

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No.3690/2002**

BHARTIYA MAZDOOR SANGH AND ANR. Petitioners

Through: Mr. Kailash Vasdev, Sr. Advocate along
with Mr. K.K. Patra, Ms. Aparajita
Swarup and Ms. Neha Khattar Vidhari,
Advocates.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Sandeep Sethi, Sr. Advocate along
with Mr. Anupam Varma and Mr.
Vishal Anand, Advocates for NDPL,
BRPL & BYPL.
Mr. Najami Waziri, Standing Counsel
along with Mr. Abhay Raj Varma,
Advocates for the Govt. of NCT of
Delhi.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

16.10.2012

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1. This writ petition filed by the two Unions representing the workmen of the erstwhile Delhi Vidyut Board (DVB) and impleading the Government of the National Capital Territory of Delhi (GNCTD) and the DVB only as respondents was filed seeking the following reliefs:

“A. Issue an appropriate writ order or directions directing the Respondents to invite fresh bids for privatization of DISCOMS giving equal opportunity to all and on the same terms and conditions.

B. Issue an appropriate order in nature of mandamus or any other appropriate writ, order or direction directing the

Respondent to give equal opportunity to the others including Petitioners to bid for the privatization of DISCOMs and quash the conditions of pre-qualification in para 15.3.11 and 15.11.1 of RFQ.

- C. Issue a writ of certiorari or any other writ, order or direction in the nature thereof or any other writ, order or direction quashing and setting aside the Delhi Electricity Reform (Transfer Scheme) Rules 2001 issued by the Delhi Government by Notification dated 20th November 2001 bearing No.F.11(99)/2001-power/2867.
- D. Issue a writ of certiorari or any other writ in the nature thereof or any other writ, order or direction quashing and setting aside Policy Directions issued by the Delhi Government by its Notification dated 22nd November 2001 bearing No.F.11(118)/2001-power.
- E. Issue a writ of prohibition, restraining the Delhi Government from executing agreements for privatization of DISCOMs with the present bidders whose bids are not in accordance with the bidding criteria including tariff determination criteria set out in RFQ.
- F. Declare Section 3(2) of the Delhi Electricity Reforms Act 2000 to the extent the said Section provides for creation of one member Commission as unconstitutional and void.
- G. Issue a writ of mandamus or any other writ in the nature thereof or any other writ, order or direction requiring the Delhi Government and its undertakings to create an enabling framework that would facilitate competition in generation and supply of electricity through the use of transmission and distribution networks upon payment of wheeling charges;
- H. Pass such other and further order as may be deemed just and proper in the facts and circumstances of the case.

2. The writ petition was accompanied with an application for interim relief seeking stay of the award of contracts upon unbundling of DVB. Though rule was issued in the petition as far back as on 31st May, 2002 when the petition first came up before this Court but the stay as sought was not granted; it was only observed that any action taken in the meantime shall abide by the result of the writ petition. Subsequently, vide order dated 29th July, 2002, entities which on the unbundling of DVB had been awarded the contracts, i.e., of North-West Delhi Electricity Distribution Company Ltd., South-West Delhi Electricity Distribution Company Ltd., Central-East Delhi Electricity Distribution Company Ltd., Delhi Power Supply Company Ltd. and Delhi Power Company Ltd. were impleaded as respondents. The petition however languished with the petitioner from time to time seeking directions for production of records. The writ petition was however dismissed on 24th November, 2004. The petitioners preferred a Special Leave Petition to the Supreme Court which was granted and converted into Civil Appeal No.5028/2007. The said appeal was allowed vide order dated 4th August, 2011. Finding that the writ petition had been disposed of under an impression that the issues raised therein were also pending consideration in FAO No.199/2002 but which was not so, the

Supreme Court “without going into the merits of the case” set aside the order dated 24th November, 2004 of this Court of dismissal of the writ petition and remanded the writ petition for decision afresh in accordance with law and keeping all questions of law and fact including as to maintainability of the writ petition open, to be raised before this Court. Though the Supreme Court had directed expeditious disposal of the writ petition, “preferably within six months”, but the counsels sought adjournments on one ground or the other.

3. We heard the counsels on 11th October, 2012 when it transpired that the relief claimed in the petition was against the bids invited by the GNCTD as far back as in 2001 for unbundling of the DVB. However since no interim stay was granted, DVB stands unbundled ten years ago and the new entities on such unbundling have taken over the various tasks/functions of DVB. The said entities for the last ten years have taken various steps including making investments. It was the contention of the senior counsel for the said entities that what has happened in the last ten years during the pendency of this petition is not capable of being unscrambled. Considerable merit was found in the said argument. In spite of the interim order dated 31st May, 2002, of the happenings during the pendency of the

petition to abide by the outcome of the writ petition, the same, even in the event of the petition succeeding will be fraught with difficulties.

4. Though the contention of the petitioners in the writ petition was that the workers of DVB and their unions were wrongly excluded from the tender process initiated upon unbundling of DVB but the senior counsel for the petitioners argued primarily on the basis of the wrongs now being committed by the unbundled entities. Reliance in this regard was placed on the Report of the Public Accounts Committee dated 2nd March, 2006 of the Delhi Legislative Assembly and grievance was made that though GNCTD had on earlier occasions been specifically directed to explain the action taken on the said Report but had in the affidavit filed not done so. Allegations of errors in tariff determination were also raised. The senior counsel for the unbundled entities responded by contending that the petitioners had approached the Court belatedly after implementation of the scheme for unbundling; that the special foras are available for challenge to the delay; that the disinvestment in DVB has been upheld in *Delhi Electricity Regulatory Commission v. BSES Yamuna Power Ltd., (2007) 3 SCC 33*. It was also contended that electricity distribution is a capital intensive business and not such which could on disinvestment have been

handed over to the workers, as is the claim of the petitioners.

5. We in the aforesaid state of affairs had enquired from the senior counsel for the petitioners as to what purpose the present petition would serve inasmuch as setting the clock back into today's time does not look feasible. The senior counsel for the petitioners also though unable to rebut the same, drew attention to prayer paragraphs (C) and (F) above in the writ petition and contended that the reliefs claimed therein survived. However, since much has happened in the last over ten years and which is not pleaded but sought to be argued, we enquired from the senior counsel for the petitioners as to whether it would not be inappropriate for the petitioners to withdraw the present petition with liberty to file a fresh petition for the reliefs surviving. The senior counsel for the petitioners had then sought time to take instructions and that is how the matter was adjourned to today.

6. The senior counsel for the petitioners today states that he has no instructions to withdraw the petitions.

7. Notwithstanding the same, we are of the view that what is recorded hereinabove does not change from the refusal of the petitioners to withdraw the petition. The relief, if any, to which the petitioners would now be entitled, would be of setting aside of what has already happened and what

has been implemented for the reason of breach by the aforesaid entities of the terms on which they were awarded the contracts and of grant to them of favours not originally provided by the GNCTD. However, as aforesaid, the pleas in that respect are lacking in the writ petition and it has remained in the same state as at the time of institution ten years ago.

8. Though the senior counsel for the unbundled entities has contended that all so called surviving issues also do not survive in view of subsequent judgments but need is not felt to go into that question at this stage as the same is to be gone into when a new action, if any, is initiated by the petitioners.

9. We, therefore, dismiss this writ petition in view of the aforesaid but grant liberty to the petitioners to take appropriate action for prayers (C) and (F) supra, stating the events which have taken place subsequent to the filing of this petition.

No costs.

CHIEF JUSTICE

RAJIV SAHAI ENDLAW, J

OCTOBER 16, 2012

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