(2010) 10 KAR CK 0020

In the Karnataka High Court

Case No : Writ Appeal No''s. 5807 to 5842 and 8175 to 8210 of 2003

State of Karnataka APPELLANT

Vs

Karnataka Electricity Board Engineers Association and Others RESPONDENT

Date of Decision : 18-10-2010

Acts Referred:

Karnataka Electricity Reforms Act, 1999 — Section 14, 14 (2), 15

Citation : (2011) 2 KarLJ 146

Hon'ble Judges : V.G. Sabhahit, J;A.S. Bopanna, J

Bench : Division Bench

Advocate : Sriyuths Ashok Haranahalli, General, D. Vijayakumar, Additional Government, Sundaraswamy Ramdas and Anand, for the Appellant; Sriyuths P.D. Vishwanath and D.N. Nanjunda Reddy, Sr. Counsels, H. Mujtaba, M.A. Subramani and Ashok Haranahalli, General, D. Vijaya Kumar, A.G.A. and Sundaraswamy Ramadas and Anand, for the Respondent

Final Decision : Dismissed

Judgement

V.G. Sabhahit, J.—These appeals arise out of the order passed in W.P. No. 27495 of 2002 connected with W.P. Nos. 19413 to 19431 of 2003 and 19550 to 19565 of 2003 (Karnataka Electricity Board, Engineers Association, Bangalore v. State of Karnataka and Ors. 2003 (7) Kar. L.J. 487), wherein the learned Single Judge of this Court by order dated 30-6-2003, has allowed the writ petitions and struck down the provisions of Sub-rule (5)(a) of Rule 4 of the Karnataka Electricity Reform (Transfer of Undertakings of Karnataka Power Transmission Corporation Limited and its personnel to Electricity Distribution and Retail Supply Companies) Rules, 2002 as ultra vires of Section 15 of the Karnataka Electricity Reforms Act, 1999.

2. Respondents 7 to 42 in W.A. No. 5807 of 2003 and Respondents 2 to 37 in W.A. No. 8175 of 2003, who were working in the cadre of Graduate Engineers in the erstwhile Karnataka Electricity Board (for brevity, ''the Board'') filed writ petitions before this Court under Articles 226 and 227 of the Constitution of India

contending that they all belong to the State wide cadre of Graduate Engineers in the Board. In 1998-99, there was a proposal to initiate certain reforms in the functioning of the Board and in view of the same, the State Government promulgated an Act known as ''Karnataka Electricity Reforms Act, 1999'' (for short, ''the Act''). The Act received the assent of the President on 28-8-1999 and the same has come into force with effect from 1-6-1999. The said Act provides for constitution of an Electricity Regulatory Commission (the Commission) for the State of Karnataka, to provide for the restructuring of the electricity industry in the State, the corporatisation of the Karnataka Electricity Board and the rationalisation of the generation, transmission, distribution and supply of electricity in the State, to provide for avenues for participation of private sector entrepreneurs in the electricity industry in the State and generally for taking measures conducive to the development and management of the electricity industry in the State in an efficient, economic and competitive manner to provide reliable quality power and to protect the interest of the consumer, including vesting in the commission the powers to regulate the activities of the power sector in the State and for matters connected therewith or incidental thereto. Chapter v. of the Act provides for reorganisation of the Karnataka Electricity Board and the transfer of Board''s functions, transfer of assets, liabilities etc. Section 14 of the Act provides for reorganisation of the Karnataka Electricity Board and authorises the State Government to prepare a transfer scheme to give effect to the object and purposes of the Act. With effect from the date the Transfer Scheme is published or such further date as may be prescribed, any property, interest in property, rights and liabilities, which immediately before the effective date of the first transfer belong to the Board shall vest in the State Government on such terms and conditions as may be agreed between the State Government and the Board. Section 14(2) of the Act authorises the State Government to revest any property, interest in property etc., in the Karnataka Power Transmission Corporation Limited (for short, ''the KPTCL'') or any Generating Company or Companies in accordance with the Transfer Scheme on such terms and conditions as may be agreed between the parties. Section 14(5) of the Act provides for establishment of ''transferee/licensee'', by the Karnataka Power Transmission Corporation and further, to draw up a transfer scheme to vest in the transferee/licensee any function including distribution function, any property, interest in the property, rights and liabilities which have been vested in the Karnataka Power Transmission Corporation and publish the same as the scheme of transfer under the Act, which would be the second transfer. Section 15 of the Act reads as follows.--

Section 15. Provisions relating to personnel.(1) The State Government may provide in a transfer Scheme framed u/s 14 of the Transfer of the personnel from the Board to the KPTC or to the generating company or companies or from the KPTC to further transferee, as the case may be, on the vesting of properties, rights and liabilities in the KPTC or further transferee as provided u/s 14 and such transfers shall be effective in the same manner as in the case of transfers u/

s 14.

Explanation. - For the purposes of this section and Section 16, the term "personnel" shall mean all persons who, on the effective date of the transfer, are the employees of the Board or KPTC, as the case may be.

(2) Upon such transfer scheme, the personnel shall hold office or service under the KPTC or generating company or companies or the transferee company on terms and conditions that may be determined, in accordance with the transfer scheme:

Provided that such terms and conditions on the transfer shall not in any way be less favourable than those which would have been applicable to them before the relevant transfer scheme and the continuity of service of the personnel shall be maintained:

Provided further that any such scheme under Sub-sections (1) and (2) shall be consistent with the tripartite agreements entered into between the State Government, Board or KPTC, as the case may be and the employees.

(3) Notwithstanding anything contained in the Industrial Disputes Act, 1947 or any other law as is applicable and except for the provisions made in this Act, the transfer of the employment of the personnel referred to in Sub-section (1) shall not entitle such employees to any compensation or damages under this Act, or any other Central or State law or under the general law, save as provided in the transfer scheme.

In the transfer scheme that may be framed by the State Government u/s 14 of the Act, it may provide for transfer of the personnel from the Board to the KPTCL, or to the Generating Company or on the vesting of the properties, rights and liabilities in the KPTCL to transferee/licensee.

3. It is the further case of Respondents 7 to 42 in W.A. No. 5807 of 2003 and Respondents 2 to 37 in W.A. No. 8175 of 2003 (Petitioners in W.P. Nos. 19413 to 19431 of 2003 and 19550 to 19565 of 2003, who will be hereinafter referred to as ''the writ Petitioners'') that a tripartite agreement was entered into between the State Government, the Electricity Board and its employees. Clause (5) of the agreement provides for the terms and conditions of service of in Service Engineers in the event of their absorption into two or more corporate entities. Clause 5(j) of the agreement reads as under:

(j) In the event of formation of two or more corporate entities, all the in Service Engineers shall be absorbed in these corporate entities which would be the successor bodies to the Board. However, one entity shall be termed as the main successor entity for all the service matters. As on the date of formation of these entities, the Engineers will continue on as-is-where-is-basis but their services would be maintained at the main successor entity and they would be treated as being on deputation to the other successor entities.

It is the further contention of the writ Petitioners that any scheme for transfer u/s 15 of the Act is to be in conformity with the tripartite agreement in view of Section 15(2) of the Act, which has been given statutory recognition. Rule 4 of the Karnataka Electricity Reform (Transfer of Undertaking of Karnataka Power Transmission Corporation Limited and its personnel to Electricity Distribution and Retail Supply Companies) Rules, 2002 (for short, ''the Rules''), promulgated on 31-5-2002, provides for transfer of specified personnel and posts. However, according to the writ Petitioners'', Sub-rule (5)(a) of Rule 4 of the Rules is contrary to the tripartite agreement and the provisions of the Act. Sub-rule (5)(a) of Rule 4 of the Rules reads as follows.--

(5)(a) The personnel of KPTCL belonging to the Statewide Cadre of KPTCL, including the specified personnel of KPTCL, and all other personnel of KPTCL belonging to the Statewide Cadre (hereinafter collectively called "Statewide Cadre Opting Personnel") shall no later than ten months from the relevant effective date of second transfer of ESCOM to which such specified Personnel are allocated submit an option to be absorbed in an ESCOM, or to remain with KPTCL. A decision on such options shall be taken by KPTCL within one month from the date of exercising the option in accordance with the following principles:

(i) Where the number of such Statewide Cadre Opting Personnel exercising the option does not exceed the total number of posts available in an ESCOM or in KPTCL as the case may be, all Statewide Cadre Opting Personnel shall be deemed to be absorbed in that ESCOM or remain in KPTCL as the case may be, on such post with effect from the expiry of one month from the option date or twelve months from the relevant effective date of second transfer of such specified personnel, as the case may be.

(ii) Where the number of such Statewide Cadre Opting Personnel exercising the option exceeds the total number of posts available in an ESCOM, or in KPTCL, the selection of the Statewide Cadre Opting Personnel to be absorbed in an ESCOM or to remain in KPTCL on such post shall be done on the basis of the seniority of the concerned Statewide Cadre Opting Personnel as at the relevant effective date of second Transfer of such specified personnel according to seniority list as maintained by KPTCL in respect of the such Statewide Cadre Opting Personnel.

It is the contention of the writ Petitioners that Rule 4(5)(a) of the Rules virtually compels an employee - officer to exercise his option for absorption in any one of the ESCOM and is contrary to the tripartite agreement and the provisions of the Act and wherefore, they sought for declaration that Sub-rule (5) of Rule 4 of the Rules is ultra vires of Section 15 of the Act and further declare that the said rules is unconstitutional being violative of Articles 14 and 16 of the Constitution of India.

4. The petitions were resisted by the Respondents by contending that the clause pertaining to maintenance of common seniority list for the State Wide Cadre of KPTCL as provided in the tripartite agreement as per Clause 5(j) was applicable

only in the case of first transfer i.e., transfer of personnel from the Karnataka Electricity Board to KPTCL and not to second transfer i.e., transfer of personnel from the KPTCL to the Electricity Supply Companies and wherefore, Sub-rule (5)(a) of Rule 4 of the Rules is valid and the same does not contravene the provisions of Section 15(2) of the Act and cannot be said to be ultra vires. It was also contended that option has been given to the personnel as per the said Rule 4(5)(a) of the Rules to the employees either to opt for service in the transferee-Electricity Supply Companies or to continue in KPTCL and if an employee/officer does not exercise his/her option for absorption in any of the ESCOM, he would be entitled to continue in the KPTCL and there is no compulsion for the employees to exercise the option and wherefore, the Sub-rule (5)(a) of Rule 4 is justified.

5. The learned Single Judge, after considering the contentions of the learned Counsel appearing for the parties, by order dated 30-6-2003, held that tripartite agreement entered into between the State Government, Electricity Boar and its employees has been statutory recognition u/s 15(2) of the Act and any scheme for transfer of personnel has to be in conformity with the tripartite agreement and Rule 4(5)(a) of the Rules is contrary to Clause 5(j) of the tripartite agreement and the provisions of Section 15(2) of the Act. The learned Single Judge negatived the contention of the Respondents in the writ petitions that the impugned Rule 4(5)(a) of the Rules would only given an option for the employees either to continue in the KPTCL or to opt for service in any one of the Electricity Supply Companies. The learned Single Judge also negatived the contention of the Respondents that the Clause 5(j) in the tripartite agreement is not applicable to second transfer from KPTCL to Electricity Supply Companies and accordingly, held that Sub-rule (5)(a) of Rule 4 of the Karnataka Electricity Reform (Transfer of Undertakings of Karnataka Power Transmission Corporation Limited and its personnel to Electricity Distribution and Retail Supply Companies) Rules, 2002 is ultra vires of Section 15 of the Karnataka Electricity Reforms Act, 1999 and struck down the same. Being aggrieved by the same, W.A. No. 8175 of 2003 is filed by KPTCL, Bangalore Electricity Supply Company (BESCOM) and Hubli Electricity Supply Company (HESCOM) and W.A. No. 5807 of 2003 is filed by the State.

6. We have heard the learned Senior Counsel appearing for the Appellants in W.A. No. 8175 of 2003 and the learned Additional Government Advocate appearing for the Appellant in W.A. No. 5807 of 2003 and the learned Senior Counsel appearing for the contesting Respondents in both the appeals.

7. The learned Senior Counsel appearing for the Appellants in W.A. No. 8175 of 2003 submitted that Rule 4(5)(a) of the Rules, which has been struck down by the learned Single Judge as ultra vires of Section 15 of the Act is based upon erroneous reasoning and though, tripartite agreement is given statutory recognition u/s 15(2) of the Act, the said Clause 5(j) of the tripartite agreement would be applicable only to transfer of employees of the Board to KPTCL, and not for second transfer from KPTCL to Electricity Supply Companies. The learned

Senior Counsel further submitted that Rule 4(5)(a) of the Rules would only give option to the employees to opt for continuation in the KPTCL or in the Electricity Supply Companies and there is no compulsion for the employees to exercise the option. If an employee does not exercise his/her option, his/her services would be continued in the KPTCL itself. The learned Single Judge was not justified in striking down the Rule 4(5)(a) of the Rules as ultra vires. The learned Senior Counsel further submitted that so far as persons who have opted to continue in KPTCL, their seniority in the cadre would continue. The learned Senior Counsel further submitted that in fact, a proposal had been made to the Government to maintain common cadre seniority in the cadre of Engineers even in respect of second transfer also and the Government has not yet responded. Therefore, no action could be taken.

8. The learned Additional Government Advocate appearing for the Appellant in W.A. No. 5807 of 2003, apart from reiterating the arguments of the learned Senior Counsel appearing for the Appellants in W.A. No. 8175 of 203, further submitted that no ground had been made out to strike down the impugned Rule 4(5)(a) of the Rules as ultra vires of Section 15(2) of the Act and the impugned order of the learned Single Judge is liable to be set aside.

9. The learned Senior Counsel appearing for the contesting Respondents in both the appeals submitted that the contention of the learned Counsel appearing for the Appellants in both the appeals that the impugned Rule 4(5)(a) of the Rules only gives an option to the employees to continue in KPTCL or to opt for service in Electricity Supply Companies and if an employee does not exercise his/her option, his services would be continued in the KPTCL itself, cannot be accepted as the provisions of the impugned rule would itself indicate that once the option is exercised by the writ Petitioners to serve in the Electricity Supply Companies, they would cease to be members of the seniority list, which is maintained Statewide in the KPTCL. Also, persons, who are junior to persons who opt for continuation in KPTCL shall be promoted to higher posts in the Electricity Supply Companies and wherefore, this would defeat Clause 5(j) of the tripartite agreement, which has been statutorily recognised by Section 15(2) of the Act, wherein KPTCL, was required to maintain common Statewide seniority list in respect of cadre of Engineers and their services in Electricity Supply Companies may be treated as deputation. The learned Senior Counsel further submitted that the impugned Rule 4(5)(a) of the Rules clearly violates the said object of the tripartite agreement and wherefore, the learned Single Judge has rightly held that the said clause is ultra vires of Section 15(2) of the Act.

10. We have given careful consideration to the contentions of the learned Counsel appearing for the parties and scrutinised the material on record.

11. The material on record would clearly show that the fact that the Respondents 7 to 42 in W.A. No. 5807 of 2003 and Respondents 2 to 37 in W.A. No. 8175 of 2003 were working in the cadre of Graduate Engineers in the erstwhile Karnataka Electricity Board is not in dispute. It is also not in dispute that in view of the

Karnataka Electricity Reforms Act, 1999, the Karnataka Power Transmission Corporation Limited (KPTCL), Bangalore Electricity Supply Company (BESCOM), Hubli Electricity Supply Company (HESCOM), Mangalore Electricity Supply Company (MESCOM), Gulbarga Electricity Supply Company (GESCOM) had been formed and the Karnataka Electricity Reform (Transfer of Undertakings of Karnataka Power Transmission Corporation Limited and its personnel to Electricity Distribution and Retail Supply Companies) Rules, 2002, have been promulgated. Section 15 of the Act clearly provides that the Scheme for transfer of employees after the establishment of the Electricity Supply Companies shall be in conformity with the tripartite agreement entered into on 15-9-1999. Section 15 of the Act reads as follows.--

Section 15. Provisions relating to personnel.--(1) The State Government may provide in a transfer scheme framed u/s 14 of the Transfer of the Personnel from the Board to the KPTC or to the generating company or companies or from the KPTC to further transferee, as the case may be, on the vesting of properties, rights and liabilities in the KPTC or further transferee as provided u/s 14 and such transfers shall be effective in the same manner as in the case of transfers u/s 14.

Explanation.--For the purposes of this section and Section 16, the term "Personnel" shall mean all persons who, on the effective date of the transfer, are the employees of the Board or KPTC, as the case may be.

(2) Upon such transfer scheme, the personnel shall hold office or service under the KPTC or generating company or companies or the transferee company on terms and conditions that may be determined, in accordance with the transfer scheme:

Provided that such terms and conditions on the transfer shall not in any way be less favourable than those which would have been applicable to them before the relevant transfer scheme and the continuity of service of the personnel shall be maintained:

Provided further that any such scheme under Sub-sections (1) and (2) shall be consistent with the tripartite agreements entered into between the State Government, Board or KPTC, as the case may be and the employees.

(3) Notwithstanding anything contained in the Industrial Disputes Act, 1947 or any other law as is applicable and except for the provisions made in this Act, the transfer of the employment of the personnel referred to in Sub-section (1) shall not entitle such employees to any compensation or damages under this Act, or any other Central or State law or under the general law, save as provided in the transfer scheme.

(emphasis supplied)

Clause 5(j) of the tripartite agreement dated 15-9-1999 reads as follows.--

(j) In the event of formation of two or more corporate entities, all the in service Engineers shall be absorbed in these corporate entities which would be the successor bodies to the Board. However, one entity shall be termed as the main successor entity for all the service matters. As on the date of formation of these entities, the Engineers will continue on as-is-where-is-basis but their services would be maintained at the main successor entity and they would be treated as being on deputation to the other successor entities.

The impugned rule, which is challenged in the writ petitions i.e., Rule 4(5)(a) of the Rules reads as follows.--

(5)(a) The Personnel of KPTCL belonging to the Statewide Cadre of KPTCL, including the specified personnel of KPTCL, and all other Personnel of KPTCL belonging to the Statewide Cadre (hereinafter collectively called "Statewide Cadre Opting Personnel") shall no later than ten months from the relevant effective date of second transfer of ESCOM to which such specified personnel are allocated submit an option to be absorbed in an ESCOM, or to remain with KPTCL. A decision on such options shall be taken by KPTCL within one month from the date of exercising the option in accordance with the following principles:

(i) Where the number of such Statewide Cadre Opting Personnel exercising the option does not exceed the total number of posts available in an ESCOM or in KPTCL as the case may be, all Statewide Cadre Opting Personnel shall be deemed to be absorbed in that ESCOM or remain in KPTCL as the case may be, on such post with effect from the expiry of one month from the option date or twelve months from the relevant effective date of second transfer of such specified personnel, as the case may be.

(ii) Where the number of such Statewide Cadre Opting Personnel exercising the option exceeds the total number of posts available in an ESCOM or in KPTCL, the selection of the Statewide Cadre Opting Personnel to be absorbed in an ESCOM or to remain in KPTCL on such post shall be done on the basis of the seniority of the concerned Statewide Cadre Opting Personnel as at the relevant effective date of second transfer of such specified personnel according to seniority list as maintained by KPTCL in respect of the such Statewide Cadre Opting Personnel.

It is clear from perusal of the provisions of the Act and the tripartite agreement and the impugned rule, which have been culled out above that the provision of the impugned Rule 4(5)(a) of the Rules is contrary to Clause 5(j) of the tripartite agreement dated 15-9-1999 as State-wide common cadre seniority will be maintained only in respect of the employees, who opt for continuation in KPTCL. There is no merit in the contention of the learned Senior Counsel appearing for the Appellants in W.A. No. 8175 of 2003 and the learned Additional Government Advocate appearing for the State in W.A. No. 5807 of 2003 that the impugned rule does not violate Section 15(2) of the Act as it is violative of Clause 5(j) of the tripartite agreement as referred to above. It is clear from the impugned rule that though option has been given to the employees to continue in KPTCL, in which case, their seniority will be continued in the Statewide cadre list in KPTCL and if they opt for service in Electricity Supply Companies, respective Electricity Supply Company will have its own rules and only persons, who have opted for service in Electricity Supply Companies would be considered for promotion in their respective Electricity Supply Company. Assuming that persons named A, B, C, D and E are at Sl. Nos. 1 to 5 of the Statewide seniority list in the KPTCL, as per Clause 5(j) of the tripartite agreement, their transfer to Electricity Supply Company would be treated as deputation and all A, B, C, D and E would continue to be in the Statewide cadre of Engineers. However, under the impugned rule, contrary to Clause 5(j) in the tripartite agreement, which has been given statutory recognition in view of proviso to Section 15(2) of the Act, it is clear that if C and D opt for service in Mangalore Electricity Supply Company or Gulbarga Electricity Supply Company, they will be considered for promotion to higher post and would be promoted and persons, who would continue in the KPTCL would not be considered for promotion to higher posts in view of Rule 4(5)(a) of the Rules as persons, who have opted to serve in Electricity Supply Companies would have better prospect for consideration to higher posts than their counterparts, who continue their service in the KPTCL. Even though it is not compulsory for the employees to exercise their option and the impugned rule provides that if for any reason, an employee does not exercise his/her option, his/her services would be continued in the KPTCL, the service conditions of such employees would get affected and the same is violative of Clause 5(j) of the tripartite agreement as recognised in the proviso to Section 15(2) of the Act. It is well-settled that the rules framed under the Act cannot be contrary to the provisions of the Act and the Rules had to be framed in conformity with the tripartite agreement. Since Rule 4(5)(a) of the Rules is contrary to Clause 5(j) of the tripartite agreement in view of proviso to Section 15(2) of the Act as referred to above, it is clear that the said rule is contrary to the provisions of the Act. It is well-settled that rules framed under the provisions of a statute form part of the statute. In other words, rules have a statutory force. But, before a rule can have the effect of statutory provision, two conditions must be fulfilled, namely (i) it must conform to the provision of the statute under which it is framed; and (ii) it must also come within the scope and purview of the rule making power of the authority framing the rule if either of these conditions is not fulfilled, the rule so framed would be void, as laid down by the Hon''ble Supreme Court in the case of General Officer Commanding-in-Chief and Another Vs. Dr. Subhash Chandra Yadav and Another, In the present case, the impugned Rule 4(5)(a) of the Rules does not conform to the provisions of the statute under which it is framed as the impugned rule is contrary to the provisions of Section 15(2) of the Act. Having regard to the above said facts of the case, we hold that the impugned order passed by the learned Single Judge does not suffer from any error or illegality as to call for interference in this intra Court appeal. Accordingly, we hold that the appeals are devoid of merit and pass the following order.

The writ appeals are dismissed.

