

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

% *Date of Decision : May 22 , 2013*

+ **LPA 315/2013**

GOVT. OF NCT OF DELHI Appellant
Represented by: Ms.Avnish Ahlawat, Advocate
with Mr.Vibhav Mishra, Advocate

versus

D.K.PURI & ANR. Respondents
Represented by: Mr.Salim Inamdar, Advocate with
Mr.Vedanta Varma, Mr.Vibhor
Kush and Ms.Kartika Chaudhary,
Advocates for R-1
Mr.Parag Tripathi, Sr.Advocate
with Mr.Sumeet Pushkarna and
Ms.Meenakshi Midha, Advocates

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE V.KAMESWAR RAO

PRADEEP NANDRAJOG, J. (Oral)

1. The appeal challenges an interim order dated April 16, 2013 passed by the learned Single Judge disposing of CM No.4116/2013 filed by the first respondent, the writ petitioner before the learned Single Judge.
2. Communication dated March 25, 2013 removing first respondent from the post of trustee held by him has been stayed.
3. Our concern in the appeal is limited to see whether the discretion has been exercised by the learned Single Judge by a proper

application of the law, for the reason an appeal challenging an interim order relates to law and not the domain of re-appreciating the facts.

4. Preceding privatization of electricity in Delhi, the Delhi Vidyut Board was bifurcated into different companies; some generating and some distributing electricity in Delhi. The existing employees of DVB were given an option to join the different companies, which they joined but on the condition that their services shall continue to be pensionable and the term of the unbundling of DVB was the constitution of a pension fund to be managed by trustees. Not only the retired employees of DVB but even existing employees who would have had continued to serve, but under different companies, were to receive pension in the future and thus they had a stake in the pension fund. The term of the trust deed, vide clause 3(a), required 5 out of 15 trustees to be representatives of the employees, 1 of whom had to be the representative of the pensioner or those receiving family pension. The prima facie view taken by the learned Single Judge, while interpreting clause 3(a) is that it does not limit the choice of the employees, while making a nomination, to restrict the nominee from amongst themselves and even a retired employee can be a nominee. The first respondent is a retired employee and is 1 out of 5 employee's nominee on the trust.

5. The material part of the language of clause 3(a) reads '*Five of whom will be representatives of employees out of which one will be the representative of pensioners/family pensioners*'. We could have appreciated the stand of the appellant if the language of the clause was '*Five of whom will be representatives of employees which representatives would be from the employees.....*'. This not being so, the interpretation prima facie projected by the appellant requires words to be interpolated in the clause.

6. On this stand alone, we find no infirmity in the prima facie view taken by the learned Single Judge, that since first respondent is a retired DVB employee that by itself cannot be held against him of being the employee representative on the trust and act as a trustee.

7. Sh.Parag P.Tripathi learned senior counsel who appears for respondent No.2 would submit that the writ petitioner i.e. the first respondent in the appeal, is acting in a manner which is detrimental to the working of the trust, in that, he sits over papers sent to him and addresses communications to all and sundry.

8. Learned counsel for the respondent refutes the same.

9. We do not enter said controversy because of the reason the same is irrelevant.

10. The appellant admits before us that the only reason to remove the first respondent as a trustee was he being disqualified to be a trustee on clause 3(a) being interpreted by the appellant and not any act of misdemeanour.

11. Be that as it may, learned counsel for first respondent assures that his client would not retain any paper sent to him nor would send letters to all and sundry; simultaneously wanting it to be recorded that it should not be treated as an admission that in the past he was.

12. We understand. To burry a non-issue, these kinds of concessions are always made.

13. But, we cannot but restrain ourselves to observe that no trustee can paralyze the instant trust because the deed of trust envisages decisions by majority. Further, decisions by trustees have to be taken collectively (may be by majority) and not by circulation.

14. The argument that the interim injunction would amount to allowing the writ petition because the term of the first respondent is to

come to an end in the month of January 2014, has been met and rightly responded to by the learned Single Judge who has observed that not granting the injunction would amount to the claim being dismissed because by January 2014 nothing would survive for adjudication.

15. The next date before the learned Single Judge is July 04, 2013 and we hope and expect that on said date the writ petition would be heard for disposal.

16. The appeal is dismissed in limine but without any orders as to costs.

CM No. 7844/2013

Dismissed as infructuous.

(PRADEEP NANDRAJOG)
JUDGE

(V.KAMESWAR RAO)
JUDGE

MAY 22, 2013
mamta