deputation in ?Utpadan Nigam? at that date.

(3) The ?Servants of Other Corporations of Energy Sectors? shall submit their applications for ?Absorption? in the services of ?Utpadan Nigam? within 15 days from the date of issuance of the above orders.

(4) Such applications given by ?Servants of Other Corporations of Energy Sectors? shall be final and irrevocable.

(5) ?Utpadan Nigam? shall be entitled to accept or reject the above application for various posts on the basis of suitability and eligibility of the servant and availability of posts.

(6) ?Servants Of Other Corporations of Energy Sectors shall be permanently ?Absorbed? in the services of ?Utpadan Nigam? on the same post at which they were working on the date of ?Absorption ? and their inter se seniority visavis such ?Absorbed? servants and the savants who have been already absorbed in the services of Utpadan Nigam shall be retained as it would have been in erstwhile U.P. State Electricity Board.

(7) Only regular ?Servants of Other Corporations of Energy Sectors shall be eligible for ?Absorption? in ?Utpadan Nigam?.

(8) Before final ?Absorption? in ?Utpadan Nigam?. No objection from their parent department would be necessary.

(9) On ?Absorption? the ?Servants of Other Corporations of Energy Sectors? shall be entitled to ?Service Benefits? and ?Terminal Benefits? alongwith time scale including the length of continuous service (with the period of deputation) in the parent department as they would have been admissible/payable in U.P. State Electricity Board? for that continuous service (with the period of deputation).

(10) Those ?Servants of Other Corporations of Energy Sectors? who do not apply for their ?Absorption? or whose applications for ?Absorption? are rejected by ?Utpadan Nigam? shall keep working on deputation with ?Utpadan Nigam? after enforcement of these regulations till new appointments are made by the ?Nigam? as per their working requirement. Thereafter, as and when the ?Nigam? makes the appointments such servants shall be repatriated to the parent department.

However, such servants working with ?Utpadan Nigam? on deputation shall be repatriated to the parent department with a maximum period of 12 months from the date of enforcement of these regulations.

(B) For ?Other Employees? :

Entry in the services of ?Utpadan Nigam? at higher posts, such as Executive Engineer and above or equivalent levels, shall also be made by ?Absorption? from amongst suitable candidates from other Public Sector Corporations or by Direct Recruitment in accordance to the needs of the organization in public interest. Thus, ?Absorption? can be made at various levels posts from time to time as per requirement and as per the standards decided by the Board of Directors of ?Utpadan Nigam? and the Board of Directors of ?Utpadan Nigam? shall also decide on level wise number of posts for such ?Absorption? for each year. Such provisions for ?Absorption?/Recruitment shall be limited to the period Reform process continues in the Energy Sector. The absorption shall be carried out under following terms and conditions :

?(1) For all purposes Absorbed servant/servants shall be treated as the servant of ?Utpadan Nigam ? from the date of joining in ?Utpadan Nigam? after ? Absorption?. Their Seniority shall be kept at the junior most level of the post appointed at and the inter se Seniority of such absorbed servants shall be decided by ?Utpadan Nigam?.

(2) On ?Absorption? the ?Service Benefits? and ?Terminal Benefits? to the absorbed servants shall be admissible/payable as per rules applicable to the servants recruited by ?Utpadan Nigam? after 1412000, the date of unbundling of erstwhile U.P. State Electricity Board.?

10. The petitioners aggrieved against the aforesaid regulations of 2006 and in particular the conditions under Para 4.0 (A) & (B) of the Regulations, 2006 which has the effect of alteration of their seniority in case the persons already working in other corporations of energy sectors opt for absorption in UPRVUNL, have filed this writ petition challenging the validity of the aforesaid regulations.

11. Sri Ashok Khare, Senior Advocate, assisted by Sri P.N. Ojha assailed the aforesaid Regulations broadly contending that :

1. The absorption of the employees of erstwhile UPSEB having attained finality under the Transfer Scheme 2000, the same cannot be reopened in the garb of the Regulations, 2006.

2. A reading of Sections 23(1) and (7), 52 and 54 of Reforms Act, 1999 read with Clause 6 (6) and (10) of the Transfer Scheme 2000 makes it clear that the Regulations framed by the erstwhile UPSEB governing the conditions of service of their employees would continue to apply even after transfer and absorption in the three corporations unless altered by the Regulations framed by the Transferee. It is thus permissible only in exercise of power under Section 79(c) of the 1948 Act. However since Regulations, 2006 have not been framed in

accordance with procedure prescribed under Section 79(c) of the 1948 Act, therefore, not a validly framed Regulation as permitted under Clause 6(10) of the Transfer Scheme 2000 and is ultra vires of the said provision.

3. Reforms Act, 1999 and in particular Section 23(1) &(2) read with Sections 52 and 54 show that there is no provision prescribing procedure for framing of Regulations in respect to service conditions and, therefore, Section 79 of 1948 Act continue to operate even after promulgation of the Reforms Act, 1999 with the only change that in place of UPSEB either State Government or Transferee Corporation has to be read.

4. The petitioners opted for absorption in UPRVUNL considering overall situation as it prevailed at that time and have acted to their detriment, which has attained finality by virtue of Office Order dated 24102005, which has also resulted in final determination of seniority vide Office Order dated 26112005. In case, the respondents are allowed to reopen absorption of the employees of other Corporations of energy sector with the benefit of seniority, it would adversely affect petitioners' seniority. It is contended that seniority once finally determined, is a vested right and cannot be divested even by making Regulations and, therefore, the Regulations are illegal.

5. The Transfer Scheme permit maximum period of five years for completion of exercise of absorption and transfer of the employees of erstwhile UPSEB in three Corporations, which is over. UPRVUNL, since, is not empowered to extend the aforesaid period, is indirectly trying to achieve the same object by reopening the matter of absorption of employees of other Corporations of energy sector by enacting the Regulations, 2006 which is impermissible and contrary to the scheme of the Act and Transfer Scheme and Rules and Regulations framed thereunder.

6. The Regulations, 2006, in fact, are malicious and mala fide exercise of power for collateral purposes, since something, which is not permissible directly is being sought to be achieved by the aforesaid Regulations.

12. Repelling the arguments of the petitioners, Sri S.K. Kalia, Senior Advocate, assisted by Sri Anil Mehrotra, appearing on behalf of UPRVUNL submitted that the Transfer Scheme after expiry of period of five years has attained finality and, thereafter all the persons, who became employees of the respective Corporations are to be governed by the terms and conditions of such Corporation. The respective Corporations are also at liberty to frame such terms and conditions of employment as permissible in exercise of the powers under the Article of Association, since the Corporations are Companies registered under the Companies Act, 1956 and are governed by the terms and conditions prescribed in the Article of Association. As an ordinary corporate employer, UPRVUNL also has right to create the post, determine terms and conditions of the employment of its employees and like all other Companies incorporated under the Companies Act, the mode of framing any rules and regulations pertaining to conditions of

service etc. are required to be framed by a resolution of the Board of Directors and such conditions of service are binding upon the employees in accordance with the stipulation and the conditions of service as agreed between the parties. Referring to Clause 118(IX) of the Article of Association, it is contended that the UPRVUNL is well within its right to frame Regulations, 2006. He further contended that Section 79 of the 1948 Act is not applicable for framing Regulations by the UPRVUNL or other two Corporations and the only procedure for framing the Regulations is such as prescribed under the Article of Association or under the provisions of the Companies Act. He further contended that the decision to invite experienced engineering personnel of other Corporations of energy sector has been taken for compelling reasons causing serious functional hazards due to lack of sufficient number of engineering and other officers in UPRVUNL. He pointed out that against the sanctioned strength of 1366 posts of Executives and 2345 posts of Supervisors in engineering, finance and accounts, Only 375 Executives and 730 Supervisors in engineering, finance and accounts opted for absorption and could have been finally absorbed while 643 Executives and 440 Supervisors of engineering, finance and accounts, who opted for and finally absorbed in UPPCL, are working on deputation with UPRVUNL and are required to be repatriated for which they are pressing hard but due to non availability of sufficient number of working hands in the UPRVUNL, they are not in a position to repatriate which has led to a number of writ petitions filed by such persons wherein orders have been issued for their repatriation. Such a serious deficiency of personnel is likely to hamper the smooth functioning, discharge of statutory and public duty of national importance in the matter of generation of electricity in the State of U.P. In this view of the matter, UPRVUNL was compelled and had no other option but to invite experienced staff from other Corporations of energy sector and if they are not allowed certain benefits, at least such which they were already enjoying, no person would come forward seeking absorption in UPRVUNL and the deficiency would continue. It is with this view of the matter and in the totality of circumstances, in larger public interest, UPRVUNL decided and framed Regulations, 2006, which are rational and have taken into consideration interest of all the concerned parties as well as UPRVUNL and it neither can be said to be arbitrary nor otherwise are violative of any provision of law. He also seriously dispel the argument of mala fide exercise of power on the part of UPRVUNL and submitted that the aforesaid contention is bereft of any factual foundation besides being otherwise incorrect and appears to have been raised in sheer distress.

13. We have heard learned Counsels for the parties and perused the record.

14. The rival submissions of the parties, in our view, give rise to the following issues, necessary for adjudication in this petition :

1. What is the procedure of making rules and regulations governing recruitment and conditions of services of the employees for the corporations and in particular UPRVUNL after absorption/final absorption of the employees under Transfer

Scheme, 2000?

2. Whether any provision made by UPRVUNL for further recruitment/employment/engagement/absorption/appointment of a person in the service of UPRVUNL which may have the effect of giving him benefit of service rendered elsewhere would be per se illegal or arbitrary or contrary to any provision of law?

3. Whether such a provision as referred to in question No. 2 can be said to be illegal only on the ground that it adversely affects the seniority position of the existing employees of the corporation, which stood finally determined?

4. Whether seniority is such a vested right that cannot be divested or disturbed even by making a provision, which may have an effect of altering seniority position due to subsequent arrivals and would such a provision be per se illegal?

5. Whether Regulations, 2006 is rational, valid and otherwise in accordance with law?

15. Coming to the question No. 1, the submissions of Sri Khare, Senior Advocate, appearing on behalf of the petitioner is that in view of Sections 23(1) and (7), 52 and 54 of Reforms Act, 1999 read with clause 6(10) of Transfer Scheme, 2000, the procedure prescribed under Section 79(c) of 1948 Act would continue to apply and UPRVUNL can frame Regulations only in accordance with the procedure prescribed under Section 79(c) of 1948 Act and not otherwise. He contended that there is no other procedure provided under the Reforms Act, 1999 or the Transfer Scheme or anywhere else and, therefore, the procedure prescribed under the 1948 Act would continue to apply with the only change that in place of UPSEB, it would be read as UPRVUNL. In our view, the aforesaid submission ignores the specific provision contained under Section 23(7) of the Reforms Act, 1999 and apparently a misreading of all the above provisions of the Reforms Act, 1999. However, before deliberating on Section 23 in depth, it would be prudent to consider the effect of Reforms Act, 1999 on the provisions of the Electricity Act, 1910 (in short "1910 Act") and 1948 Act. Section 54 of the Reforms Act provides the effect of enactment and enforcement of Reforms Act, 1999 and reads as under :

54. (1) Except as provided in Section 55, the provisions of this Act, notwithstanding that the same are inconsistent with or contrary to the provisions of the Indian Electricity Act, 1910 or the Electricity (Supply) Act, 1948 shall prevail in the manner and to the extent provide in subsection (3).

(2) Subject to subsection (I), all matter in the Indian Electricity Act, 1910 and the Electricity (Supply) Act, 1948, with which the Board has been concerned or dealing with, shall be subject to the following :

(a) the Board shall cease to undertake the functions which are to be discharged by the Commission in terms of the provisions of this Act, or any rules or regulations made under the Act :

(b) upon the issue of notifications in terms of Section 23 of this Act, the Board shall cease to undertake such of the Junctions of the Board as are assigned under the notification to the companies or body corporate or persons or authority.

(3) Subject to subsections (1) and (2), upon the establishment of the Commission, the provisions of the Indian Electricity Act, 1910 and the Electricity (Supply) Act, 1948 shall, in so far as this State is concerned, be read subject to the modifications, and reservations provided in this Act including the following :

(i) All references to the State Electricity Board in the Indian Electricity Act, 1910 in so far as this State is concerned shall be read as reference to the Commission or companies or body corporate or person or authority as provided in this Act or any rules or regulations framed under this Act and wherever it relates to general policy matters the State Government.

(ii) The provisions of Sections 3 to 11, 28, 36(2), 49A, 50, 51 and 52 of the Indian Electricity Act, 1910, to the extent this Act has made specific provisions, shall not apply in the State.

(iii) The provisions of all other sections of the Indian Electricity Act, 1910 shall apply except that :

(a) the terms 'licence', or 'licensee' shall have the meaning as defined in this Act and the licences issued under the said Act of 1948 shall be construed as having been issued under this Act;

(b) the reference to the sections of the Indian Electricity Act, 1910 and the Electricity (Supply) Act, 1948 in the provisions of the Electricity (Supply) Act, 1948 shall be taken as reference to the corresponding provisions of this Act to the extent modified by this Act.

(c) the reference to arbitration in this Act except where it is by the Central Electricity Authority, shall be taken as reference to the proceedings under Section 34 of this Act and the arbitration procedure prescribed under the Indian Electricity Act, 1910 shall not apply.

(iv) The schedule to the Indian Electricity Act, 1910 shall be applicable only with reference to the provisions of this Act wherein the applications of the Schedule are specified and not otherwise.

(v) All reference to the State Electricity Board in the Electricity (Supply) Act, 1948, in so far as this State is concerned shall be read as references to the Commission or companies or body corporate or person or authority as provided in this Act or any rules or regulations framed under this Act and wherever it relates to general policy matter, the State Government.

(vi) In respect of matters provided in Sections 5 to 15, 16, 17, 18, 19, 20, 23 to 26, 27, 37, 40 to 43, 44, 45 to 54, 56 to 69, 72, 75 and 76 to 83 of the Electricity (Supply) Act, 1948, to the extent this Act has made specific provisions, the provisions of the Electricity (Supply) Act, 1948 shall not apply in

the State.

(vii) The provisions of all other sections of the Electricity (Supply) Act, 1948 shall apply except that :

(a) the terms 'licence', or 'licensee' shall have the meaning as defined under this Act and the licences issued under the said Act of 1948 shall be construed as having been issued under this Act;

(b) the reference to the sections of the Indian Electricity Act, 1910 and Electricity (Supply) Act, 1948 in the provisions of the Electricity (Supply) Act, 1948 shall be taken as reference to the corresponding provisions of this Act to the extent modified by this Act;

(c) the reference to arbitration in these provisions except where it is by the Central Electricity Authority shall be taken as reference to the proceedings under Section 34 of this Act and the arbitration procedure prescribed under the Electricity (Supply) Act, 1948, shall not apply.

(viii) The provisions of Section 72 and 73 of the Electricity (Supply) Act, 1948 shall be restricted to generating companies and references to the State Electricity Board in these sections shall stand omitted.

(ix) The Schedules to the Electricity (Supply) Act, 1948 shall be applicable only with reference to the provisions of this Act wherein the application of the Schedules are specified and not otherwise.?

16. A careful reading of Section 54 of the Reforms Act, 1999 makes it clear that neither 1910 Act nor 1948 Act, both have been repealed in their entirety nor have been made totally ineffective. On the contrary, it is provided, wherever specific provision has been made under the Reforms Act, 1999, the same shall prevail over similar provision/corresponding provision under the aforesaid two Acts. In respect to other provisions, wherever 'UPSEB' has been mentioned, the same may be referred to as the 'State' or 'Commission' or 'Company' or 'Society' corporate or persons or authority as provided under the Reforms Act, 1999 or the Rules and Regulations framed thereunder, except wherever, it relates to general policy matter where it would be read as the 'State Government'. The provisions, corresponding or similar whereto does not exist in the Reforms Act, 1999, the aforesaid two Acts shall continue. Further, Section 55 of the Reforms Act, 1999 save the powers, rights and functions of the Regional Electricity Board, Central Electricity Authority and Central Government and authorities other than State Electricity Board and State Government under two Acts or the Rules made thereunder.

17. For our purpose, since the argument has been advanced with reference to Section 79(c), which empowers the UPSEB to frame Regulations regarding conditions of services of its employees by publication in the Official Gazette, we proceed to consider only the question of continuity of the said provision in respect to power of UPRVUNL for framing provisions regarding conditions of

service and recruitment of its staff under the Reforms Act, 1999 and the Rules and Regulations or the Transfer Scheme framed/issued thereunder. Section 54(3) (VI) of the Reforms Act, 1999, specifically provides that Section 79 of 1948 Act to the extent specific provision has been made under the Reforms Act, 1999 shall not apply in the State. We have to see whether any specific provision in respect to the procedure or power of the Company or Body or licensee to whom the distribution or generation of electricity is transferred under the Reforms Act regarding terms and conditions of services of its employees has been made in the Reforms Act, 1999. Section 23 (7) empowers the State Government to provide for transfer of personnel to corporation or company and specifically says that on such transfer, the personnel shall hold office or service under the Power Corporation or a company subsidiary to it or the generating company, as the case may be, on terms and conditions, that may be determined in accordance with the Transfer Scheme, 2000 subject however to certain conditions, namely, (a) the terms and conditions of personnel shall not be less favourable which was applicable to them immediately before the transfer, (b) they shall have continuity of service, (c) all benefits of service accrued before the Transfer shall be fully recognized and taken into account for all purposes including payment of any or all terminal benefits. Therefore, the transfer scheme may contain a provision empowering the transferee to determine the terms and conditions of its employees. Clause 6(10) of the Transfer Scheme, 2000 empower the transferee to frame its regulations governing the conditions of service of personnel transferred under the scheme and till such time, the existing service conditions of UPSEB shall continue to apply as such. Therefore, a plain reading of Section 23(7) read with Clause 6(10) of the Transfer Scheme, 2000 makes it clear that a provision has been made under the Reforms Act, 1999 empowering the State Government and then to empower the transferee to frame rules/regulations determining terms and conditions of service of its employees. Further Clause 6(10) of the Transfer Scheme specifically empowers the transferee to frame its Regulations. Section 15 of 1948 Act empowers UPSEB to appoint such employees as may be required to enable to carry out its functions and also to delegate, by Regulations, such powers to its Chairman and other Subordinate Officers. Section 79 of the 1948 Act empowers the Board to make Regulations by notification in the Official Gazette on various matters and Clause (c) thereunder provides the duties of officers and other employees and their salaries, allowances and other conditions of service. It is not disputed between the parties that in exercise of power under Section 79(c) of the Act, UPSEB from time to time framed various Regulations governing conditions of service of its employees. The said terms and conditions have been permitted to continue by virtue of Section 23(7) of the Reforms Act, 1999 till provision is made by the transferee. The State Government has made a provision regarding determination of terms and conditions of the employees in the Transfer Scheme empowering the transferee to make provision and the only restriction is that such provision if made by transferee would not be less favourable to the terms and conditions already applicable to the employees before the transfer and shall protect and recognize

fully the continuity of service in all respect and accrued benefits before transfer. There is no other restriction in respect to power of the transferee to make provision determining terms and conditions of service by virtue of Clause 6 (10) of Transfer Scheme, 2000. The State Government in the Transfer Scheme, 2000, thus, has clearly empowered the transferee, as a matter of fact, to make Regulations regarding conditions of services of the personnel transferred. In respect to future employment of the person, who are not transferred, the Transfer Scheme specifically does not contain any provision obviously for the reason that Section 23 (7) of Reforms Act, 1999 has been enacted with the objective to protect the interest of the existing employees of UPSEB who were to be transferred in respect to terms and conditions and benefits, they were enjoying, before transfer, but there appears no intention of the Legislature to restrict the normal power of transferee to frame and make provisions regarding terms and conditions of its employees, which it may recruit or appoint in future after or before finalization of the transfer of the existing employees. In respect to all the employees, therefore, there is a provision under Section 23(7) with respect to determination of terms and conditions which may be provided in the Transfer Scheme and, therefore, in our view reading Section 54 subsection 3 (VI) of the Reforms Act, 1999 with Section 23 (7), a specific provision has been made regarding determination of terms and conditions of the transferred employees under the Act. Therefore, Section 79(c) of the 1948 Act, in our view, shall also stand superseded by the aforesaid provision. We, thus, are of the considered view that the transferee is empowered to make its Regulations in the manner provided in Common Law that is under Article of Association or under the Companies Act in respect to all its employees whether transferred or subsequently recruited and for the said purpose, Section 79(c) of the 1948 Act has no application and it stands superseded by Section 23(7) of the Reforms Act, 1999 read with Clause 6(10) of the Transfer Scheme, 2000.

18. The questions No. 2, 3 and 4 are interrelated and considered together.

19. Sri Khare vehemently contended that seniority once determined is a vested right and any principle subsequently formulated by the employer, which has the effect of divesting such position in seniority would be illegal by placing reliance on D.P. Sharma v. Union of India, AIR 1989 SC 1071; P.D. Agarwal v. State of U.P., AIR 1987 SC 1676; Registrar General of India & Anr. v. V. Thippa Shetty & Ors., 1998 (8) SCC 690.

20. In our view, the submission proceeds on the assumption that a particular place in the seniority list is such a right which can be equated with a vested right and cannot be divested. This is against the known principle in service jurisprudence and is wholly untenable. Whether seniority is a condition of service or an incident of service was considered by a three Judges' Bench of the Apex Court in Syed Khalid Rizvi v. Union of India, 1992 Suppl. JT 169 : 1993 Suppl. 3 SCC 575 and in para 31 of the judgment, the Apex Court relying on its earlier judgment in A.K. Bhatnagar v. Union of India, 1991(1) SCC 544, held as under :

?Seniority is an incident of service and where the service rules prescribe the method of its computation, it is squarely governed by such Rules.....?

21. The, same view was reiterated in IAS (S.C.S.) Association U.P. v. Union of India, 1993 Suppl. (1) SCC 730 and K. Narayan v. State of Karnataka, 1993 (5) SLR 290 (SC) (Para5). A Constitution Bench of the Apex Court in Prafulla Kumar Das & Ors. v. State of Orissa, 2003 (XI) SCC 614, held that seniority is merely a civil right and the Legislature can, in its discretion bestow or divest the right of the seniority. The relevant extract is reproduced as under :

?Under Article 309 of the Constitution of India, it is open to the Governor of the State of the State to make rules regulating the recruitment, and the conditions of service of persons appointed to such service and posts until the provision in that behalf is made by or under an Act of the Legislature. As has been rightly pointed out by the Court in Nityananda Kar Case, the Legislature, or the Governor of the State, as the case may be, may, in its discretion, bestow or divest a right of seniority. This is essentially a matter of policy, and the question of a vested right would not arise, as the State may alter or deny any such ostensible right, even by way of retrospective effect, if it so chooses (sic) in public interest.?

(Emphasis added.)

22. The same view has been reiterated by a Full Bench of this Court in Farhat Hussain Azad v. State of U.P. & Ors., 2005(1) LBESR 863 (All) (FB) : 2005(2) AWC 1221. After referring to A.K. Bhatnagar (supra), IAS (S.C.S.) Association (supra) and Prafulla Kumar Das (supra), the Full Bench also observed that ? Seniority is an incident of service and when rules prescribed the method of computation, it is squarely governed by such Rules. No one has vested right to promotion.?

23. In view of the above binding precedents, it is clear that once a policy laying down a principle for determination of seniority formulated, thereafter, seniority would be governed according to that principle and it is a right of an employee so long as that principle operates to claim and seek its enforcement. However, right of employee to have his seniority determined according to a principle already formulated would not deprive the employer from changing the policy and making a different Rule, with different principle though obviously it is subject to other statutory, limitation, if any, and, of course, if the employer satisfy the test of ? State? under Article 12 of the Constitution, such policy decision must be rational, reasonable and not arbitrary. As held by the Constitution Bench in Prafulla Kumar Das (supra), the rule framing authority may in its discretion bestow or divest the right of seniority for the reason that it is a matter of polity and question of vested right would not arise at all. The reasons for entitling the employer to change polity with altered principle for determining seniority, which may also disturb the position in seniority of the employees are very apparent. If position in seniority is treated to be a vested right, it may prevent an employer to recruit/ employ experienced persons with the benefit of service and seniority if it is

necessary and in the interest of the institution of the employer. Such a bald proposition would neither be conducive to the betterment of the administration nor would otherwise be in larger public interest. In our mind after the Constitution Bench Judgment of Apex Court that right of seniority does not deprive the employer to change its polity and the question of vested right would not arise ceases the issue and it is not open to the petitioner to advance a submission contrary thereto.

24. Coming to the cases relied by the learned Counsel for the petitioners, namely, P.D. Agarwal (supra), D.P. Sharma (supra) and Registrar General (supra) we find that reliance is misplaced and untenable since, the dispute in those cases and the observation made in the context of the dispute was totally different. In D.P. Sharma (supra), some of persons recruited as School Masters or LDCs, Leading Hands (Technical) etc. in certain establishment of defence were declared surplus and came to be posted/transferred to the Armed Forces Headquarters and in other interservice organizations as Lower Division Clerk. Their posting/transfer was done in the public interest. They joined on transfer between 1960 to 1964 and throughout their seniority inter se was determined on the principle of length of service. In 1968, Armed Force Headquarters Clerical Service Rules were framed which came into force with effect from 16/1/1968 providing that seniority in the service shall be determined on the basis of confirmation. The department sought to redraft the already determined seniority of the employees working in the department on the basis of confirmation, which resulted in wiping out long service rendered before confirmation and caused a total disturbance of already determined seniority of the existing staff. The Apex Court held that the Rules would have no retrospective effect and will not hamper the existing rights of the officers, who were appointed long prior to the Rules came into force. Similarly in P.D. Agarwal (supra), the Rules earlier framed provided reckoning point for seniority, the date of substantive appointment, but after a long time, an amendment was made retrospectively changing the principle of seniority to the date of confirmation, which has the effect of depriving benefit of service from the date of substantive appointment to temporary post to the persons already working, for the purpose of seniority. Since, these rules also affected inter se seniority of the existing staff, which was already determined finally, the validity of such Rule was assailed and the Apex Court found that such amendment is not reasonable, is arbitrary, thus, violate Articles 14 and 16. While holding Rule arbitrary, the Apex Court found that effect of such amendment is likely to result even reversion of certain persons, who were already promoted on account of their seniority and, therefore, it did not found the retrospective amendment to be rational and reasonable. In Registrar General (supra), the employees appointed on ad hoc basis sought to be regularized retrospectively so as to score a march over the already regularly selected and appointed employees and to disturb their seniority. The Apex Court did not find such retrospective regularization to be reasonable and valid.

25. In our view, none of the aforesaid judgments, therefore, have any application

to the facts and dispute in the case in hand. Here the persons, who were already appointed in UPRVUNL and stood finally absorbed, their inter se seniority would remain intact and there is no alteration in their inter se seniority by change of policy. However, considering the situation prevailing in the corporation, i.e., huge deficiency of technical man power and other functional difficulties, UPRVUNL has decided to recruit or appoint certain persons, who are working in other energy sectors and possess valuable experience. In order to attract them to join in UPRVUNL, it has been provided that the benefit of their past service shall be well recognized in UPRVUNL and for determining their seniority in UPRVUNL, such service shall be duly recognized. The new policy has the effect of adding some persons in the cadre of UPRVUNL and will only add in the seniority list, but it cannot be said that the existing inter se seniority of the employees of UPRVUNL stands altered, on account of the new policy.

26. Sri Khare, at this stage, sought to argue that the petitioners exercised their options for absorption by taking into account all the relevant facts and circumstances as prevailed at that time, which included a factor that most of the engineers have opted for UPPCL and, therefore, in the hope of better chances of promotion, since, most of the senior persons have opted for absorption in UPPCL, the petitioners gave their option for UPRVUNL. He submitted that in case, the new policy is allowed to operate, it will result in causing serious prejudice to the petitioners, since, the factors on account whereof they exercised their options would stand diluted without their being any fresh option for the petitioners for absorption in UPPCL or UPJVNL. The argument, though, a bit attractive, but lacks substance. The petitioners intend to deprive their employer his common law right and power to formulate policy for the betterment and effective functioning of the institution by attracting experienced and better talents from outside only for the reason of their so called seniority and diminution of chances of promotion. It is wellsettled that chance of promotion is neither a fundamental nor a legal right. Only consideration for promotion in accordance with Rules is a fundamental right, where the employer answers the description of 'State' under Article 12 of the Constitution, but mere chance of promotion is neither a fundamental right nor legal. Instead of giving a list of catena of decision on this issue, it would be useful to refer a recent judgment in *Anil Kumar Vitthal Shete & Ors. v. State of Maharashtra & Anr.*, 2006 (5) SCALE 84, where merger of different cadres sought to be assailed on the ground that it would result in reduction of chances of promotion of the appellant. Rejecting, the Apex Court held 'It is well established that chances of promotion is not a condition of service and reduction of chances of promotion would not amount to change of condition of service.'

27. Here the Apex Court, thus, held that promotion is not even a condition of service and, therefore, rejection of chance of promotion would not amount to change of condition of service. That being so, in the case in hand also if the incumbents are allowed to join pursuant to the Regulations, 2006 with the benefit of seniority and if on account of their longer length of service, they get a higher place in seniority in UPRVUNL, it would only lower down existing

employees in the zone of consideration and would defer or delay their promotion for sometime. This per se being not a condition of service can neither be said to result in any deprivation of vested right nor a legal right and, therefore, the aforesaid contention has to be rejected. Besides, in *Anil Kumar Vitthal Shete* (supra), the Court further held that it is also open to an employer to adopt a policy changing conditions of service of its employees provided such service condition is in consonance with the Constitution and is not arbitrary and unreasonable.

28. Sri Khare countered this situation contending where certain persons have already been recruited and further absorption from other service is sought to be made, it should be given effect only from the date of absorption and any benefit of past service to persons subsequently absorbed would be illegal and he placed reliance on *R.S. Makashi v. I.M. Menon*, 1982 (1) SCC 379; *Wing Commander J. Kumar v. Union of India*, 1982 (2) SCC 116; *K. Madhavan v. Union of India*, 1987(4) SCC 566 and *Sub Inspector Roop Lal v. Lt. Governor Delhi & Ors.*, 2000(1) SCC 644; *Yogendra Prasad Mandal v. State of Bihar & Ors.*, 1998 (3) SCC 137 and *Dwijen Chandra Sarkar & Anr. v. Union of India & Ors.*, 1999 (2) SCC 119. We have examined the aforesaid authorities, but do not find that they lend any support to the petitioners. In *R.S. Makashi* (supra), the Court did not accept that seniority should be determined only on the basis of date of appointment to the post and any departure from the said rule will be prima facie unreasonable and illegal. It held that there is no basis for such assumption and it is devoid of any legal sanction. In fact, the Court did not recognize existence of any rigid or inflexible rule that seniority should always be determined on the basis of respective date of appointments to the post. Recognizing the right of rule making authority to frame a policy taking note of the relevant circumstances obtaining in relation to each department objectively and fairly, it was held :

‘Almost the entire reasoning of the learned Single Judge is based on an assumption that there is an invariable ‘normal rule’ that seniority should be determined only on the basis of the respective dates of appointment to the post and that any departure from the said rule will be prima facie unreasonable and illegal. The said assumption is devoid of any legal sanction. We are unable to recognize the existence of any such rigid or inflexible rule. It is open to the rulemaking authority to take a note of the relevant circumstances obtaining in relation to each department and determine with objectivity and fairness what rules should govern the inter se seniority and ranking of the personnel working in the concerned departments and the Courts will only insist the rules so formulated should be reasonable, just and equitable.

29. In *Wing Commander J. Kumar* (supra), the aforesaid view taken in *R.S. Makashi* (supra) has been reiterated in para 34 of the judgment. In *K. Madhavan* (supra) also the Apex Court as a rule of thumb did not find that the benefit of past service cannot be allowed, but on the contrary in para 17 of the judgment observed ‘The retrospective appointment or promotion to a post should be given

most sparingly and on sound reasoning and foundation.? In Roop Lal (supra), the Court struck down part of the office memorandum, which denied benefit of service rendered by the deputationists prior to absorption finding it to be violative of Articles 14 and 16, and, it held :

?It is clear from the ratio laid down in the above case that any rule, regulation or executive instruction which has the effect of taking away the service rendered by a deputationist in an equivalent cadre in the parent department while counting this seniority in the deputed post would be violative of Articles 14 and 16 of the Constitution.?

30. In Yogendra Prasad Mandal (supra), certain staff working at Singhbhumi Project of Bihar State Forest Development Corporation rendered surplus sought to be absorbed in State Trading Wing of Forest Department of the State Government. The absorptionists contended that their past service rendered in a Public Sector Corporation should be recognized but it was rejected by the Court in the absence of any provision permitting benefit of such service on transfer and absorption in the State Government, as is apparent from the following :

?We have not been shown any provision or any Rule under which the services of an employee of an autonomous body can be transferred to the State Government with continuity of service or preservation of seniority. In the minutes of 11111981 there is no mention of any continuity of service being maintained or the seniority of the staff absorbed being preserved from the date of their joining the Bihar State Forest Development Corporation. In the absence of this specific provision, the appointment in the State cadre has to be considered as appointment from the date when it takes effect?.

31. The benefit was denied by the Court, since, the service rendered in a public sector corporation was not found equivalent to the service rendered in a Government department in the absence of any provision permitting or recognizing such equivalence. The aforesaid judgment, therefore, has no application to the facts in the case. Similarly, in Dwijen Chandra Sarkar (supra), considering the provisions providing benefit of past service except seniority, it was held that benefit of past service for the purpose of seniority cannot be extended in all cases. In the present case, however, the position is different, since the rules under challenge clearly provide and contemplate benefit of past service to a persons, who may apply for absorption in UPRVUNL. Learned Counsel for petitioner could not place any authoritative pronouncement to show that a provision made by an employer recognizing past service of a service of a person sought to be employed either by way of absorption or recruitment by direct appointment or in any other manner would per se be arbitrary, discriminatory and unreasonable. Even otherwise, we are of the view that in the facts and circumstances of the case, the respondent are justified to make such a provision, which has rational nexus and object to be achieved. Recently, in Indu Shekhar Singh & Ors. v. State of U.P. & Ors., 2007(1) LBESR 278 (SC) : JT 2006(5) SC 260, certain employees working in U.P. Jal Nigam were sent on

deputation to Ghaziabad Development Authority. They were permitted to exercise option for absorption to Development Authority on a clear condition that their past services in U.P. Jal Nigam would not count for the purpose of seniority. The deputationists accepted the condition and opted for absorption whereupon the order were issued observing them in Development Authority. Subsequently, they approached this Court seeking a writ of mandamus commanding respondents to give benefit of past service rendered by them for the purpose of seniority. The writ petition was allowed by this Court and in appeal, the Apex Court after considering various judgments including those which have been referred by the learned Counsel for the petitioners before us, namely, R.S. Makashi (supra); Wing Commander J. Kumar (supra); K. Madbavan (supra) and Sub Inspector Roop Lal (supra) held in para 24 of the judgment that the past services may be directed to be counted towards seniority in two situations(1) when their exist a rule directing consideration of seniority, and (2) where recruitment is made from various sources, it would be rational to frame a rule considering the past service of the employees concerned. It further held that if the situation warrants, a provision may or may not be made to give benefit of past service for the purpose of seniority and accordingly reversed the judgment of this Court. Thus, it can safely be said that if a provision is made for acknowledging past service of a person sought to be recruited in service for the purpose of seniority, this by itself would not be illegal and arbitrary merely for the reason that it may rob off some places in the seniority to the employees who are already in service, but validity of such a provision can be tested on the anvil of Articles 14 and 16 to see whether the provision is rational, reasonable and just.

32. The aforesaid provision has been made by UPRVUNL in the compelling circumstances on account of huge deficiency of working hands and non availability of experienced technical staff. The UPRVUNL after due diligence, found that the experienced staff from other energy sectors may be lured for appointment in UPRVUNL, if certain advantages are to be retained for them. It is also worthy to notice that the advantages, which UPRVUNL intends to confer upon such prospective applicants, is not something, which they did not posses at all. If the benefit in the matter of seniority is sought to be conferred to a person, who has no past service to his credit, such benefit may prima facie be unreasonable. But it is not disputed that the persons working in other energy sectors in the State of U.P., namely, UPPCL or UPJVNL are those, who were working in UPSEB at the time when the petitioners were also working and they were enjoying higher seniority over these petitioners. Therefore, the effect, if any, of implementation of the rules in question would be that if some engineering officers working in UPPCL or UPJVNL, who are already absorbed thereat finally, seeks their appointment by absorption now in UPRVUNL, they would join the later establishment with the benefit of past service and at the best, it would result in restoring their seniority qua petitioners as in UPSEB. No new benefit is sought to be conferred upon them. In the entirety of the facts and circumstances, we do not find in any manner, the provisions under question,

unreasonable, irrational or arbitrary. It is always open to the employer to provide weightage to past service and experience of a person in the interest of its institution and to bring more & more efficiency in administration. Therefore, the rules under question are neither illegal nor arbitrary nor violative of Articles 14 and 16 of the Constitution.

33. Sri Khare lastly sought to argue that Section 23 (7) of the Reforms Act, 1999 read with Clause 3 (10) of the Transfer Scheme, 2000 use the word "Regulation" and therefore, UPRVUNL can only change the condition of service by framing statutory Regulations and not the Regulations, which are non statutory. In our view, this submission is to be noted for rejection only UPRVUNL is not a statutory body, but a Company registered under the Companies Act. It is not disputed that the employment and contract of the petitioners which was earlier with a statutory autonomous body, namely, UPSEB, stood transferred to UPRVUNL and now it is UPRVUNL, who is empowered to determine the conditions of service of its employees. The manner in which such provision can be made would be governed by the Article of Association of such Company and when the Company itself is not statutory, to expect such company to frame statutory Regulations for governing its employees is wholly untenable. The effect of transfer of service from statutory body to a non statutory body, namely, a company registered under the Company Act, would deprive the statutory protection available to the employees and now the matter would be governed by ordinary law of contract. Normally, the transfer of contract involves the consent of the employees also, but in the present case, the petitioner's contract has been transferred to UPRVUNL by statute itself and, therefore, the employees have no role and their consent is not required. The only rider on the power of transferee employer is that the service condition whenever changed would not be less beneficial and will not deprive past benefits accrued to the transferred employees before transfer, that is, to the extent provided under Section 23(7) of the Reforms Act, 1999. The protection under Section 23(7) neither continue the status of the transferred employee with the new companies as statutory nor otherwise has any other role except to prevent employer from exercising its ordinary powers available in Common Law, which would be contrary to the protection given under Section 23(7) of the Reforms Act, 1999. For all other purposes, the transferee company is free to formulate its policies and enter into contract or lay down terms and conditions of its employees in the manner, it find best suited for the efficient functioning of the company. Merely for the reason that the State Government is 100% share holder of the company does not identify the company itself with the State Government, in *Shrikant v. Vasant Rao*, 2006 (2) SCC 682, the Court held in para 24 that in the matter of a company where the entire share capital is held by the State Government, yet it cannot be identified with the State Government and is always entitled to act and proceed in a manner a company function. This principle was recognized as long back as in 1970 also by a Constitution Bench in *R.C. Cooper v. Union of India*, AIR 1970 SC 564, and at page 584, the Apex Court held?A company registered under the Companies Act is a legal person,

separate and distinct from its individual members. Property of the Company is not the property of the shareholders. A shareholder has merely an interest in the Company arising under its Article of Association measured by a sum of money for the purpose of liability, and by a share in the profit.?

34. The aforesaid view was reiterated in Heavy Engineering Mazdoor Union v. State of Bihar & Ors., AIR 1970 SC 82; Andhra Pradesh State Road Transport Corporation v. Income Tax Officer, AIR 1964 SC 1486; Western Coalfields Ltd. v. Special Area Development Authority, AIR 1982 SC 697. A Constitution Bench of the Apex Court in M/s. Electronics Corporation of India Ltd. v. Secretary, Revenue Department, Government of A.P., AIR 1999 SC 1734, in Para15 of the judgment held as under :

?A clear distinction must be drawn between a company and its shareholder, even though that shareholder may be only one and that the Central or a State Government. In the eye of the law, a company registered under the Companies Act is a distinct legal entity other than the legal entity or entities that hold its shares.?

35. Thus, we hold that a Company can determine terms and conditions of its employees as provided under Article of Association but since the Article of Association of a Company is neither a Rule nor Regulation and has no statutory force the conditions determined thereunder would also be not statutory. The UPRVUNL thus have the power to determine terms and conditions of its employees by making provisions in exercise of powers under provisions of Article of Association read with Companies Act.

36. Coming to the last submission that Regulations, 2006 is irrational, invalid being malicious and result of mala fide exercise of the power, we find that so far as the plea of mala fide is concerned, the petitioners have not laid down any factual foundation fortifying their submission. In the absence of any pleading, the plea of mala fide cannot even be entertained and, therefore, we reject the aforesaid submission. So far as the rationality of Regulations, 2006 is concerned, this issue has already been dealt with while considering question Nos. 2, 3 and 4.

37. In view of the aforesaid discussions, we are of the considered view that the U.P. Rajya Vidyut Utpadan Nigam Limited Absorption Regulations, 2006 is neither illegal nor arbitrary nor otherwise unjust and U.P. Rajya Vidyut Utpadan Nigam Ltd. is well within its rights to frame and promulgate the same under the provision of Clause 118(IX) of the Article of Association read with Section 23(7) of the Reforms Act, 1999 and Clause 6(10) of the Transfer Scheme, 2000.

38. In view of the discussions made hereinabove, the writ petition fails and is, accordingly, dismissed.

39. However, there shall be no order as to costs.