
(2004) 05 AHC CK 0106

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 28038 of 1999

U.P.State Electricity Board

APPELLANT

Vs

Presiding Officer, Labour Court, Bareilly & Ors.

RESPONDENT

Date of Decision : 14-05-2004

Acts Referred:

Uttar Pradesh Electricity Reforms Act, 1999 — Section 23(1), 23(2)

Citation : (2004) 05 AHC CK 0106

Hon'ble Judges : A.K.Yog, J

Final Decision : Allowed

Judgement

A.K. Yog, J.—Heard Sri Ranjeet Saxena, Advocate, for the petitioner and Sri A.N. Bhargava, Advocate on behalf of contesting respondent Nos. 2, 3 and 4.

2. On behalf of contesting respondents, Sri A.N. Bhargava, Advocate, at the outset, raised a preliminary objection to the effect that this Writ Petition is not maintainable by and on behalf of the U.P. State Electricity Board (for short UPSEB) in view of the Uttar Pradesh Electricity Reforms Act, 1999 (called Reforms Act, 1999) which came in force w.e.f. 14th January, 2000 published in U.P. Gazette, Extra., Pt4, Section (Kha), read with the Uttar Pradesh Electricity Reforms Transfer Scheme, 2000 (called Scheme 2000), a statutory scheme, promulgated by the Governor of the State of U.P. in pursuance of the provisions of Clause (3) of Article 348 of the Constitution vide notification dated 14th January, 2000 exercising powers conferred under subsection (1) & (2) of Section 23 of Reforms Act, 1999.

3. Sri A.N. Bhargava, learned counsel for the contesting respondent Nos. 2, 3 and 4 pointed out that no right, liability or interest of any kind whatsoever, exists or vests in the Board and all powers, rights, liabilities, interest obligation etc., formerly relating to and vesting in UPSEB now stand transferred and vest in U.P. Power Corporation Ltd. and/or its subsidiary company as contemplated under Section 13 of Reforms Act, 1999.

4. Sri Ranjeet Saxena, counsel for the petitioner (UPSEB) disputes correctness of the above proposition of the respondents' counsel.

5. I shall now examine and find out the status of UPSEB in the wake of Reforms Act, 1999 & Scheme, 2000.

Sections 13 & 23 of the Reforms Act, 1999 read

13. Formation and functions of the Uttar Pradesh Power Corporation Limited. (1) For the purposes of procurement, transmission and supply of electricity, a Company by the name of the Uttar Pradesh Power Corporation Limited shall be formed and registered under the Companies Act, 1956 as soon as may be after the commencement of this Act by the State Government.

(2) The Power Corporation shall undertake planning and co ordination in regard to transmission and shall determine the electricity requirements in the State in consultation with the generating companies, the State Government, contiguous States, the Commission, the Regional Electricity Board, the Central Electricity Regulatory Commission and the Central Electricity Authority.

(3) The Power Corporation shall,

(a) be provisional licensee for transmission and supply of electricity within the state until the grant of licence by the commission;

(b) be responsible for transmission system operations;

(c) be the legal successor of the Board in relation to all power purchase and transmission agreements entered into by the Board with generating and transmission companies including those owned or controlled by the Central Government; and

(d) undertake such other functions as may be required under the licence.

(4) Upon the grant of licence to it under Section 15, the Power Corporation shall have such powers and discharge such duties and perform such functions of the Board under the Indian Electricity Act, 1910 and Electricity (Supply) Act, 1948 or the rules made thereunder as may be specified by the commission in the licence.

(5) The Commission may, in consultation with the Power Corporation grant licence also to a company subsidiary to the Power Corporation.

23. Transfer of the Board's properties, powers, functions, duties and personnel.

(1) On and from the date specified in a transfer scheme, prepared and notified by the State Government to give effect to the objects of this Act, hereinafter referred to as the appointed date in this Act, all properties, and all interests, rights and liabilities of the Board therein shall vest in the State Government.

(2) The properties, interest, rights and liabilities vested in the State Government under subsection (1), shall be re-vested by the State Government in the Power Corporation and in a generating company in accordance with the transfer scheme

so notified along with such other property, interest, rights and liabilities of the State Government as may be specified in such scheme, on such terms and conditions as may be determined by the State Government.

(3) In addition to the rights and powers of the Power Corporation as specified in Chapter IV of this Act, such of the rights and powers exercisable by the Board under the Electricity (Supply) Act, 1948 as the State Government may, by notification specify shall be exercisable by the Power Corporation or the generating company, as the case may be, for the purposes of performing the functions and discharging the duties under the said Act of 1948.

(4) The State Government may, after consultation with the generating company or the Power Corporation, hereinafter referred to in this Section as transferor, may, require transferor to draw up a transfer scheme to vest in a person hereinafter referred to in this Section as transferee, any of the functions including distribution function, property, interest, right or liability which may have been vested in the transferor under this Section and notify the same as statutory transfer scheme under this Act. The transfer scheme to be notified under this subsection shall have the same effect as the transfer scheme under subsection (2).

(5) Where,

(a) a transfer scheme involves the transfer of any property or right in favour of any person any person or undertaking not wholly owned by the State Government, the scheme shall give effect to the transfer only for fair value to be paid by the transferee to the transferor;

(b) a transaction of any description is made in pursuance of a transfer scheme, it shall be binding on all persons including third parties, even if such persons have not consented to it.

(6) A transfer scheme may,

(a) define the property, interest, rights and liabilities to be allocated

(i) by specifying the property, rights and liabilities;

(ii) by referring to all the properties, interests, rights and liabilities comprising a specified part of the transferor's undertaking; or

(iii) partly in one way and partly in other;

(b) provide that the rights or liabilities specified in the scheme shall be enforceable by or against the transferor or the transferee;

(c) impose on the transferee an obligation to enter into such written agreements with or excuse such other instruments in favour of any other transferee as may be specified in the scheme; and

(d) make such supplemental, incidental and consequential provisions as the

transferor may consider appropriate including provisions specifying the order in which any transfer or transaction shall take effect.

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

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

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

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

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

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

Explanation. For the purposes of this Section and the transfer scheme, the expression 'personnel' means all persons who on the appointed date are the employees of the Board and who under the transfer scheme are given the option to join service under the control of the transferee.

(8) All debts and obligations incurred, all contracts entered into and all matters and things done by, with or for the Board, including all securities, and guarantees given on behalf of the Board before the appointed date for a transfer scheme becomes effective shall, to the extent specified in the relevant transfer scheme, be deemed to have been incurred, entered into or done by, with or for the State Government or the concerned transferee and all suits or other legal proceedings instituted by or against the Board may be continued or instituted by or against the State Government or the concerned transferee, as the case may be.

(9) Where a licensee is required to vest any part of his undertaking in another licensee under subsection (4), the licence of the transferee may be amended under Section 19 or revoked under Section 18.

(10) The Board shall cease to be charged with, and shall not perform the functions and duties specified by notification issued under subsection (3) with regard to transfers made on or after the date of the said notification.?

(underlined to lay emphasis)

6. The term "concerned transferee" used in Section 23(8), according to clause 2(h) of the Transfer Scheme, 2000 meansUPPCL or UPRVUNL or UPJVNL, in whom the Undertaking or Undertakings are vested in terms of the provisions of sub sections (2) or (7) of Section 23.

For convenience clauses 2, 3,5,7,8 & 9 of Scheme, 2000 are reproduced

?2. Definitions. In this scheme, unless the context otherwise requires:

(a).....

(b) ?Property? includes electricity systems, dams, tunnels, in take and outlet structures of water conductor systems, generating stations with associated plant, machinery equipment, transmission and distribution systems, land building, offices, stores, furniture fixtures, vehicles, residential quarters and guest houses and amenities and installations pertaining thereto and other movable and immovable assets, cash in hand, cash at bank, investments, book debts corporeal or incorporeal, tangible and intangible assets, benefits, licences, consents, authorities, registrations, patents, trade marks and powers of every kind, nature and description whatsoever, privileges, liberties, easements, advantages, benefits and approvals, interest of whatever nature and wherever situate;

(c) ?Date of transfer? means the date of commencement of this scheme for effecting transfer of properties, interest, rights and liabilities, proceedings or personnel to the relevant transferee in accordance with this Transfer Scheme;

(d) ?Liabilities? include all liabilities, debts, duties, obligations and other outgoing including statutory liabilities and Government levies of whatever nature including contingent liabilities which may arise in regard to dealings before the date of the transfer in respect of the specified Undertakings;

(e)

(f) ?Proceeding? includes all proceedings of whatever nature including suits, appeals, complaints, petitions, applications, conciliatory, arbitration whether civil or criminal or otherwise;

(g)

(h) ?Transferee? means UPPCL or UPRVUNL or UPJVNL, in whom the undertaking or Undertakings are vested in terms of the provisions of subsections (2) or (7) of Section 23;

(i) ?Undertaking? means a block of blocks of properties, interest, rights and liabilities vested in the State Government under subsection (1) of Section 23 and

such other properties, interest, rights and liabilities as specified in this Scheme;

(j)

(k)

(l)

3. Transfer of property to the State. (1) On and from the date specified in this scheme, that is the date of commencement of this Scheme, all properties and all interests, rights and liabilities of the Board therein shall stand transferred to and vest subventions and obligations of the Board towards the State shall stand extinguished and cancelled, which shall be in full and final settlement of all claims whatsoever of the Board.

(2) Nothing in subclause(1), shall apply to rights responsibilities, liabilities and obligations in respect of the personnel and personnel related matters including statutory dues such as salary, wages, gratuity, pension, provident fund, compensation terminal and retirement benefits and the same shall be dealt within the manner provided under clause 6 of this Scheme.

4.

5. Transfer of Undertaking by the State. (1) The Undertaking forming part of Thermal Generation Undertakings asset out in Schedule "A" shall stand transferred to an vest in UPRVUNL on and from the date of the transfer subject to the terms and conditions in this Scheme.

(2) The Undertaking forming part of Hydro Generation Undertaking as set out in Schedule "B" shall stand transferred to an vet in UPJVNL on and from the date of the transfer subject to the terms and conditions in this Scheme.

(3) The Undertaking forming part of Transmission and Distribution Undertakings as set out in Schedule "C" shall stand transferred to and vest in UPPCL on and from the date of the transfer subject to the terms and conditions in this Scheme.

(4) On such transfer and vesting of the Undertaking in terms of subclause (1) to UPRVUNL or subclause (2) to UPJVNL or sub clause (3) to UPPCL, as the case may be UPRVUNL or UPJVNL or UPPCL, as the case may be (the Transferee), shall be responsible for all contracts, rights, deeds, schemes, bonds, agreements and other instruments of whatever nature relating to the respective Undertakings transferred to it to which the board was a party, subsisting or having effect on the date of the transfer, in the same manner as the Board was liable immediately before the date of the transfer, and the same shall be in force and effect against or in favour of the Transferee and may be enforced effectively as if the Transferee had been a party thereto instead of the Board.

5(a) The transfer and vesting of the Undertaking to the transferee in terms of this Scheme shall take effect immediately on the date of the transfer notwithstanding that the value of such Undertaking have not been finally

determined but have been determined on a provisional basis as on March 31, 1999 subject to updating and finalization as on the date of transfer, at a later date.

(b) The provisional opening balance sheet as on March 31, 1999 of UPRVUNL, UPJVNL and UPPCL and the terms and conditions applicable are set out in Part II of Schedule "A", Schedule "B" and Schedule "C" respectively. The provisional balance sheet as on March 31, 1999 shall be subject to finalization as per item (a) and also subject to audit of the accounts as per the Companies Act, 1956.

(c) The State Government may also by an order to be issued for the purpose amend, vary, modify, add, delete or otherwise change the values and terms and conditions specified in the provisional balance sheet at any time during the provisional period mentioned in clause 9 of this Scheme.

6. Transfer of Personnel. (1) Transfer of personnel, shall be subject to the terms and conditions contained in the subsection (7) of Section 23.

(2) For the purpose of this Scheme, the personnel shall stand classified as under

(a)...to (d).....

(e) The Personnel of other common services including head office personnel as specified in Schedule "I" comprising of; those rendering service commonly for generation, transmission, distribution or any other undertakings of the Board and whose services in the Board as on the date of the transfer are not exclusively or primarily related, to the undertakings specified in Schedule "A" or Schedule "B" or Schedule "C" and shall also include personnel who are not covered in Schedule "E", Schedule "F" Schedule "G" and Schedule "H".

(3) to (16).....

7. Rights and obligations of third parties restricted. Upon the transfer being effected in accordance with the provisions of the Act and this Scheme, the rights and obligations of all persons shall be restricted to the Transferee to whom they are transferred to and notwithstanding anything to the contrary contained in any deed, documents, instruments, agreements or arrangements which such person has with the Board, he shall not claim any right or interest against the State Government, Board or the Transferor or any other Transferee.

8. Pending suits, Proceedings. (a) All Proceedings of whatever nature by or against the Board pending on the date of the transfer shall not abate or discontinue or otherwise in anyway prejudicial be affected by reason of vesting or revesting of the transfer scheme mentioned in the Act and in this Scheme but the proceedings may be continued, prosecuted and enforced by or against the Government or after the transfer of the Undertakings, by or against the transferee to whom the same are assigned in accordance with the transfer scheme only.

9. Classification and transfer of property, rights, liabilities and proceedings

provisional in the first instance. (1) The classification and transfer of Undertaking including personnel under this Scheme, unless otherwise specified in any order made by the State Government, shall be provisional and shall be final upon the expiry of one year from the date of the transfer.

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

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

Schedule "I" reads

Schedule "I"

OTHER COMMON CADRE PERSONNEL

PERSONNEL KOF COMMON SERVICE INCLUDING HEAD OFFICE PERSONNEL RENDERING SERVICE COMMONLY FOR ADMINISTRATION. GENERATION. TRANSMISSION AND DISTRIBUTION

Sl. No. Name of Cadre Designation

1. Engineering Junior Engineers, Computer, Draughtsman Ferro Boy, Tracer etc.
2. Headquarter Ministerial Personnel Assistant, Upper Division Assistant, Lower Division Assistant, Typist Steno, Peons, Librarian, Translator, Care Taker, Civil List Compiler, Cataloguer, Receptionist, Programmer, Driver, Data Puncher cum Programmer, Carpenter, Plumber, Typewriter Mechanic, Security Guard etc.
3. Accounts Routine Grade Clerk, Accounts Clerk, Cashier, Peon, Accountant, Assistant Accountant, Commercial Assistant etc.
4. Miscellaneous Personnel not covered in aforesaid cadres.

7. Clause 2(b) of Scheme, 2000 while defining the expression "Property" includes in it "interest of whatever nature and wherever situate". Similarly, expression "Liabilities" include in it ? all obligations and other outgoing including statutory liabilities?. Clause 3 provides that all "properties", all interests, rights and liabilities pertaining vesting in UPSEB shall stand transferred to and vest in the State Government, absolutely and in consideration thereof all loans, subventions and obligations of the Board towards the State in respect of the above shall stand extinguished and cancelled in full and final settlement.

8. Clause 7 of Scheme 2000 (quoted above) clearly provides the rights and obligations of all persons shall be restricted to the "Transferee", defined under Clause 2 (h) and notwithstanding anything contrary in any deed, document, contract, agreement, etc., which a person has with the UPSEB shall not claim any right or interest against State Government, UPSEB or the "Transferor" or any other "Transferee".

9. Clause 8 of Scheme, 2000, however, provides an exception in as much as it saves right and interest of those whose matters may be pending for consideration in the form of Suit or proceedings of whatsoever nature by or against UPSEB on the date of transfer under Reform Act, 1999 read with Scheme 2000 at the relevant time and thus such transfer (under Reforms Act, 1999 & the Scheme, 2000) shall prejudicially affect said right, etc. by reason of vesting from UPSEB to the Corporation subject to the condition contained in the said clause which reads

?.....but the proceedings may be continued, prosecuted and enforced by or against the Government or after the transfer of the Undertakings, by or against the transferee to whom the same are assigned in accordance with the transfer scheme only.?

10. The aforementioned provisions of Reforms Act, 1999 read with Scheme, 2000 show that Board has no subsisting right or interest in the subject matter of the award sought to be impugned by means of the present Writ Petition and "the proceedings" pending on the date of transfer, have to be continued, prosecuted and enforced the Transferee to whom said rights, interest, obligations, etc. have been assigned in accordance with the transfer Scheme only.

11. In view of the above it is apparent that the Board has no subsisting cause of action as on date since liabilities under impugned "award", as admitted by the learned counsel for the petitioner has long back vested in the concerned transferee company which has not been brought on record.

12. During the course of argument it is submitted that this stand taken by him in similar matters before other Courts have been accepted but he failed to give reference of those cases or produce copy of relevant order. Such a casual submission at the Bar, cannot be appreciated.

The stand take by the learned counsel for the petitioner is without merit.

13. It may be recalled that this Court earlier passed an interim order, dated 12112002, relevant extract of which read

?.....Considering the nature of the case, I further direct in case all parties are served and parties have exchanged pleadings, the case shall be listed for final hearing in the week commencing 672003.?

14. Aforesaid order was challenged in the Apex Court and vide judgment and order dated 2692003 the Apex Court has set aside the said interim order. It is

interesting to note that the learned counsel for the Petitioner, on query from Court, failed to inform as to who is providing funds to litigate the matter? It is apparent that funds are provided by some one (U.P. Power Corporation) and not UPSEB.

15. U.P. Power Corporation Ltd. or its subsidiary company has not been brought on the record in place of the petitioner (UPSEB). It is evident that hearing of the case is delayed to the prejudice and sufferance of contesting respondent.

16. Sri Ranjeet Saxena, at the fag end of the arguments at the Bar, prays for short time to bring on record U.P. Power Corporation Ltd. and/or its subsidiary company, as the case may be.

17. In the interest of justice, case is adjourned for one week subject to payment of cost which I quantify as Rs. 5,000/ only.

18. Let necessary steps be taken for bringing on record U.P. Power Corporation Ltd. or its subsidiary company, as the case may be, if it is interested and so advised, to prosecute the case further and pay costs on or before next date fixed.

19. List on 215 2004 at 10 a.m. or 3.00 p.m.