
(2006) 09 SC CK 0052

In the Supreme Court Of India

Case No : Civil Appeal No. 4191 of 2004

Ram Pravesh Singh and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 22-09-2006

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 141, 142, 21
Electricity (Supply) Act, 1948 — Section 78A
Electricity Act, 1910 — Section 15, 3, 4, 5, 6
Industrial Disputes Act, 1947 — Section 25F, 25FF

Citation : (2007) 113 FLR 639 : (2007) 1 JCR 62 : (2006) 12 JT 209 : (2007) 1 LLJ 202 : (2006) 4 PLJR 222 : (2006) 9 SCALE 468 : (2006) 8 SCC 381 : (2006) SCC(L&S) 1986 : (2006) 6 SCR 512 Supp

Hon'ble Judges : R. V. Raveendran, J;B. P. Singh, J

Bench : Division Bench

Advocate : P.S. Mishra, Gaurav Agrawal, Upendra Mishra, Dhruv Kr. Jha and Prashant Kumar, for the Appellant; Kailash Yadav Navin Prakash, Nishakant Pandey, Gopal Singh and Chander Shekhar Ashri, for the Respondent

Final Decision : Dismissed

Judgement

R.V. Raveendran, J.—Appellants who were the employees of Futwah Phulwarishariff Gramya Vidyut Sahakari Samiti Ltd., a co-operative society under liquidation, have challenged the order dated 30.9.2002 passed by the Patna High Court, dismissing their appeal (L.P.A. No. 1030/2002) against the order dated 24.2.2002 passed by a Single Judge rejecting their writ petitions.

2. Prior to 1976, Bihar State Electricity Board (for short, "the Board") was supplying electricity to the rural areas surrounding Patna. In the year 1976, the Bihar Government, the Board and Rural Electrification Corporation brought into existence a society registered under the Bihar Co-operative Societies Act, known as the "Futwah - Phulwarishariff Gramya Vidyut Sahakari Samiti Ltd. (for short "the Society") to implement a REC Scheme for better distribution of electricity to rural areas. The state government granted a licence dated 24.8.1976 to the

society, u/s 3 of the Indian Electricity Act, 1910 ("Act" for short) to supply electricity to the Futwah and Phulwari Sharif Blocks, for a period of 20 years, with options to the licensee to extend the period of licence.

3. By letter dated 23.4.1993, the Board recommended to the State Government, to revoke the licence granted to the Society and merge the Society with the Board, assigning three reasons : (i) The purpose for which the Society was created no longer existed. (ii) The Society was drawing electricity from multiple points in the Board's distribution network, making it difficult to ascertain the actual quantity of electricity drawn by the Society. (iii) The financial position and management of the Society was in a very bad shape and huge arrears were due from the Society to the Board, in spite of Board supplying it to the Society at 7 paise per unit (as against the Board's cost price of 90 to 115 paise per unit).

4. The State Government, after considering the matter, issued a notification dated 25.4.1995, in exercise of its power under Sections 4 and 5 of the Act revoking the licence dated 24.8.1976 granted to the Society. The State Government also constituted a Committee to evaluate the assets of the society which had to be transferred to the Board. The Committee was also required to consider whether it would be useful for the Board to absorb some of the employees of the Society. At a Meeting held on 18.9.1995 (as per Minutes drawn up on 10.11.1995), the said Committee made the following suggestions:

- (a) The Society should be liquidated in view of the cancellation of the licence;
- (b) The Liquidator of the Society should realize the amounts due to the Society and also invite claims from creditors of the Society for settlement of claims;
- (c) The amounts due in regard to the electricity supplied up to the date of cancellation (25.4.1995) should be credited to the Society, and the amounts due for electricity supplied thereafter should be received by the Board;
- (d) The accounts relating to the income and expenditure of the Society and the Board be maintained separately, from the date of cancellation of licence, so that they could settle the accounts between them; and
- (e) The Board should consider taking work from the employees of the society and pay salary to them. The Board may also consider absorbing the eligible employees of the Society after examining whether they were qualified for the posts and were duly appointed and whether their pay-fixation has been properly done.

5. The State Government by letter dated 2.1.1996 requested the Board to implement the suggestion of the Committee relating to the employees of the society that the Board should take work from the employees of the society and pay their salaries, and also consider the absorption of eligible employees. Some assurance was also held out in 1996 on the floor of the Legislature that the Board will be persuaded to take over the undertaking of the society with its employees. However, thereafter, the State Government took a decision that the

assets and liabilities of the society should be transferred to the Board, but not the services of the employees of the Society. The said decision was communicated by the Secretary, Energy Department to the Secretary, Cooperative Department and the Board, by letter dated 24.2.1997.

6. In view of the rejection of the proposal for absorption of services of employees of the Society by the Board, several representations were sent by the Administrator of the Society to the State government to absorb the services of the employees of the society. The Administrator of the Society also furnished a list of employees of the Society with particulars of designations and educational and technical qualifications to the State Government. The number of employees is 225 ranging from Engineers to Class IV employees. The said list was forwarded by the State Government to the Board on 14.7.1999 with a request to ascertain the existing vacancies in the Board. There were some more correspondence relating to the suggestions from various quarters, for absorption of the suitable and fit employees of the Society by the Board.

7. But the Board did not absorb the services of the employees of the Society. Therefore, the employees of the society (appellants) filed CWJC Nos. 1503 of 2000 and 14394 of 2001 seeking a direction to the Board to absorb them in equivalent posts with continuity of service and also pay their arrears of salaries, allowances and other dues. They contended that they had a right, both in law and in equity, as also a "legitimate expectation" to be absorbed into the services of the Board, for the following reasons:

a) The Committee constituted by the State Government had recommended that the Board should take work from the employees of the society and ultimately absorb them;

b) The employees of the society have a "legitimate expectation" that they should be absorbed by the Board for the following reasons:

(i) Initially several private companies were generating and distributing electricity in the State. When the Board was constituted, the undertakings of all those private companies were taken over and their employees were all absorbed in the services of the Board.

(ii) Whenever the undertaking of any company or institution was taken over by any statutory body or corporation, the services of employees of such undertaking are also normally taken over.

(iii) When an "undertaking" is purchased, in the absence of an intention to the contrary, all the assets and liabilities, as also the services of all employees are transferred to the purchaser and therefore the Board cannot refuse to absorb them.

(iv) When certain departments were abolished by the State of Bihar, this Court and the High Court had passed several orders directing absorption of the retrenched employees in other departments of the state government.

(v) The society was constituted by the Board and the state government to discharge the functions which were earlier being carried on by the Board. The licence granted to the society to distribute electricity was subsequently revoked on the recommendation of the Board. The Board has expressed its readiness to take over the undertaking of the Society. The Board has in fact taken over the assets of the Society and discharging the functions of the society without any interruption, on revocation of the Society's licence on 25.4.1995.

(vi) The Board had extracted some work from the employees of the society from 25.4.1995 till May, 1996.

c) There are large number of vacancies in the Board in various categories of posts and there would be no difficulty for absorption of their services by the Board.

d) All the employees of the society have crossed the maximum age limit for seeking fresh employment and if they were not absorbed by the Board, they will be deprived of their livelihood.

e) The society was an instrumentality of the State Government and the Board, and answered the definition of "State" within the meaning of that expression in Article 12 of the Constitution of India. When the undertakings of such instrumentality of the state was taken over by another instrumentality of the State, "fairness in action" which is one of the hallmarks of a "State" require that the rights of the employees are protected by providing for their absorption in an appropriate manner.

The State Government, in its counter, while denying the claim of the writ petitioners, however, admitted that in August, 2001, it had taken a decision that when the prohibition against recruitment in the Board is lifted and appointments are made in future, preference should be given to the eligible employees of the society if necessary by granting relaxation of the age limit.

8. A learned single Judge of the High Court rejected the said contentions and consequently, dismissed the writ petitions by order dated 24.2.2002. He held:

(i) The state government had not given any specific direction to the Board to absorb the services of the employees of the society. Any decision taken by the state government that as and when prohibition against recruitment was lifted and appointments were to be made, the Board should give preference to the eligible employees of the society, was not by itself a direction to the Board. At all events, having regard to Section 78A of the Electricity (Supply) Act, 1948 the State Government can issue direction only in regard to matters of policy, but could not issue a direction to appoint or absorb any employee of the society in its service as that would amount to encroachment of Board's power u/s 15 of the Act -- vide *Rakesh Ranjan Verma vs. State of Bihar* [1992 Suppl.(2) SCC 343] .

(ii) Even if the society was to be considered as an instrumentality of the State, that would not assist the appellants to contend that the society was an extension

of the Board, nor cast any obligation on the Board to absorb the employees of the society. When the licence granted u/s 3 of the Act was revoked and the undertaking of the Society (licencee) was agreed to be purchased by Board, the provisions of the Act governed the matter and those provisions did not enable the appellants to claim any right of being absorbed in the services of the Board.

(iii) The fact that the Board took over the undertakings of the private companies which were generating and distributing electrical power till then, along with the services of the employees of such private undertakings, did not have any relevance to the appellants' claim for absorption. The undertakings and services of employees of the erstwhile licencees were taken over several decades ago when the Board was constituted and when the Board was financially and administratively in a completely different position. As the financial position of the Board was presently precarious due to various circumstances, in particular, setting up of Jharkhand State Electricity Board following the reorganization of the state of Bihar and as the Board itself was considering retrenchment of large number of its existing employees, it cannot be compelled to take over the services of the employees of the society in the absence of any legal right in the appellants.

(iv) It could not direct absorption on equitable grounds. Any equitable consideration of the claim of the appellants cannot ignore the financial position of the Board, howsoever sympathetically the court may view the plight of the appellants. The state government, being interested in the welfare of the employees of the society had considered several alternatives to rehabilitate the employees of the Society. In the course of exploring the various alternatives, information was sought by the Government, views were expressed and assurances were made on the floor of the House, to explore the possibility of the Board absorbing the services of the employees of the society. But that did not create any right in the employees of the society to seek employment from the Board. In the absence of any specific decision by the Board or assurance by the Board to absorb the services of the appellants, the principle of "legitimate expectation" was not attracted.

(v) Having regard to Section 7 and 7A of the Act, when the undertaking of a licensee was purchased by the Board, there was no obligation on the part of the Board to absorb the employees of the erstwhile licensee.

9. The Letters Patent Appeal filed by the appellants against the said decision of the learned single Judge was dismissed by a Division Bench by a brief order dated 30.9.2002, both on the ground of limitation and on merits, thereby affirming the decision of the learned single judge. The said order is challenged in this appeal. On the contentions urged, the following question arises for our consideration:

Whether there is any obligation on the part of the Board - either contractual or statutory, or on equitable considerations-to absorb the services of the appellants?

Contractual Obligation:

10. The licence granted to the society u/s 3 of the Indian Electricity Act, 1910 was revoked by the State Government on 25.4.1995. It is no doubt true that on such revocation, the Board took over the entire activities of the society relating to distribution of power to the licensed areas. The Board also gave its concurrence to purchase the undertaking of the society. But the Board neither entered into any contract with the society, nor gave any assurance to the Society or its employees to absorb the employees of the society into its service. Therefore, obviously, there is no contractual obligation on the part of the Board to absorb the services of the appellants.

Statutory Obligation:

11. Section 3 of the Act dealt with grant of licence by the State Government to any person to supply energy in any specified area. Section 4 dealt with revocation of such licences. The provisions that would have effect when a licence was revoked, were listed in Section 5. Section 6 gave the option to the Electricity Board and the State Government to purchase the undertaking of a licensee, in the circumstances mentioned therein. Section 7 provided for vesting of the undertaking of the licensee sold to a purchaser u/s 5 or 6. Section 7A provided for determination of the purchase price. None of these provisions of the Act required the purchaser of the undertaking to take over the services of the employees of the Society. The appellants have not been able to show any other statutory provision which entitles them to seek absorption by the Board. Hence, there is no statutory obligation to absorb them into Board's service.

Equitable considerations:

12. Realising that the appellants had no contractual or statutory right, learned Counsel for the appellants sought to derive support for the claim on equitable considerations, by placing reliance on an amalgam of the principles relating to legitimate expectation, fairness in action and natural justice, reiterating the contentions urged before the High Court.

13. It may be true that when the Board took over the undertakings of the erstwhile private licencees several decades ago, it also took over the services of the employees of such private licensees. It is also possible that this Court in exercise of its jurisdiction under Article 142, on the facts of a given case, might have directed that the persons, whose services had been terminated on account of closure of an instrumentality of the State, be continued in the service of Government Departments or other Government Corporations. It may also be true that certain enactments providing for transfer of undertakings in pursuance of nationalization or otherwise, had also provided for continuation/transfer of the services of the employees of the undertakings to the transferee. But these do not attract the principle of "legitimate expectation".

14. What is legitimate expectation? Obviously, it is not a legal right. It is an

expectation of a benefit, relief or remedy, that may ordinarily flow from a promise or established practice. The term "established practice" refers to a regular, consistent predictable and certain conduct, process or activity of the decision-making authority. The expectation should be legitimate, that is, reasonable, logical and valid. Any expectation which is based on sporadic or casual or random acts, or which is unreasonable, illogical or invalid cannot be a legitimate expectation. Not being a right, it is not enforceable as such. It is a concept fashioned by courts, for judicial review of administrative action. It is procedural in character based on the requirement of a higher degree of fairness in administrative action, as a consequence of the promise made, or practice established. In short, a person can be said to have a "legitimate expectation" of a particular treatment, if any representation or promise is made by an authority, either expressly or impliedly, or if the regular and consistent past practice of the authority gives room for such expectation in the normal course. As a ground for relief, the efficacy of the doctrine is rather weak as its slot is just above "fairness in action" but far below "promissory estoppel". It may only entitle an expectant : (a) to an opportunity to show cause before the expectation is dashed; or (b) to an explanation as to the cause for denial. In appropriate cases, courts may grant a direction requiring the Authority to follow the promised procedure or established practice. A legitimate expectation, even when made out, does not always entitle the expectant to a relief. Public interest, change in policy, conduct of the expectant or any other valid or bonafide reason given by the decision-maker, may be sufficient to negative the "legitimate expectation".

The doctrine of legitimate expectation based on established practice (as contrasted from legitimate expectation based on a promise), can be invoked only by someone who has dealings or transactions or negotiations with an authority, on which such established practice has a bearing, or by someone who has a recognized legal relationship with the authority. A total stranger unconnected with the authority or a person who had no previous dealings with the authority and who has not entered into any transaction or negotiations with the authority, cannot invoke the doctrine of legitimate expectation, merely on the ground that the authority has a general obligation to act fairly.

15. In *Union of India v. Hindustan Development Corporation* [1993 (3) SCC 499] , this Court explained the nature and scope of the doctrine of "legitimate expectation" thus:

For legal purposes, the expectation cannot be the same as anticipation. It is different from a wish, a desire or a hope nor can it amount to a claim or demand on the ground of a right. However earnest and sincere a wish, a desire or a hope may be and however confidently one may look to them to be fulfilled, they by themselves cannot amount to an assertable expectation and a mere disappointment does not attract legal consequences. A pious hope even leading to a moral obligation cannot amount to a legitimate expectation. The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or

custom or an established procedure followed in regular and natural sequence. Again it is distinguishable from a genuine expectation. Such expectation should be justifiably legitimate and protectable. Every such legitimate expectation does not by itself fructify into a right and therefore it does not amount to a right in the conventional sense. (Emphasis Supplied)

This Court also explained the remedies flowing by applying the principle of legitimate expectation:

...it is generally agreed that legitimate expectation gives the applicant sufficient locus standi for judicial review and that the doctrine of legitimate expectation is to be confined mostly to right of a fair hearing before a decision which results in negating a promise or withdrawing an undertaking is taken. The doctrine does not give scope to claim relief straightaway from the administrative authorities as no crystallized right as such is involved. The protection of such legitimate expectation does not require the fulfillment of the expectation where an overriding public interest requires otherwise. In other words where a person's legitimate expectation is not fulfilled by taking a particular decision then decision-maker should justify the denial of such expectation by showing some overriding public interest. Therefore even if substantive protection of such expectation is contemplated that does not grant an absolute right to a particular person. It simply ensures the circumstances in which that expectation may be denied or restricted. A case of legitimate expectation would arise when a body by representation or by past practice aroused expectation which it would be within its powers to fulfil. The protection is limited to that extent and a judicial review can be within those limits. But as discussed above a person who bases his claim on the doctrine of legitimate expectation, in the first instance, must satisfy that there is a foundation and thus has locus standi to make such a claim. In considering the same several factors which give rise to such legitimate expectation must be present. The decision taken by the authority must be found to be arbitrary, unreasonable and not taken in public interest. If it is a question of policy, even by way of change of old policy, the courts cannot interfere with a decision. In a given case whether there are such facts and circumstances giving rise to a legitimate expectation, it would primarily be a question of fact. If these tests are satisfied and if the court is satisfied that a case of legitimate expectation is made out then the next question would be whether failure to give an opportunity of hearing before the decision affecting such legitimate expectation is taken, has resulted in failure of justice and whether on that ground the decision should be quashed. If that be so then what should be the relief is again a matter which depends on several factors.

16. In *Punjab Communication Ltd. v. Union of India* - 1999 (4) SCC 727, this Court observed:

The principle of legitimate expectation is still at a stage of evolution. The principle is at the root of the rule of law and requires regularity, predictability and certainty in the Governments dealings with the public. The procedural part of it

relates to a representation that a hearing or other appropriate procedure will be afforded before the decision is made.

However, the more important aspect is whether the decision maker can sustain the change in policy by resort to Wednesbury principles of rationality or whether the court can go into the question whether the decision-maker has properly balanced the legitimate expectation as against the need for a change.... In sum, this means that the judgment whether public interest overrides the substantive legitimate expectation of individuals will be for the decision-maker who has made the change in the policy. The choice of the policy is for the decision-maker and not for the court. The legitimate substantive expectation merely permits the court to find out if the change in policy which is the cause for defeating the legitimate expectation is irrational or perverse or one which no reasonable person could have made.

17. Recently, a Constitution Bench of this Court in *Secretary, State of Karnataka v. Umadevi* [2006 (4) SCC 1] referred to the circumstances in which the doctrine of legitimate expectation can be invoked thus:

The doctrine can be invoked if the decisions of the administrative authority affect the person by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there have been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has received assurance from the decision-maker that they will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn.

Another Constitution Bench, referring to the doctrine, observed thus in *Confederation of Ex-servicemen Associations vs. Union of India* [JT 2006 (8) SC 547] :

No doubt, the doctrine has an important place in the development of Administrative Law and particularly law relating to "judicial review". Under the said doctrine, a person may have reasonable or legitimate expectation of being treated in a certain way by an administrative authority even though he has no right in law to receive the benefit. In such situation, if a decision is taken by an administrative authority adversely affecting his interests, he may have justifiable grievance in the light of the fact of continuous receipt of the benefit, legitimate expectation to receive the benefit or privilege which he has enjoyed all throughout. Such expectation may arise either from the express promise or from consistent practice which the applicant may reasonably expect to continue.

In such cases, therefore, the Court may not insist an administrative authority to act judicially but may still insist it to act fairly. The doctrine is based on the principle that good administration demands observance of reasonableness and where it has adopted a particular practice for a long time even in absence of a

provision of law, it should adhere to such practice without depriving its citizens of the benefit enjoyed or privilege exercised.

18. Let us now examine whether the principles of legitimate expectation can have any application in this case. What transpired several decades ago when the Board commenced its operations and when its finances were sound, cannot have any bearing on its action in the year 1995. The position of the Board vis-?-vis the Society in 1995 was completely different from the position of the Board vis-?-vis the several ex-licensees when the Board took over their undertakings several decades back. Further, the assumption that whenever an undertaking is taken over, transferred or purchased, the transferee or purchaser should continue the services of the employees of the erstwhile owner of the undertaking, is not sound. In fact, statutory provisions seem to indicate otherwise. Section 25FF of the Industrial Disputes Act, 1947 provides that where the ownership or management of an undertaking is transferred, whether by agreement or by operation of law, from the employer in relation to that undertaking to a new employer, every workman who has been in continuous service for not less than one year in that undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of Section 25F, as if the workman had been retrenched, except in the cases mentioned in the proviso thereto. Therefore, the natural consequence of a transfer of an undertaking, unless there is a specific provision for continuation of the service of the workmen, is termination of employment of its employees, and the employer's liability to pay compensation in accordance with Section 25F. In *Anakapalle Co-operative Agricultural and Industrial Society Ltd. v. Workmen* [AIR 1963 SC 1489] , a Constitution Bench of this Court rejected the contention of the employees that, on transfer of the undertaking, the employees of the undertaking should be absorbed by the purchaser/transferee of the undertaking. This Court held:

This double benefit in the form of payment of compensation and immediate re-employment cannot be said to be based on any considerations of fair play or justice. Fair play and justice obviously mean fair play and social justice to both the parties. It would, we think, not be fair that the vendor should pay compensation to his employees on the ground that the transfer brings about the termination of their services, and the vendee should be asked to take them back on the ground that the principles of social justice require him to do so and in that sense, the said compensation is distinguishable from gratuity. Therefore, if the transferor is by statute required to pay retrenchment compensation to his workmen, it would be anomalous to suggest that the workmen who received compensation are entitled to claim immediate reemployment in the concern at the hands of the transferee.

19. The Board had never agreed nor decided to take services of any of the employees of the Society. In fact, it is not even the case of the appellants that the Board had at any point of time held out any promise or assurance to absorb

their services. When the licence of the Society was revoked, the State Government appointed a Committee to examine the question whether the Board can take over the services of the employees of the Society. The Committee no doubt recommended that the services of eligible and qualified employees should be taken over. But thereafter the State Government considered the recommendation and rejected the same, apparently due to the precarious condition of the Board which itself was in dire financial straits, and was contemplating retrenchment of its own employees. At all events, any decision by the State Government either to recommend or direct the absorption of the Society's employees was not binding on the Board, as it was a matter where it could independently take a decision. It is also not in dispute that for more than two decades or more, before 1995, the Board had not taken over the employees of any private licensee. There was no occasion for consideration of such a course. Hence, it cannot be said that there was any regularity or predictability or certainty in action which can lead to a legitimate expectation.

20. The appellant next submitted that this Court, in some cases, has directed absorption in similar circumstances. Reliance is placed on the decision in *G. Govinda Rajulu v. Andhra Pradesh State Construction Corporation Ltd.* -- 1986 (Supp) SCC 651 . We extract below the entire judgment:

We have carefully considered the matter and after hearing learned Counsel for the parties, we direct that the employees of the Andhra Pradesh State Construction Corporation Limited whose services were sought to be terminated on account of the closure of the Corporation shall be continued in service on the same terms and conditions either in the government departments or in the government corporations. The writ petition is disposed of accordingly. There is no order as to costs.

The tenor of the said order, which is not preceded by any reasons or consideration of any principle, demonstrates that it was an order made under Article 142 of the Constitution on the peculiar facts of that case. Law declared by this Court is binding under Article 141. Any direction given on special facts, in exercise of jurisdiction under Article 142, is not a binding precedent. Therefore, the decision in *Govindarajulu* cannot be the basis for claiming relief similar to what was granted in that case. A similar contention was negated by the Constitution Bench in *Umadevi* (supra):

The fact that in certain cases, the Court directed regularization of the employees involved in those cases cannot be made use of to found a claim based on legitimate expectation.

21. We will now consider the contention that the appellants are entitled to relief based on the principle of fairness in action, on equitable considerations. Learned Counsel for the appellants relied on two decisions of this Court in support of his contention *Gurmail Singh v. State of Punjab* [1991 (1) SCC 189] and *Kapila Hingorani v. State of Bihar* [2003 (6) SCC 1]

22. The observations in *Gurmail Singh* (supra) on which reliance is placed are extracted below:

This is where, as here, the transferor and/or transferee is a State or a State instrumentality, which is required to act fairly and not arbitrarily (see the recent pronouncement in *Mahabir Auto Stores v. Indian Oil Corporation* -- 1990 (3) SCC 752) and the court has a say as to whether the terms and conditions on which it proposes to hand over or take over an industrial undertaking embody the requisite of "fairness in action" and could be upheld. We think that, certainly, in such circumstances it will be open to this Court to review the arrangement between the State Government and the Corporation and issue appropriate directions. Indeed, such directions could be issued even if the elements of the transfer in the present case fall short of a complete succession to the business or undertaking of the State by the Corporation, as the principle sought to be applied is a constitutional principle flowing from the contours of Article 14 of the Constitution which the State and Corporation are obliged to adhere to.

It was very fair on the part of the State Government to decide that, as the tubewells would be operated by the Corporation, it would be prudent to run them with the help of the appellants rather than recruit new staff therefore and that the government should bear the burden of any losses which the Corporation might incur as a result of running the tubewells. But having gone thus far, we are unable to see why the government stopped short of giving the appellants the benefit of their past services with the government when thus absorbed by the Corporation. Such a step would have preserved to the appellants their rightful dues and retirement benefits. The conduct of the government in depriving the appellants of substantial benefits which have accrued to them as a result of their long service with the government, although the tubewells continue to be run at its cost by a Corporation wholly owned by it, is something which is grossly unfair and inequitable. This type of attitude designed to achieve nothing more than to deprive the employees of some benefits which they had earned, can be understood in the case of a private employer but comes ill from a State Government and smacks of arbitrariness. Acting as a model employer, which the State ought to be, and having regard to the long length of service of most of the appellants, the State, in our opinion, should have agreed to bear the burden of giving the appellants credit for their past service with the government. That would not have affected the Corporation or its employees in any way - except to a limited extent indicated below - and, at the same time, it would have done justice to the appellants. We think, therefore, that this is something which the State ought to be directed to do.

But in a case where one or both of the parties is a State instrumentality, having obligations under the Constitution, the court has a right of judicial review over all aspects of transfer of the undertaking. It is open to a court, in such a situation, to give appropriate directions to ensure that no injustice results from the changeover.

These observations have to be understood in the background of the facts of that case. The appellants therein were tubewell operators in the Public Works Department (PWD) of the State Government. The State took a decision to transfer all tubewells to a Corporation wholly owned and managed by the State and as a consequence all the permanent posts with reference to the Tubewell Circle in the PWD were abolished. Notices were served in terms of Section 25F of the Industrial Disputes Act. When those notices were challenged, they were set aside on the ground that they were not in consonance with Clause [c] of Section 25F. The State Government issued fresh notices of termination and they were also set aside by the High Court on the ground that they did not conform to Clause [b] of Section 25F. Thereafter, the State Government served fresh notices terminating the services in accordance with Section 25F for the third time. The third round notices were also challenged. But the High Court upheld the notices of retrenchment. The order of the High Court was challenged before this Court. During the pendency of the long drawn litigation, the newly formed Corporation decided to take over their services by extending them the same scale of Pay, which they were getting when they were in the employ of the State Government. Therefore, the only grievance that survived for consideration before this Court related to appellants therein being treated as fresh appointees on the dates of their respective appointment by the corporation, thereby denying them the benefit of their past service and seniority. It is in the context of examining the said grievance, this Court made the aforesaid observations. As noticed above, retrenchment u/s 25FF was found to be valid. The Corporation had voluntarily taken over the services of the retrenched employees. The question whether the transferee or the purchaser of the undertaking should absorb the services of the employees of the previous employer was not in issue and therefore, the said decision is of no assistance. On the other hand, what may be relevant are the following observations of the Constitution Bench in *Uma Devi* (supra):

Obviously, the State is also controlled by economic considerations and financial implications of any public employment. The viability of the department or the instrumentality of the project is also of equal concern for the State. The State works out the scheme taking into consideration the financial implications and the economic aspects. Can the court impose on the State a financial burden of this nature by insisting on regularization or permanence in employment, when those employed temporarily are not needed permanently or regularly? As an example, we can envisage a direction to give permanent employment to all those who are being temporarily or casually employed in a public sector undertaking. The burden may become so heavy by such a direction that the undertaking itself may collapse under its own weight. It is not as if this had not happened. So, the court ought not to impose a financial burden on the State by such directions, as such directions may turn counterproductive.

23. The decision in *Kapila Hingorani* (supra) is an interim order in a public interest litigation. In the State of Bihar, various Government companies and public sector undertakings had not paid salaries to their workmen and other

employees for a long time, resulting in deaths and suicides of several employees. The petitioner therein wanted the State to bear the responsibility for payment of salaries. The State resisted the petition on the footing/contending that the liabilities of the company cannot be passed on to the State by taking recourse to the doctrine of lifting the veil or otherwise. This Court issued certain interim directions for disposal of all liquidation proceedings in regard to the Government companies in question and appointment of a Committee to scrutinize (ascertain) the assets and liabilities of the company. This Court also directed the State Government to deposit a sum of Rs. 50 crores before the High Court for disbursement of salaries to the employees. During the course of the said interim order, this Court observed as follows:

The government companies/public sector undertakings being "States" would be constitutionally liable to respect life and liberty of all persons in terms of Article 21 of the Constitution of India. They, therefore, must do so in cases of their own employees. The Government of the State of Bihar for all intent and purport is the sole shareholder. Although in law, its liability towards the debtors of the company may be confined to the shares held by it but having regard to the deep and pervasive control it exercises over the government companies; in the matter of enforcement of human rights and/or rights of the citizen to life and liberty, the State has also an additional duty to see that the rights of employees of such corporations are not infringed.

The right to exercise deep and pervasive control would in its turn make the Government of Bihar liable to see that the life and liberty clause in respect of the employees is fully safeguarded. The Government of the State of Bihar, thus, had a constitutional obligation to protect the life and liberty of the employees of the government-owned companies/ corporations who are the citizens of India. It had an additional liability having regard to its right of extensive supervision over the affairs of the company.

The said observations made in an interim order with reference to the State's obligations will not be of any avail to seek employment under the Board. We are not concerned in these appeals about the rights of the employees of the Society vis-?-vis the Society or the State Government. We are concerned with a specific question as to whether they can seek absorption under the Board. We may in this behalf refer to the decision of this Court in *Bhola Nath Mukherjee v. Government of West Bengal* [1997 (1) SCC 562] relating to transfer of a licensee's undertaking to a State Electricity Board, as a consequence of revocation of the licence. In that case the Board initially allowed the employees of the erstwhile licensee to continue in its service but subsequently introduced terms which rendered them fresh appointees from the date of take over of the undertaking. The question that arose for consideration was whether the employees were entitled to compensation u/s 25FF of the Act; and whether the liability for payment of such compensation u/s 25FF of the Act was on the transferor or the Board. This Court held that employees had no right to claim any

retrenchment compensation from the Board, nor did they have any right to claim to be in continuous employment on the same terms and conditions, after the purchase of the undertaking by the Board. The said decision clearly recognises that the Board has no obligation towards the employees of the previous owner of the undertaking.

We therefore find no reason to interfere with the order of the High Court. The appeal is dismissed.