
(2009) 04 JH CK 0047
In the Jharkhand High Court

Sahodar Prasad Mahto

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 27-04-2009

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 309
Electricity (Supply) Act, 1948 — Section 5
Electricity Act, 2003 — Section 131, 172
Electricity Regulatory Commission Act, 1998 — Section 3

Citation : (2009) 04 JH CK 0047

Hon'ble Judges : M.Y. Eqbal, J;Jaya Roy, J

Bench : Division Bench

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—The instant writ petition has been filed by way of Public Interest Litigation challenging the appointment of respondent No. 5, Mr. H.B. Lal, on the post of Chairman, Jharkhand State Electricity Board on the ground inter alia that the Board has been constituted in a most arbitrary manner and respondent No. 5 is a person of doubtful integrity and is aged about 90 years, has been appointed as Chairman of the Board. Further prayer has been made for quashing the notification dated 17.9.2008 whereby respondent No. 5 was appointed as Chairman and further for a direction upon the respondents to reconstitute the Jharkhand State Electricity Board in accordance with the provisions of the Act and keeping in view the National Electricity Policy under the Electricity Act, 2003.

2. Petitioner claims himself to be a Vidyut Shramik Leader and colleague of Mr. Sideshwar Prasad Sinha who earlier filed Public Interest Litigation being W.P. (PIL) No. 6774 of 2002 for a direction upon the respondent not to appoint corrupt persons as a Chairman and Members of the Jharkhand State Electricity Board (in short "JSEB Board"). But before the case could be taken up, the JSEB Board was reconstituted. After reconstitution of the Board, another Public Interest Litigation being W.P. (PIL) No. 310 of 2003 was filed challenging the Constitution of the Board and during pendency of the writ petition, the Board was

again reconstituted by removing the persons against whom complaints were made. Various allegation and institutions have been made in the writ petition against respondent No. 5 who was earlier-appointed as Chairman of the Board and during his period, there had been shortfall in generation, transmission and supply of electricity. It is stated that in the year 2004 respondent No. 5 was appointed as Chairman of the board which was challenged in a writ petition and pursuant to direction of this Court, the Board was again reconstituted and respondent No. 5 was removed from the post of Chairman. The contention of the petitioner is that again by the impugned notification dated 17.9.2008, the respondents-Slate appointed respondent No. 5 as Chairman of the Hoard. Regarding the past conduct of respondent No. 5 following statements have been made in paragraph 29 of the writ petition:

a) The then DIG, Member and Chairman has written in the files of B.S.E.B. being file No. - 55111c 10262/72 at page No. 6 regarding the illegal purchase of 5000 electric meters from the Tea Stall of Calcutta.

b) The memo of charge issued upon Mr. H.B. Lal regarding illegal purchase of Electric meter, irregularities in repairing of Transformer, etc., in this Mr. Sidehwar Prasad Sinha was one of the witness.

c) Public undertaking committee of Bihar Legislative Assembly in his second report at para - 26 to 28 has made serious comments and allegation of Mr. H.B. Lal.

d) In meeting of D.P.C. dated 16.07.1977 in annexure -IV item No. -5 it has been recorded proof of allegation and also Mr. H.B. Lal has been declared immoral.

3. According to the petitioners, respondent No. 5 Mr. H.B. Lal, retired from the service of the Board in the year 1978 and he is aged about 90 years and is not in a position to perform duties of the post of Chairman because of age factor as well as for want of knowledge, latest advanced technologies in the field of electricity.

4. In the counter affidavit filed by respondent No 4, the Jharkhand State Electricity Board, stated inter alia that frivolous petitions in the name of Public Interest Litigation, have been filed several times challenging the constitution of the Board. According to the Board, respondent No. 5 after successful completion of service, superannuated from the Board as Technical Member. He rendered his excellent service in the Board and received appreciation's. It is stated that respondent No. 5 was not removed as a Chairman of the Board rather he himself resigned from the post of the Chairman. According to the Board, under the Electricity Supply Act, 1948, there is no age limitation prescribed for appointment of a member or Chairman of the Board.

5. In the counter affidavit filed by respondent Nos. 1 and 2, namely, the Department of Energy, Govt. of Jharkhand, it is stated that respondent No. 5 has all the required technical qualification in the field of electricity. He has a number

of Indian and foreign degrees to his credit. Respondent No. 5 superannuated from the Bihar State Electricity Board as Technical Member and all appointments are made in the Electricity Board only after obtaining vigilance clearance. In case of respondent No. 5 also, vigilance clearance was obtained before his appointment as Chairman of the Board. The respondents-State denied all the allegations and insinuations made against respondent No. 5 in the writ petition.

6. Respondent No. 5 in his counter affidavit has given full details of his qualifications, experience and expertise in the electricity field. It is stated that the then Chief Minister of Jharkhand after considering the merits of several candidates had ordered the appointment of respondent No. 5 on the post of Chairman of the Board in the year 2001. It is stated that in the Public Interest Litigation filed at that time challenging the constitution of the Board, this Court has not given any finding against respondent No. 5. However during pendency of the writ petition, Mr. Rajiv Ranjan was appointed as Chairman of the Board. Respondent's further case is that in the year 2001, he was appointed as Chairman of the Board and continued till 2005 when respondent No. 5 tendered his resignation from the post of Chairman during political instability. During the short tenure of respondent No. 5, his contribution in the Board has been immense.

7. The Indian Electricity Act, 1910 was enacted for the purpose of providing law relating to supply and use of electricity. In the year 1948, in order to provide for rationalization of production and supply of electricity and for taking measures conducive to electrical development, the Electricity Supply Act, 1948 was passed. In the said Electricity Supply Act, 1948, amendments were made time to time in 1956, 1966, 1976, 1978 and lastly in 1983. Section 5 of the 1948 Act laid down provisions for constitution and composition of the State Electricity Boards. According to Section, 5 the State Government was empowered to constitute by notification in the official gazette a State Electricity Board which shall consist of not less than three and not more than seven members appointed by the State Government. For better appreciation, Section 5 of the 1948 Act is quoted herein below:

5. Constitution and composition of the State Electricity Boards. (1) The State Government shall, as soon as may be after the issue of the notification under Sub-section (4) of Section I, constitute by notification in the Official Gazette a State Electricity Board under such name as shall be specified in the notification.

(2) The Board shall consist of not less than three and not more than seven members appointed by the State Government.

(3) ... (omitted)

(4) Of the members:

(a) one shall be a person who has experience of, and has shown capacity in, commercial matters and administration;

(b) one shall be an electrical engineer with wide experience; and

(c) one shall be a person who has experience of accounting and financial matters in a public utility undertaking, preferably an electricity supply undertaking.

(5) One of the members possessing any of the qualifications specified in Sub-section (4) shall be appointed by the State Government to be the Chairman of the Board.

(6) A person shall be disqualified from being appointed or being a member of the Board if he is a member of Parliament or of any State Legislature or any local authority.

(7) No act done by the Board shall be called in question on the ground only of the existence of any vacancy in, or any defect in the constitution of, the Board.

8. In the year 2003, new Electricity Act, 2003 was enacted by the Parliament in order to consolidate the laws relating generation, transmission, distribution, trade and use of electricity and for taking measures conducive to the development of electricity industry promoting competition therein protecting interest of consumers and supply of electricity to all areas, rationalization of electricity tariff and ensuring transparent policies.

9. The very object and purpose of 2003 Act is that all existing State Electricity boards have been left to compete with other private licensees in the field of generation, transmission and distribution of electricity. Under the new Act, the State Electricity Boards have become the deemed licensees. The Electricity Act, 2003 also provides for several statutory/regulatory bodies empowering them to regulate and control the business of electricity and to develop competitive environment among the companies in the field of electricity.

10. Part IX of the Act deals with constitution and function of Central Electricity Authority. Section 70 provides that there shall be a body to be called the Central Electricity Authority to exercise such functions and perform such duties as are assigned to it under this Act. It further provides that a Central Electricity Authority shall consist of not more than 14 Members including its Chairperson. Similarly, Part X of the Act deals with constitution, powers and functions of Central Commission. Section 76 provides that there shall be a Commission to be known as the Central Electricity Regulatory Commission to exercise the powers conferred on, and discharge the functions assigned to, it under this Act. Sub-section (2) of Section 76 of the Act provides that the Central Electricity Regulatory Commission, established u/s 3 of the Electricity Regulatory Commissions Act, 1998 shall be deemed to be the Central Commission for the purposes of this Act and the Chairperson, Members, Secretary and other officers and employees thereof shall be deemed to have been appointed under this Act and they shall continue to hold office on the same terms and conditions on which they were appointed. Section 82 deals with the constitution, powers and functions of State Commission. According to this Section, every State

Government shall, within six months from the appointed date, by notification, constitute for the purposes of this Act, a Commission for the State to be known as the Electricity Regulatory Commission. The State Commission shall consist of not more than three Members including the Chairperson who shall be appointed by the State Government on the recommendation of Selection Committee so constituted u/s 85 of the Act. Section 85 lays down the provision for constitution of Selection Committee to select Members of State Commission. The Selection Committee shall consist of a person who has been a Judge of the High Court, the Chief Secretary and the Chairperson of the Authority or the Chairperson of the Central Commission. It is, thus, clear that the constitution of all the State Commission under the Act shall be made strictly in accordance with procedures provide in the Act.

11. Section 185 is the repealing provision according to which to Indian Electricity Act, 1910 the Electricity Supply Act, 1948 and, the Electricity Regulatory Commissions Act, 1998 have been repealed. However, there is a transitional provision contained in Section 172 of the Act. For better appreciation, Section 172 reads as under:

172. Transitional provisions. Notwithstanding anything to the contrary contained in this Act,:

(a) a State Electricity Hoard constituted under the repealed laws shall be deemed to be the State Transmission Utility and a licensee under the provisions of] this" Act for a period of one year from the appointed date or such earlier date as the State Government may notify, and shall perform the duties and functions of the State Transmission Utility and a licensee in accordance with the provisions of this Act and rules and regulations made thereunder:

Provided that the State Government may, by notification, authorise the State Electricity Hoard to continue to function as the State Transmission Utility or a licensee for such further period beyond the said period of one year as may be mutually decided by the Central Government and the State Government.

(b) all licences, authorisations approvals, clearances and permissions granted under the provisions of the repealed laws may, for a period not exceeding one year from the appointed date or such earlier period; as may be notified by the Appropriate Government, continue to operate as if the repealed laws were in force with respect to such licence, authorisations, approvals, clearances and permissions, as the case may be, and thereafter such licences, clearances and permissions, as the case may be, and thereafter such licenses, authorisations, approvals, clearances and permissions shall be deemed to be licences, authorisation, approvals, clearances and permission under this Act and all provisions of this Act shall apply accordingly to such licences authorizations approvals, clearances and permissions.

(c) the undertaking of the State Electricity Hoards established u/s 5 of the Electricity (Supply) Act, 1948 may after the expiry of the period specified in

Clause (a) be transferred in accordance with the provisions of Part XIII of this Act;

(d) the State Government may, by notification, declare that any or all the provisions contained in this Act, shall not apply in that State for such period: not exceeding six months from the appointed date, as may be stipulated in the notification.

12. Part XIII of the Act lays down the provisions for reorganization of the Board. Section 131 provides that with effect from the date on which a transfer scheme, prepared by the State Government to give effect to the objects and purposes of this Act, is published or such further date as may be stipulated by the State Government, all right, title, interest in the properties and liabilities of the State Electricity Board shall be vested in the State Government on the terms and conditions agreed between the parties.

13. From bare reading of Section 172(c) of the Act, it is manifestly clear that the State Electricity Board established under the Electricity (Supply) Act, 1948 shall stand transferred after the expiry of the period mentioned therein in accordance with the provisions of Part XIII of the Act. In other words, the State electricity Board will cease to exist from the date of publication of transfer scheme as provided u/s 131(7) of the Act.

14. The Jharkhand State Electricity Board was constituted by notification dated 10.1.2001. From perusal of the file produced by the Advocate General, it appears that on 02.2.2001, a proposal was placed by the Energy Minister to the Chief Minister for the appointment of Shri Kapildeo Prasad Sinha as Chairman of the Board and six other persons as members of the said Board. On the same day, the then Chief Minister approved the appointment of respondent No. 5 - Mr. H.B. Lal, as Chairman in place of Shri Kapildeo Prasad Sinha. Thereafter, file was sent to the then Chief Secretary. On receipt of the file, the Chief Secretary made a note to the Chief Minister and raised serious objection with regard to the manner of constituting the Board. For better appreciation, the note of the Chief Secretary to the Chief Minister is reproduced herein below:

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15. In the year 2001, a writ petition by way of public interest litigation (CWJC No. 924 of 2001) was filed seeking issuance of appropriate writ directing the State of Jharkhand and its functionaries to appoint persons of impeccable and highest integrity, with unblemished past service career, and proven competence and having specialized knowledge in their respective fields to the post of Chairman and Members of the Jharkhand State Electricity Board. In the said writ petition a Division Bench of this Court made the following observations:

...It goes without saying that persons with clean record, unimpeachable reputation and impeccable integrity deserve to be appointed on the posts Chairman and Members of the Board like the State Electricity Board looking to the nature of the performance and duties to be performed and the vital interests of the State. Even though this Court has no doubt that the State Govt. shall ensure that only persons as aforesaid are appointed, we direct the learned Advocate General to obtain instructions from his client with regard to the above referred

apprehensions and misgivings of the petitioner and report to this Court or file affidavit. This is up to the learned Advocate General to file affidavit or to report.

Meanwhile we direct that if any appointment is made by the State Govt. to the posts of Chairman or Members of the Board, the State Govt. shall keep the aforesaid observations in mind. We also direct that if any appointment in the mean while is made, it shall be subject to the result of the petition.

16. As noticed above, after constitution of the Board, a proposal was given by the Energy Minister, Govt. of Jharkhand to the Chief Minister for composition of the Board by suggesting names of five individuals and two Ex-Officio Members of the Board. In the said proposal, the name of Kapildeo Prasad Sinha was given for Chairman of the Board. The Chief Minister approved the proposal of the Minister, but a modification was made whereby name of respondent No. 5 Mr. H.B. Lal was recommended as Chairman of the Board. The Division Bench in the aforementioned public interest litigation observed that how and from where and what circumstances the name of Mr. H.B. Lal cropped up is not discernible from the note of either the Minister or the Chief Minister. As stated above, when the aforesaid proposal and the suggestions of the Chief Minister was placed before the Chief Secretary of the State he in his note to the Chief Secretary raised objection as to how the matter regarding composition of Electricity Board and the appointment of its Chairman and Members was sent by the Minister In charge Energy directly to the Chief Minister without it being routed through the Chief Secretary. According to the Chief Secretary, under Rule 32 of the Rules of Executive Business, the matter should have been routed through Chief Secretary. In the said note the Chief Secretary made very damaging and adverse comments against Mr. H.B. Lal and other Members of the newly constituted Board. Surprisingly, all of a sudden, without any forwarding or any preparatory note by any officer, the Energy Minister once again forwarded his note on 2nd February, 2001 with a proposal of appointment of different person to the post of Chairman and Members of the Board. According to the proposal of the Energy Minister one Mr. Rajiv Ranjan was proposed to be the Chairman-cum- Member Administrations of Board. Shri Sachchidanand Akhauris and Shri Nirajan Rai were proposed to be the Members of the Board. The Chief Secretary in his note dated 8.3.2001 made some observations with regard to the proposal and suggestions and recommended that the antecedents of the persons proposed were not available and their experience, their eligibility also were not known and that relevant information should be obtained. The Division Bench finally disposed of the aforementioned public interest litigation and directed the State Government to restart the process for making fresh appointment of the Chairman and Members of the Board. The said judgment the Court observed:

18. A question may arise as to how should have the respondents gone about in choosing and selecting the persons for manning these posts ? (Before answering this question, one thing has to be clearly kept in mind and that is that it was the duty of the State to have chose the best available persons for these posts). The

answer to the question is very simple. The respondents were performing a statutory function, exercising the executive powers of the State. They were expected to act fairly, objectively and keeping in view the established principles to all concerned. The record in this case clearly shows that on both occasions, the respondents picked up their favorites, chosen ones from out of no-where and recommended their names for appointment. Especially, if one looks to the noting dated 7th March, 2001, one finds that there, is no disclosure whatsoever as to how, in what manner, under what circumstances and based on which material or source of information, did respondent No. 5 have to recommend propose the names of the aforesaid persons. There is no explanation whatsoever on this aspect of the mater. There is no explanation whatsoever forthcoming on this aspect even from the pleadings of the respondents. The pleadings are totally silent on these issues. It is not that the favorites were being chosen ? Can it not be said that it was a case of indulging in naked favoritism and nepotism?

19. J.S.E.B. is not the personal property of any one. It is not the private estate of any one. It is a statutory Board, being the creation of a Statute. It is an instrumentality of the State. The persons manning the Board are public servants. The Hoard is conferred with statutory powers and entrusted with statutory functions of a very vital nature, a core are of a very, very important public utility service. The Slate finances and funds the Board. The Board enjoys the powers and privileges of a State Institution. It has the trappings of an organ of (he State. Indeed, it is an " authority" as contemplated under Article 12 of the Constitution of India and yet here was an attempt to fill up the vacancies in the Board at its highest level without following the procedure as laid down under Article 14 or Article 16 of the Constitution.

20. In sum total, therefore, we have no hesitation in coming to the conclusion, based on the aforesaid facts and circumstances that the appointment of Shri Rajiv Ranjan and Shri Sachchidanand Akhauri as Chairman and Member respectively of Jharkhand State Electricity Board does not appear to have been made properly, fairly and in accordance with the provisions contained in Section 5 of the Electricity (Supply) Act, 1948. We are saying so for the following reasons :

(1) Article 14 relating to equality before law and Article 16 relating to equality of opportunity in matters of public employment do not appear to have been followed with respect to these two persons. The basis of our holding so is that with respect to these appointments to Public Offices, the public at large was not give)) any opportunity, in the sense that the participation of eligible persons was not invited. A closed-door, behind the scene process in a hush-hush manner was adopted in recommending the names of these two persons without there being any basis or material as to how and upon what foundation relating to experience, eligibility, suitability, and merit were these two persons recommended. Had the State evolved the practice and well established norm of enlarging the scope of consideration process, it would have attracted candidates with highest

capabilities, eligibility, knowledge and experience;

(2) We are not very sure whether the persons appointed actually possessed the prescribed qualifications, had the requisite experience, eligibility criteria, or the knowledge to perform the job for which they were proposed to be appointed;

(3) The recommendations of the Chief Secretary were not followed. What the past record of service of these persons including their confidential assessment from their former employers, their A.C.Rs for the past 10 years should be called for so as to assess their merit and suitability. What was this not done? This was a suggestion and recommendation which was ideal in the facts and circumstances of the case.

(4) The most ideal situation would have been, with respect to appointment on such high posts, to either invite applications of intending eligible candidates, or to constitute a search Committee or a Select Committee of highly placed persons who would look for appropriate candidates for recommending their names for these posts.

(5) Clearance by any established Vigilance organization in all such appointments should have been a mandatory requirement.

17. Because of serious objections raised by the Chief Secretary with regard to integrity of respondent No. 5 Shri H.D. Lal, the proposal for his appointment as Chairman of the Board was reconsidered and in his place, another person was appointed as Chairman. However, for the reasons best known to the then Chief Minister and the Energy Minister, in the year 2004 the Government again decided to appoint respondent No. 5. Mr. H.B. Lal as Chairman of the Board and accordingly respondent No. 5 took the charge of Chairman on 18.10.2004. It is worth to mention here that in 2001 when the Board started making appointment of retired persons and also taking the services of Engineers from other organizations on deputation and posting against the higher posts, a writ petition was filed and appointment of some of the persons were quashed. Pursuant to the said order, the services of those retired persons so appointed were terminated in 2002. It further appears that against the order passed in the writ petition, two Letters Patent Appeals were filed by the Board i.e. LPA No. 561 of 2002 and LPA No. 587 of 2002 and in those appeals, a Division Bench heard the interlocutory applications on 23rd September, 2004 and directed the Jharkhand State Electricity Board not to appoint any retired persons in their services and those who are more than 58 years of age. The Board was further directed not to make any appointment on contract basis without prior permission of the Court. In spite of the specific directives issued by the Division Bench, the respondents-Board under the Chairmanship of respondent No. 5 Mr. H.B. Lal, issued employment notice No. 5/05 on 13th May, 2005 published in the newspaper (Hindustan) inviting applications from the retired employees for filling up post of engineers and other higher posts. The said notice for appointment of retired employees was challenged before this Court in W.P.S. No. 2853 of 2005. Taking into

consideration the aforesaid orders, a Division Bench of this Court issued notice to respondent No. 5 Mr. H.B. Lal, Chairman, Jharkhand State Electricity Board, Mr. K.P. Sinha, Member and Shri S.N. Akhoury, Member, to state as to why suo motu contempt proceedings be not initiated against them for willful and deliberate violation of the Court's orders passed in W.P.S. No. 3746 of 2001 read with the order dated 23rd September, 2004 passed in L.P.A. No. 561 of 2002. In the said writ petition (W.P.S. No. 2853 of 2005), several other officers who violated the Court's orders were impleaded as parties and the Division Bench passed order directing the Chairman, Members and Secretary of the Board not to take work from the aforesaid persons. However, pursuant to the orders, all those persons who were engaged without advertisement were removed. Further, the Court found that all respondents, including those who appeared in person were engaged without following any procedures such as advertisement, interview and selection. So far the Chairman (respondent No. 5 herein) and members of the Board are concerned, the State Government then decided to reconstitute the Board. For better appreciation, paragraphs 3 to 7 of the order are quoted here in below:

3. Counsel for the petitioner submitted that in view of order aforesaid dated 20th July, 2005, all those who were engaged without advertisement, have been removed. This has been accepted by the learned Counsel for the Jharkhand State Electricity Board (Board for short).

4. Respondent Nos. 9, 10, 12, 13, 14, 15, 16, 17, 21, 22, 23, 25, 28, 29, 30 and 31 have appeared through their respective counsel. According to them, there being a need, the Board engaged them taking into consideration of their experience. It was further submitted that the respondents have not been removed but they have been restrained from work in view of the order of this Court.

5. After hearing the parties, we find that all the respondents including those who have appeared, were engaged without following any procedure, such as advertisement, interview and selection.

6. In the circumstances, if the Board has stopped taking work from the, the Board should not allow them to function. They should to be treated to have been disengaged by the Board.

7. So far the Chairman and Members of the Board are concerned, the State Government having decided to re constitute a Board, no further order is required to be passed in this respect.

18. Because of such illegal and irregular appointment of the retired persons made during the tenure of respondent No. 5 Mr. H.B. Lal, the State Government decided to reconstitute the Board. In view of the aforesaid decision of the Government, respondent No. 5 was either removed from the Chairmanship or he resigned, whatever may be. Thereafter, the Board was reconstituted and another person of the choice of Chief Minister was appointed as Chairman. After the

removal/resignation of respondent No. 5, the post of Chairman remained vacant for sometime and a note was placed by the Chief Secretary to the Energy Minister on 23.6.2006 stating that four times different chairmen were appointed u/s 5 of the Electricity (Supply) Act, 1948 and now u/s 172 of the new Electricity Act, 2003, the Board was allowed to function as licensee till 9th October, 2006. Hence necessary order may be passed. In that noting the then Chief Minister directed Shri Shivendu, Member, Revenue of the Board to discharge the function of Chairman. The Secretary again placed the note to the Chief Secretary on 27.2.2007 informing him that the Government of India extended the time till 30.6.2007 for implementing the Electricity Act, 2003. The Chief Secretary, in turn, placed the note to the Chief Minister. In the meantime, the Chief Minister took a decision on 29.12.2007 for appointing Shri Brijmohan Verma temporarily as Chairman of the Board and a notification to that effect was issued.

19. Again from the note-sheet dated 17.9.2008, it appears that the Government took a decision to appoint respondent No. 5 Mr. H.B. Lal, as Chairman of the Board. The note was then placed on the same day i.e. 17.9.2008 by the Secretary to the Chief Minister for appointing respondent No. 5 Mr. H.B. Lal, as Chairman of the Board till further orders.

20. It reveals from the file produced before us that on 17.9.2008, Mr. B.K. Tripathi, PPS to Chief Minister, gave a note to the Secretary, Energy Department for immediately placing the proposal for appointment of Mr. H.B. Lal on the post of Chairman of the Board. The noting of the PPS to the Chief Minister is reproduced herein below:

^^>kj[k.M ljdkj eq[;ea=h lfpoky; ?p;kZ fVIi.kh?

eS0I0izs0la0 3603688 fnukad 17-9-2008 3] dkds jksM] jkWaph

lfpo ?tkZ foHkkx

funs"kkuklkj Mk0 ,p0ch0 yky dk ckW;ksMkVk layXu djrs gq, vuqjks/k gS fd v/;{k >kj[k.M jkT; fo|qr cksMZ ds in ij Mk0 ,p0ch0 yky dh fu;qfDr ds izLrko ds lkFk "kh? kz lafpdk miLFkkfir djus dh d`ik dh tk;A

g0 ch0 ds0 f=ikBh eq[;ea=h ds iz/kku lfpo^^

21. On the same day the proposal was placed by the Chief Secretary to the Chief Minister who appointed Mr. H.B. Lal as Chairman of the Board and the notification to that effect was issued on the same day i.e. 17.9.2008.

22. It further appears from the record that after notification was issued appointing Mr. H.B. Lal as Chairman, process was started for obtaining vigilance clearance and other clearance on the allegations pending against Mr. H.B. Lal. Several letters were issued including letters dated 4.12.2008 and 27.12.2008 by the S.P. (Vigilance Bureau) demanding details of the complaints made against Mr. H.B. Lal during his tenure as Chairman in 2004-05. Vide letter dated 3.1.2009 addressed to the Cabinet Secretary (Vigilance), the Energy Secretary informed

that details of allegations against Mr. H.B. Lal from October, 2004 to July, 2004 is not available. Hence, request was made to provide the same. The said letter was followed by another letter dated 24.1.2009. Thereafter, both the Vigilance Department and Energy Department stopped making any correspondence and there is nothing on the record to show that vigilance clearance and other clearance against Mr. H.B. Lal was obtained. However, so far the allegation with regard to his suspension and initiation of departmental proceeding in the erstwhile State of Bihar is concerned, the respondent-State in the supplementary counter affidavit filed on 13.1.2009 stated inter alia that in response to letter sent by respondent No. 2 -Energy Secretary, to the Principal Secretary, Department of Energy, Government of Bihar seeking information with regard to suspension and punitive measures taken against Mr. Lal. An information was furnished to the effect that Mr. Lal was suspended and departmental proceeding was initiated but subsequently the suspension was withdrawn but one of the charges was proved against him, a punishment was awarded to him in the form of stopping one increment with non-cumulative effect. A resolution dated 13.8.1975 has been annexed as Annexure B to the counter affidavit which is worth to be quoted herein below:

fcgkj ljdkj fo|qr foHkkx

ladYi la[;k 1962 fnukad 13-8-75 pwaWfd Jh gfjoa"k yky] tks fcgkj ljdkj ?fo|qr foHkkx? ds ,d LFkk;h inkf/kdkjh gS vkSj tks laizfr fo|qr v/kh{k.k vfHk;ark ds in ij iwF.kZ;k esa inkLFkkfir gS ds fo:) dfri; ?kksj dnpkj] vnrk vfuferrk ,oa vlko/kkuh ds fy, foHkkxh; vkns"k la[;k 103 fnukad 19 tqykbZ ,oa 9 fnukad 4 ekpZ 1974 }kjk foHkkxh; dk;Zokgh pyk;h xbZ Fkh rFkk mu vkjksiks dh lokZxha.k tkap gksus rd muds foHkkxh; vkns"k Lak[;k 3400 fnukad 18-11-1974 }kjk fuyEcu vkns"k fn;k Fkk ?tks dksVZ ds fu"ks/kkKk ds dkj.k dk;ZfUor ugh gks ldk Fkk?

2- pwWafd Jh gfjoa"k yky ls bl laca/k esa izkIr Li"Vhdj.k ,oa muds Li"Vhdj.k ij fcgkj jkT; fo|qr cksMZ ls izkIr earO; ds lE;d izdkj ls tkap ds i"pkr eaf=eaMy ? fuxjkuh? foHkkx dh vuq"alk izkIr dj ljdkj us mUgs vkjksi la[;k 4 esa [kkyh M? eks ds ugh ykSVk;s tkus ds dkj.k fo|qr ifj"kn dks gqbZ vkfFkZd {kfr esa muds izfr ns[k&jS[k esa =qfV gksus dk nks"kh ik;k x;k gS]

vr,o ljdkj us fu.kZ; fy;k gS fd%

?1? Jh gfjoa"k yky dh ,d osru o`f) vlap;ukRed izHkko ls jksd nh tk;]

?2? foHkkxh; vkns"k la[;k 3400 fnukad 18-11-74 }kjk tkjh fd;k x;k fuyEcu vkns"k dks okil fy;k tk; A

vkns"k % vkns"k fn;k tkrk gS fd bldh izfrfyfi Jh gfjoa"k yky ,oa vU; lacaf/kr inkf/kdkjh;ks dks lwpukFkZ ,oa vko;"d dk;Zokgh gsrq iszf"kr dh tk; A

fcgkj jkT;iky ds vkns"k ls g0 mi lfpo] fo|qr foHkkx^^

23. From the entire facts discussed herein above, it is evidently clear that since the creation of State of Jharkhand and during the tenure of four Chief Ministers,

namely, Shri Babulal Marandi, Shri Arjun Munda, Shri Madhu Koda and Shri Shibu Soren, about six times, the Electricity Board was reconstituted and every time at the sole discretion of the Chief Minister, a particular person was appointed as Chairman. It is also utter surprising that in the State of Jharkhand and particularly, in the Jharkhand State Electricity Board, at the sweet will and whim of the Chief Minister, first a person is appointed as Chairman and notification is issued to that effect and thereafter process started for calling for the bio-data of the person so appointed and vigilance clearance and other certificates including character roll of the candidate during his service tenure. For better appreciation, the noting dated 20.9.2008, 25.11.2008 and 24.12.2008 are quoted herein below:

iz''kk[kk inkf/kdkjh@milfpo

Mk0 ,p0ch0 yky iwoZ esa vDVwcj 2004 ls tqykbZ 2005 rd >kj[k.M jkT; fo|qr cksMZ ds v/;{k in ij inLFkkfir jgs gS A foHkkxh; vf/klwpuk la[k 1877 fnukad 17-9-2008 }kjk Mk0 yky dks iqu% >kj[k.M jkT; fo|qr cksMZ dk v/;{k in ij fu;qDr fd;k x;k gSA

vr% iwoZ inLFkkiu dky vDVwcj 2004 ls tqykbZ 2005 rd dh vof/k dk fuxjkuh LoPNrk izek.k i= dh eaf=eaMy ?fuxjkuh? foHkkx ls ekax dh tk ldrh gSA

d`i;k vkns''kkFkZ ,oa izk:i vuqeksnuKfKZ mifLFkrA

vthr 20@9@2008^^

^^iz''kk[kk inkf/kdkjh@milfpo

foHkkxh; i=kad 1911] fnukad 22-9-2008 }kjk Mk0 ,p0ch0 yky] iwoZ v/;{k >kj[k.M jkT; fo|qr cksMZ dk fuxjkuh LoPNrk izek.k i= miyC/k djkus dk vuqjks/k fd;k x;k Fkk] tks vHkh rd vizkIr gS A

vr% eaf=eaMy ?fuxjkuh? foHkkx dks iqu% Lekj fn;k tk ldrk gS A d`i;k vkns''kkFkZ ,oa Lekj i= vkns''kkFkZ ,oa Lekj i= vuqeksnuKfKZ A

vthr 25@11@2008^^

^^iz''kk[kk inkf/kdkjh

d`i;k Ik`"B 41@i dk voyksdu fd;k tk; A

iqfyl v/kh{kd] fuxjkuh C;wjks }kjk lwfpr fd;k x;k gS o"kZ 2004&2005 esa Jh ,p0ch0 yky fo|qr cksMZ >kj[kaM+ ds v/;{k Fks] muds v/;{k dky esa buds fo:) dksbZ vkjksi ,oa mlds QyKQy dh lwpuK ekaxh x;h gS A

bl laca/k esa fofnr gS fd foHkkxh; i=kad 1911 fnukad 22-9-2008 }kjk ea=h ? fuxjkuh? foHkkx ls LoPNrk izek.ki= dh ekax dh x;h Fkh ,oa foHkkxh; i=kad 303@l-dks- fnukad 25-11-2008 }kjk Lekj i= Hkh fn;k x;k gS A

vr% Ik`" 41@i ds laca/k esa iqu% Lekj i= nsus ij lfpo egksn; dk funsZ"k izkIr
fd;k tk ldrk gS A

d`i;k vkns"kkFkZ A

vthr 25@11@2008^^

24. In English law, the prerogative powers of crown have traditionally been said to confer discretion which no Court can question, but the arbitrary power claimed by the Crown has now been made subject to judicial review along with various other known legal powers. [R. v. Secretary of State of State and Commonwealth (1989) Q B 811. Lord Denning said that the prerogative power is discretionary power to be exercise for the public good, it follows, that its exercise can be examined by the Court just as any other discretionary power which is vested in the Executive.

25. In Halsbury's Law of England, 4th Edn. Vol. 1(1) at para 251, it is observed:

251. In General. An information in the nature of quo warranto took the place of the obsolete writ of quo warranto which lay against a person who claimed or usurped an office, franchise, or liberty, hi inquire by what authority he supported his claim, in order that the right to the office or franchise might be determined. It also lay in cases of non-user, abuse, or lung neglect of a franchise. Certain limitations were imposed on the scope of the information by statutory provisions to the effect that elections to certain offices should not be questioned on the ground that the person elected was at the lime of election disqualified, save by election petition. In 1933 an alternative form of proceedings was substituted for informations in respect of the qualification of persons acting as members of a local authority or as mayors of boroughs, and it was provided that except in the form so substituted no proceedings, whether by way of information in the nature of quo warranto or otherwise, should be taken against a person on the ground that he had, while disqualified for acting as a member of a local authority or mayor of a borough, so acted or aimed to be entitled so to act. In 1938 all informations in the nature of quo warranto were abolished, and it was provided that in any case where a person acts in an office in which he is not entitled to act and an information in the nature of quo warranto would have lain against him. the High Court was empowered, at the instance of any person who would have been entitled to apply for such an information, to grant an injunction restraining the former from so acting and might, if the case so required, deviate the office to he vacant. This procedure has been replaced, in turn by a provision enabling the Court to grant in injunction to restrain a person from acting in an office where she is not entitled to do, and if the case so requires to declare the office to be vacant.

26. It was further observed that:

254. Substantive nature of office. An information in the nature of quo warranto lay only in the office was substantive in character that is, an office independent

in title, and if the holder of the office was an independent official, not one discharging the functions of a deputy or servant at the will and pleasure of others. An information in the nature of a quo warranto lay in respect of an office held at pleasure. provided that the office was one of a public and substantive character.

27. Pursuant to the President's address to the two houses of Parliament assembled together at the commencement of the first session after 13th General Election to Lok Sabha, the Government of India, Ministry of Law, justice & Company Affairs, vide its resolution dated 22nd February, 2000 resolved to constitute "The National Commission to Review the Working of the Constitution" to make suitable recommendations. In its report, the National Commission, inter alia, recommended as under:

6.7 Modernizing the Civil Services - Creation of new services & curtailment of undue safeguards

6.7.1 Arbitrary and questionable methods of appointments promotions and transfers of officers by political superiors also led to corrosion of the moral basis of its independence. It has strengthened the temptation in services to collusive practices with politicians to avoid the inconvenience of transfers and to gain advantage by ingratiating themselves to political masters. They would do the politicians' biddings rather than adhere to rules. Lest the situation becomes more vicious, it is necessary that a better arrangement be conceived under the Constitution. The question of appointments. transfers and placements is not to be left to the discretion of the politicians or administrative bosses but be entrusted to independent and autonomous boards. The Commission therefore, recommends that the questions of personnel policy including placements. promotions, transfers and fast-track advancements on the basis of forward-looking career management policies and techniques should be managed by autonomous Personnel Boards for assisting the high level political authorities in making key decisions. Such civil service boards should be constituted under statutory provisions They should be expected to function like the UPSC. Reputed management experts from institutes of management, well known for their excellence should be inducted into these boards to provide a broad based pool of expertise. The principle is not to take politics out of personnel policy but to make knowledge and information institutionally available to the political decision-makers on the basis of appropriate parliamentary legislation under article 309. The sanctity of parliamentary legislation under article 309 is needed to counteract the publicly known trends of the play of unhealthy and destabilizing influences in the management of public services in general and higher civil services in particular.

28. It is well settled that before appointing Constitutional and statutory authorities for holding a very highest post there should be thorough and meticulous inquiry and scrutiny regarding their antecedents. Integrity and merit have to be properly considered and evaluated in the appointments to such high

position. The Chairman of the Electricity Board occupies a pivotal place of importance in the Board in the matter of generation, transmission and distribution of electricity. The entire economic development of the State depends on the smooth generation, transmission and distribution of electricity both to the High Tension consumers and domestic consumers. The integrity and efficiency of its administrative apparatus depends considerably on the quality of selection made by the Government. It is needless to say that best and finest talent should be drawn in administration and the same can be achieved only by appointing a person of highest integrity and merit.

29. For example, in the instant case, as stated above, on 17.9.2008 at the instance of the Chief Minister, the Energy Department was asked to submit a proposal for appointment of Mr. H.B. Lal as Chairman and on the same day, proposal was submitted and approved by the Chief Minister for appointing Mr. Lal as Chairman till further order and notification to that effect was issued on the same day i.e. 17.9.2008. After his appointment, process was started for submission of bio-data by Mr. Lal, vigilance clearance, certificate of performance, etc. In this regard, several correspondences were made by and between the Energy Department and Vigilance Department, Government of Jharkhand and ultimately, process was stopped and the Chairman so appointed by the Chief Minister, continued. It is evident from the record that during the tenure of respondent No. 5 Mr. H.B. Lal as Chairman, i.e. from October, 2004 to July, 2005, several writ petitions were filed challenging the illegal appointment of retired officers on the important posts lying vacant in JSEB and such appointments were ultimately quashed by this Court. Those facts have not been brought on the record by the respondents.

30. It is also a matter of great surprise that when in 2001, proposal for appointment of Mr. H.B. Lal as Chairman was seriously disputed and challenged in the High Court which resulted in the appointment of another officer as Chairman, then under which special circumstances, respondent No. 5 was again appointed in 2004 as Chairman. During his period as Chairman from October, 2004 to July, 2005, several irregularities were committed in the matter of appointment of retired persons and other persons on contract basis without any proper advertisement and without following the recruitment rules which resulted in his removal or resignation. In spite of that, respondent No. 5 was again appointed as Chairman without following any process of appointment and solely on the discretion of the Chief Minister. We have gone through all the files produced before the Court and we have no hesitation in observing that the Energy Department, Govt. of Jharkhand remained busy after constitution of Board in 2001 in constituting Board again and again and appointing persons of their choice in spite of several orders passed by this Court directing the Government to constitute the Board in accordance with law.

31. It is also worth to mention here that after the Electricity Act, 2003 came into force, the Energy Department, Govt. of India extended the period for dissolving

the Electricity Board and creation of the authorities in accordance with the scheme of the Act. In 2006 the Board was allowed to function as licensee till 9th October, 2006. Again the period was extended till 30.6.2007 and 17.9.2008. In spite of extension of time, the Government of Jharkhand has not come with a scheme. It appears from the record that the Government of India, Ministry of Power, vide letter dated 20th February, 2009 agreed for continuation of Jharkhand State Electricity Board as the State Transmission Utility till 15.6.2009. It has been specifically mentioned in the said letter that this will be the last extension and the Board will become illegal after 15.6.2009 if not unbundled as per the provision of Electricity Act, 2003. The said letter of Government of India, Ministry of Power dated 20.2.2009 is quoted herein below:

No. 25/23/2004-R&R Government of India Ministry of Power Shram Shakti Bhawan, Rafi Marg New Delhi the 20th February, 2009 The Secretary (Energy), Government of Jharkhand, Nepal House, Ranchi (Fax No. 0651-2491002)

Sub: Continuation of Jharkhand State Electricity Board (JSEB) upto 15.6.2009 beyond 31.10.2008.

Sir,

I am directed to refer to the Government of Jharkhand letter dated 13.12.2008 on the subject mentioned above and to state that in view of State's request and the prevailing circumstances, in pursuance of Section 172(a) of the Electricity Act, 2003, it has been decided by the Central Government to agree for the continuation of Jharkhand State Electricity Board (JSEB) as the State Transmission Utility and a Licensee upto 15.6.2009 beyond 31.10.2008, to enable to State Government to complete the unbundling process. This is last extension and the JSEB will become illegal after 15.6.2009. if not unbundled as per the provision of the Electricity Act, 2003.

Yours faithfully. Sd/- (Malay Shrivastava) Director 23714000

32. Although the respondents-State totally failed to justify the special circumstances under which, without following the norms, Chairman of the Board has been appointed but respondent No. 5, the Chairman of the Board, as a main contesting respondent by filing several affidavits has tried to justify his appointment. The said respondent No. 5 has gone to the extent by saying that the order passed by a Division Bench of this Court in the earlier writ petitions directing the Government to unbundled the Jharkhand State Electricity Board in accordance with the provisions of 2003 Act has been stayed by the Supreme Court. This Court by order dated 31.7.2007 in C.W.J.C. No. 1793 of 2001 has passed the following orders:

From the affidavit filed today by the Deputy Secretary, Energy Department, Government of Jharkhand, it is clear that already the Government of India has approved unbundling of J.S.E.B. into four successor entities and the Ministry of Power, Government of India, has given permission to Jharkhand State Electricity

Board to function as State Transmission Utility and a Licensee under the provision of Section 172(1) of the Electricity Act, 2003 upto 30.9.2007.

In view of the aforesaid statement made in the affidavit, it would be appropriate to direct the State Government to unbundle the Jharkhand State Electricity Board into four entities - (1) Jharkhand Vidyut Vikas Nigam Limited; (ii) Jharkhand Vidyut Utpadan Nigam Limited, (iii) Jharkhand Vidyut Sancharan Nigam Limited and (iv) Jharkhand Vidyut Vitran Nigam Limited. This must be done on or before 30.9.2007, upto which license has been extended to it.

This work must be undertaken without any delay and if any other persons put hindrance to the progress of the unbundling, it is open to the authorities to deal with them strictly in accordance with law. This Court directs all the persons concerned to co-operate with this process of unbundling without putting any hurdle thereto by way of implementation of this order.

We post this case after two months so that we can be informed about the progress of the unbundling.

Post this case on 1.10.2007.

33. Respondent No. 5 annexed a copy of the order passed by Supreme Court in SLP (Civil) No/17558 of 2008 and stated that the aforesaid order passed by this Court has been stayed by the Supreme Court. On perusal of the order passed by the Supreme Court, it is very clear that although the Supreme Court stayed the impugned order but clarified that issuance of notice would not preclude the respondents from publishing the scheme in terms of Section 131 of the Electricity Act 2003 and to take further action. In spite of the specific direction, the respondent-State has failed to unbundle the Board in accordance with the provisions of 2003 Act.

34. A Division Bench of this Court as far back as in 2001 has categorically observed that persons with clean record, unimpeachable reputation and impeccable integrity deserve to be appointed on the post of Chairman and Members of the Board. The Court directed that if any appointment is made by the State Government to the post of Chairman or Members of the Board, the State Government shall keep the aforesaid observation in mind. This Court further observed as quoted herein above that the most ideal procedure for appointment on such high posts would be to invite applications of intending eligible candidates or to constitute a search committee or a select committee of highly placed persons who would look for appropriate candidates for recommending the names for these posts and further clearance by established vigilance organizations should be a mandatory requirement.

35. Prima facie we find that the State Government totally disrespected, disregarded and flouted the direction passed by this Court in earlier writ petitions in the matter of appointment of Chairman and members of the Electricity Board. Not only that, the respondents-State ignoring the orders, directions and

observations passed by this Court, arbitrarily and whimsically appointed respondent No. 5, Mr. H.B. Lal, as Chairman of the Board. In our considered opinion, therefore, the impugned order of appointment of respondent No. 5 as Chairman of the Board is not only arbitrary, but also contemptuous. We have, therefore, no hesitation in holding that the appointment of respondent No. 5 as Chairman of the Board is liable to be quashed.

36. We, therefore, allow this writ petition and quash the appointment of respondent No. 5, Mr. H.B. Lal, as Chairman of the Board and direct the State Government to strictly follow the directions of this Court in making fresh appointment of Chairman of the Board. In the light of the letter dated 20th February, 2009 issued by the Ministry of Power, Government of India giving last extension and allowing continuance of the Jharkhand State Electricity Board as the State Transmission Utility till 15.6.2009, we further direct the State Government to see that before expiry of the said period i.e. 15.6.2009, the Electricity Act, 2003 is fully implemented in its true letter and spirit.