IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

WEDNESDAY, THE 5TH DAY OF AUGUST 2015/14TH SRAVANA, 1937

WP(C).No. 32588 of 2008 (S)

PETITIONER(S):

KERALA ELECTRICITY EMPLOYEES CONFED.
CONFEDERATION, HEAD OFFICE, SREENIVAS TOURISM
HOME, THAMBANNOOR, THIRUVANANTHAPURAM
REPRESENTED, BY ITS GENERAL SECRETARY
SAJEEV JANARDANAN, AGED 59 YEARS, S/O. G. JANARDANAN

BY ADVS.SRI.K.RAMAKUMAR (SR.)
SMT.SMITHA GEORGE

RESPONDENT(S):

1. UNION OF INDIA
SECRETARY, MINISTRYOF POWER , NEW DELHI.

2. STATE OF KERALA, REPRESENTED BY
ITS SECRETARY, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM.

3. SECRETARY TO GOVERNMENT,
DEPARTMENT OF POWER, GOVERNMENT OF KERALA
THIRUVANANTHAPURAM.

4. THE KERALA STATE ELCTRICITY BOARD,
REPRESENTED BY ITS SECRETARY, VAIYDHUTHY, BHAVAN
PATTAM, THIRUVANANTAPURAM.

5. THE SPECIAL OFFICER, MANAGING
COMMITTEE (CHAIRMAN, KSEB), VAIYDHUTHY BHAVAN
PATTAM, THIRUVANANTHAPURAM.

R4 BY ADV. SRI.C.K.KARUNAKARAN, SC FOR KSEB
R2,3 BY GOVERNMENT PLEADER SRI.C.R.SYAMKUMAR
R4 & 5 BY ADV. SRI.P.SANTHALINGAM (SR.)
R4 & 5 BY ADV. SRI.S.SHARAN,SC,K.S.E.BOARD
R1 & 6 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27.3.2015 ALONG WITH WPC. 10432/2009, THE COURT ON 05-08-2015 DELIVERED THE FOLLOWING:

WP(C).No. 32588 of 2008

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1: COPY OF CHART OF THE HYDRO ELECTRIC PROJECTS NOW UNDER THE KSEB.

EXHIBIT P2: COPY OF NOTIFICATION ISSUED BY THE GOVERNMENT OF KEALA.

EXHIBIT P3: COPY OF ORDER NO.BO(FM)NO.2938/(M(F)/RESTRUCTURING DT.1.12.2008 BY R4 BOARD.

EXHIBIT P4: COPPY OF ORDER NO.G.O.(MS) NO.46/08/PD DATED 10.12.2008 BY R3.

EXHIBIT P5: COPY OF B.O.(FM) NO.132/2009(RC/ACCOUNTS/2008 DATED 19.1.2009 ISSUED BY R4 BOARD.

EXHIBIT P6: COPY OF PROCEEDINGS DATED 14.10.2010 OF THE KERALA STATE ELECTRICITY BOARD.

EXHIBIT P7: COPY OF APPLICATION SUBMITTED BY THE PETITIONER BEFORE THE REGISTRAR OF COMPANIES, KERALA.

EXHIBIT P8: COPY OF LETTER DATED UNE, 2013 OF THE MINISTRY OF ENVIRONMENT & FORESTS, GOVERNMENT OF INDIA.

EXHIBIT P9: COPY OF LETTER DATED 11.11.1964 OF THE AGRICULTURAL & RURAL DEVELOPMENT DEPARTMENT, GOVERNMENT OF KERALA.

EXHIBIT P10: COPY OF NOTIFICATION NO.G.O.(P)NO.46/2013 DATED 31.10.2013 ISSUED BY R2.

EXHIBIT P11: COPY OF REPRESENTATION DATED 13.11.2013 SUBMITTED BY SRI.V.M.SUDHEERAN, THE FORMER SPEAKER & MINISTER OF KERALA WITH ENGLISH TRANSLATION.

/TRUE COPY/

PS TO JUDGE

'C.R'

ASHOK BHUSHAN, CJ
&
A.M.SHAFFIQUE, J

W.P.(C).No. 32588 of 2008
&
W.P(C).No. 10432 of 2009

Dated this the 5th August, 2015

JUDGMENT

Ashok Bhushan, CJ.

These two Writ Petitions involving similar issues of facts and law and have been heard together and are being disposed of by this common judgment. It shall be sufficient to refer to the pleadings in W.P(C).No.10432 of 2009 to decide both the Writ Petitions.

2. W.P(C).No.10432 of 2009 has been filed by R.Muraleedharan, a former Chief Engineer of the Kerala State Electricity Board (hereinafter referred to as 'the Board'). The petitioner challenges the implementation of Sections 131 and 132 of the Electricity Act, 2003 in the State of Kerala, whereby the rights over the Hydro

Projects for generating electricity in the State of Kerala will be divested from the State and can be handed over to private company. The petitioner's case is that the Board had been constituted under Section 5 of the Electricity Supply Act, 1948. The Electricity Supply Act had been repealed by the Parliament Act, namely, Electricity Act, 2003 (hereinafter referred to as 'the Act, 2003'). Section 131 of the Act, 2003 mandates the State Government to prepare a transfer scheme to give effect to the objects and performance of the Electricity Act and property, interest in property, rights and liabilities which immediately before the effective date belonged to the State Electricity Board get vested in the State Government. The petitioner's case in the Writ Petition is that under Entry 17 in List II to VIIth Schedule of the Constitution of India, water storage and water power is exclusively within the jurisdiction of the State Government, whereas Entry 38 of List III of the concurrent list relates to electricity. It is pleaded that legislation on water storage or water power can only be done by the State Legislature and the Parliament has no legislative competence to enact any legislation either on water storage or water power. Number of dams erected over various rivers are the properties of the State Government, which properties are now being directed to be transferred to Company. It is pleaded that as a result of the implementation of the provisions of Section 131 along with Sections 7 and 8 of the Act, 2013, the valuable rights of the State of Kerala over various rivers and control exercised by it till date over the Hydro Electric Project, will be completely lost to the State Government paving way to private companies. The State of Kerala issued a notification dated 25.9.2008 in exercise of power under Sections 131 and 132 of the Act, 2003 publishing a scheme, namely, the Kerala Electricity First Transfer Scheme, 2008. The State Government issued an order dated 10.12.2008 appointing seven persons as the first Directors of the proposed Company. The State, during the pendency of the Writ Petition, has also issued Exhibit P6 order by which the State Government stated that the functions, properties and all interests, rights in properties all rights and liabilities of the Kerala State Elecetricity Board are vested in the State Government by notification dated 25.9.2008. All these functions and undertakings of the Board vested in the Government are to be re-vested in the Company to be incorporated as fully owned Government Company under the Companies Act, 1956. The orders stated that the new company be constituted by six months. The petitioner in the Writ Petition has prayed for the following reliefs:

> *"i) To declare that Sections 7, 8, 9 and 131 of the Electricity Act, 2003 (Central Act 36 of 2003) as unconstitutional, void and inoperative.*
>
> *ia) To call for the records leading upto Exhibit P6 and quash the same by the issuance of a writ of certiorari or any other appropriate writ,*

order or direction.

ii) To issue a writ of mandamus forbearing the State of Kerala from transferring the rights, liabilities and properties of the Kerala State Electricity Board now in its hand to any government Company or other companies in exercise of its powers under Section 131 without enacting as State law on the subject in respect of the Hydro Electric Projects.

iii) To issue a writ of mandamus forbearing the resondents from handing over the functioning of the KSEB to any company or other forum without compulsorily complying with the provisions of Sections 131, 132 and 86 of the Electricity Act, 2003 which are all mandatory provisions and such transfer liable to be declared altogether void and unenforceable in law;

iv) To call for the records leading to the issuance of Exhibits P1, P3 and P4 and quash the same by issuance of a writ of certiorari or any other appropriate writ, order or direction."

3. W.P(C).No.32588 of 2008 has been filed by the Kerala Electricity Employees Confederation praying for the following reliefs:

> "*i) To declare that Sections 7. 8, 9 and 131 of the Electricity Act, 2003 (Central Act 36 of 2003) as unconstitutional, void and inoperative.*
>
> *ii) To issue a writ of mandamus forbearing the State of Kerala from transferring the rights, liabilities and properties of the Kerala State Electricity Board now in its hand to any Government company or other companies in exercise of its powers under Section 131 without enacting a State law on the subject in respect of the Hydro Electric projects."*

4. Counter affidavit has been filed by the State of Kerala, Union of India as well as the Kerala State Electricity Board. The relevant pleadings made therein shall be referred to hereafter.

5. Heard Sri.K.Ramakumar, learned Senior Advocate appearing for the petitioner, Sri.P.Santhalingam learned Senior Advocate appearing for the Board, Sri.S.Krishnamoorthy, learned counsel appearing for the Union of India and Sri.C.R.Syamkumar, learned Senior Government Pleader appearing for the State of Kerala.

6. Sri.K.Ramakumar, learned Senior Advocate

appearing for the petitioner, challenging the provisions of Sections 131, 7, 8 and 9 of the Act, 2003, contended that the said provisions are beyond the legislative competence of the Union Parliament. He submitted that the above provisions affect and take away the rights of the State over various rivers of the State and Hydro Electric Projects and it is only the State legislature which has legislative competence to enact law pertaining to State rivers, water storage and water power. He submitted that under Sections 7, 8 and 9 of the Act, 2003 any generating company may establish, operate and maintain a generating station without obtaining licence which also includes setting up of Hydro Generating Station. No Hydro Generating Station can be prepared without State Government's permission. It is submitted that by notification dated 25.9.2008, i.e., first transfer scheme, the State shall be divested of its rights over the State rivers and various Hydro Electric Projects in the State. It is submitted that Sections 7, 8 and 9 of the Act, 2003 be declared as unconstitutional and inoperative.

7. The learned Government Pleader appearing for the State submitted that by virtue of the Transfer Scheme dated 25.9.2008 read with Section 131, the right of the Board has been vested in the State and the State shall re-vest those rights in favour of the Company, which were earlier vested in the Board. He submitted that by revesting of the rights of the Board, none of the rights of the State over the State rivers or Hydro Electric Project, which were vested in the State are being revested in the company. It is submitted that the apprehension of the petitioner that the State shall transfer its rights to company regarding the State rivers and State Hydro Electric Project is misconceived. It is submitted that Section 131 of the Act relates to electricity, which is in the concurrent list and in the domain of the Union Parliament. He submitted that the provisions of Sections

7, 8, 9 and 131 of the Act, 2003 are not beyond the legislative competence of the Parliament.

8. The learned counsel appearing for the Union of India has also reiterated the above submission and contended that the Parliament is fully competent to legislate on the subject of electricity.

9. Learned Senior Counsel appearing for the Board submitted that the apprehension of the petitioner that the rights over the rivers and water shall be transferred to the Company is without any basis. By virtue of Section 131 of the Act, 2003 and the Transfer Scheme prepared by the State Government, only those rights which were earlier vested in the Board are to be revested in the Company. It is submitted that the State Government has now by notification dated 31.10.2013, in exercise of power under Sub-Section (2) of Section 131 of the Act, 2003, issued the Scheme for transfer, called, 'Kerala Electricity Second Transfer Scheme (Re-vesting), 2013'.

10. We have considered the submissions of the learned counsel for the parties and perused the records.

11. The Electricity Act, 2003 has been enacted to consolidate the laws relating to generation, transmission, distribution, trading and use of electricity and generally for taking measures conducive to development of electricity industry, promoting competition therein, protecting interest of consumers and supply of electricity to all areas, rationalisation of electricity tariff, ensuring transparent policies regarding subsidies, promotion of efficient and environmentally benign policies, constitution of Central Electricity Authority, Regulatory Commissions and establishment of Appellate Tribunal and for matters connected therewith or incidental thereto.

12. The provisions of Sections 7, 8 and 9 of the Act, 2003 are contained in Part III, i.e., Generation of Electricity. Sections 7, 8 and 9 are quoted as below:

"7. ***Generating company and requirement for setting up of generating station.*** *- Any generating company may establish, operate and maintain a generating station without obtaining a licence under this act if it complies with the technical standards relating to connectivity with the grid referred to in clause (b) of section 73.*

8. **Hydro-electric generation.-** (1) Notwithstanding anything contained in section 7, any generating company intending to set-up a hydro-generating station shall prepare and submit to the authority for its concurrence, a scheme estimated to involve a capital expenditure exceeding such sum, as may be fixed by the Central Government, from time to time, by notification.

(2) The Authority shall, before concurring in any scheme submitted to it under sub-section (1) have particiuilar regard to, whether or not in its opinion,-

(a) the proposed river-works will prejudice the prospects for the best ultimate development of the river or its tributaries for power generation, consistent with the requirements of drinking water, irrigation, navigation, flood-control, or other public purposes, and for this purpose the Authority shall satisfy itself, after consultation with the State Government, the Central Government, or such other agencies as it may deem appropriate, that an adequate study has been made of the optimum location of dams and other river-works

(b) the proposed scheme meets the norms regarding dam designand safety.

(3) Where a multi-purpose scheme for the development of any river in any region is in operation, the state Government and the generating company shall co-ordinate their activities with the activities of the persons responsible for such scheme in so far as they are inter-related.

(9) **Captive generation.-** (1) Notwithstanding anything contained in this Act, a person may construct, maintain or operate a captive generating plant and dedicated transmission lines:

Provided further that no licence shall be required under this Act for supply of electricity generated from a captive generating plant to any licencee in accordne with the provisions of this Act and the rules and regulations made thereunder and to any consumer subject to the regulations made under sub-section (2) of section 42.

(2) Every person, who has constructed a captive generating plant and maintains and operates such plant, shall have the right to open access for the purposes of carrying electricity from his captive generating plant to the destination of his use:

Provided that such open access shall be subject to availability of adequate transmission facility and such availability of transmission facility shall be determined by the Central Transmission Utility or the State Transmission Utility, as the case may be:

Provided further that any dispute regarding the availability of transmission facility shall be adjudicated upon by the Appropriate Commission."

13. Sections 131 and 132 of the Act, 2003 are included in Part XIII, i.e., reorganisation of Board. Sections 131(1) and 131(2) and 133 are quoted as below:

"131. ***Vesting of property of Board in State Government.-*** *(1) 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 (hereinafter in this Part referred to as the effective date), any property, interest in property, rights and liabilities which immediately before the effective date belonged to the State Electricity Board (hereinafter referred to as the Board) shall vest in the State Government on such terms as may be agreed between the State Government and the Board.*

(2) Any property, interest in property, rights and liabilities vested in the State Government under sub-section (1) shall be re-vested by the State Government in a government company or in a company or companies, in accordance with the transfer scheme so published along with such other property, interest in property, rights and liabilities of the State Government as may be stipulated in such scheme, on such terms and conditions asw may be agreed between the State Government and such company or companies being State Transmission Utility or generating company or transmission licensee or distribution licensee, as the case may be:

Provided that the transfer value of any assets transferrewd hereunder shall be determined, as far as may be, based on the revenue potential of such assets at such terms and conditions as may be agreed between the State Government and the state Transmission Utility or generating company or transmission licensee or distribution licensee, as the case may be.

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133. ***Use of proceeds of sale or transfer of Board, etc.-*** *In the event that a Board or any utility owned or controlled by the Appropriate Government is sold or transferred in any manner to a person who is not owned or controlled by the appropriate Government, the proceeds from such sale or transfer shall be utilised in priority to all other dues in the following order, namely:-*

(a) dues (including retirement benefits due) to the officers and employees of such Board or utility, who have been affected by the aforesaid sale or transfer;

(b) payment of debt or other liabilities of the transferor as may be required by the existing loan covenants."

14. The different entries to VIIth Schedule of the Constitution, which are relevant for the present case are quoted as below:

List I Entry 56:

"56.Regulation and development of inter-State rivers and river valleys to the extent to which such regulations and development under the control of the Union is declared by Parliament by law to be expedient in the public interest."

List II Entry 17

"17.Water, that is to say, water supplies, irrigation and canals, drainage and embank-ments, water storage and water power subject to the provisions of Entry 56 of List I."

List III Entry 38:

"38.Electricity".

15. As noted above, the State Government has already issued a notification dated 25.9.2008 publishing

the Kerala Electricity First Transfer Scheme, 2008. The State in its counter affidavit has explained the details of Hydro Electric Station and has also explained that the Electricity Act has not taken away the rights of the Government on the utilisation of water resources within the State in the manner as decided by the respective States. It is useful to quote paragraphs 8 and 10 of the counter affidavit filed by the State, which read as follows:

"8.The total installed generation capacity of Kerala is 2848 MW. Out of this, about 2230 MW is owned by KSEB, 360 MW by NTPC and 259 MV by private developers. Out of the 2230 MW generating capacity owned by KSEB, 1993 MV is from hydro electric stations and the rest is from thermal wind stations. Similarly, out of the 259 MW capacity of private developers, 40 MW is from hydro stations and the rest is from thermal and wind stations. Thus, the total share of hydro electric stations in the installed capacity of the State is 2033 MW, which is around 71% of the total capacity. From the above, it is obvious that approval of the State Government is required for setting up a hydro electric power plant by any person or company. The ownership of the river waters and the control over the water resources are vested with the State Government, whether the projects are set up under KSEB or private developers. The Electricity Act has not taken away the rights of State Governments on the utilization of water resources within the State in the manner as desired by the respective States. Transferring the assets and liabilities of KSEB to a Government company as per Section 131 of the Act will not affect in any manner the rights enjoyed by the State of Kerala over the rivers, river waters, river water storage and water power in the various rivers in the State of Kerala.

Xx xx xx

10. With regard to the averments in paragraphs 6 and 7 it is submitted that W.P(C).No.32588/2008 is pending disposal before this Hon'ble Court. Exhibit P4 order is issued by the government appointing the first directors of the company as a statutory requirement as envisaged in Electricity Act, 2003. In entry 38 of the

concurrent list of the Constitution of India the subject given is electricity. So, the State Government as well as the Central Government may make enactments on that subject. If the state Government enacts any law it shall not be incosistent with the provisions of the enactment made by the Central government on the very same subject. So, the Central Government is competent to make law relating to generation of electricity, storage, transmission, distribution and the matters incidental thereto. Water being one among the sources of generation of electricity, Central Government may make provisions in the Electricity Act how such water bodies are to be build up, protected and make use of. As per entry 17 of the List II the State Government can make law on the subject mentioned therein is subject to the entry in 56 of List I of the Constitution of India. As per entry 56 of the List I regulation and development of river bank is the central subject. So, the Central Government is competent to make a law regulating the hydro electric generation without adversely affecting irrigation and drainage facilities. Since water being a subject in entry 17 of the concurrent list the Central government have rights protected the interest of the states by making a provision as provided in subsection (3) of Section 3 of the Electricity Act, 2003. The Electricity Act, 2003 is applicable all over the States of India except Jammu & Kashmir. Almost all the States have transformed their Electricity Boards constituted under the Electricity Act, 1948 into company or companies as provided in this Act."

16. The State as well as the Union of India, thus, has come with the pleading that the Parliament Legislation i.e., Electricity Act, 2003 is not beyond the legislative competence of the Union Parliament.

17. A perusal of Sections 7, 8 and 9 of the Act, 2003 clearly indicates that the said provisions are substantially the provisions regarding generation of electricity. Section 8 refers to Hydro Electric Generation. Thus, Sections 7, 8 and 9 cannot be said to be not beyond Entry 38 of List III.

The Apex Court while considering the List III of the 7th Schedule has laid down in ***India Cement Ltd. v. State of Tamil Nadu*** [(1990(1) SCC 12] that entries in the List III are legislative heads or fields of legislation and the widest amplitude should be given to the language of these entries. The following was laid down in paragraph 18 of the judgment:

> *"18. Certain rules have been evolved in this regard, and it is well settled now that the various entries in the three lists are not powers but fields of legislation. The power to legislate is given by Art. 246 and other articles of the Constitution. See the observations of this Court in Calcutta Gas Co. v. State of West Bengal(1962) Suppl 3 SCR 1 : (AIR 1962 SC1044). The entries in the three lists of the Seventh Schedule to the Constitution are legislative heads or fields of legislation. These demarcate the area over which appropriate legislature can operate. It is well settled that widest amplitude should be given to the language of these entries, but some of these entries in different lists or in the same list may overlap and sometimes may also appear to be in direct conflict with each other. Then, it is the duty of*

the court to find out its true intent and purpose and to examine a particular legislation in its pith and substance to determine whether it fits in one or the other of the lists. See the observations of this Court in H. R. Banthia v. Union of India (197 0) 1 SCR 479 at p. 489: (AIR 1970 SC 1453 of p. 1458), Union of India v. H. S. Dhillon (1971) 2 SCC 779 at p. 792: (AIR 1972 SC 1061 at pp. 1069-70). The lists are designed to define and delimit the respective areas of respective competence of the Union and the States. These neither impose any implied restriction on the legislative power conferred by Art. 246 of the Constitution, nor prescribe any duty to exercise that legislative power in any particular manner. Hence, the language of the entries should be given widest scope, D. C. Rataria v. Bhuwalka Brothers Ltd. (1955) 1SCR 1071 : (AIR 1955 SC 182), to find out which of the meanings is fairly capable because these set up machinery of the Govt. (Sic).Each general word should be held to extend to all ancillary or subsidiary, matters which can fairly and reasonably, be comprehended in it. In interpreting an entry it would not he reasonable to import any limitation by comparing or contrasting that entry with any other one in the same list . It is in this background that one has to examine the present controversy."

18. To the similar effect is another judgment of the Apex Court in ***Jilubhai Nanbhai Khachar and others v. State of Gujarat and another*** [(1995)Supp(1) SCC 596], where the following was laid down in paragraph 7:

> *"7.It is settled law of interpretation that entries in the Seventh Schedule are not powers but fields of legislation. The legislature derives its power by Art. 246 and other related Articles of the Constitution. Therefore, the power to make the Amendment Act is derived not from the respective entries but under Art. 246 of the Constitution. The language of the respective entries should be given the widest scope of their meaning, fairly capable to meet the machinery of the Government settled by the Constitution. Each general word should extend to all ancillary or subsidiary matters which can fairly and reasonably be comprehended in it. When the vires of an enactment is impugned, there is an initial presumption of its constitutionality and if there is any difficulty in ascertaining the limits of the legislative power, the difficulty must be resolved, as far as possible in favour of the legislature putting the most liberal construction upon the legislative entry so that it may have the widest amplitude. Burden is on the appellants to prove affirmatively of*

its invalidity. It must be remembered that we are interpreting the Constitution and when the Court is called upon to interpret the Constitution, it must not be construed in any narrow or pedantic sense and adopt such construction which must be beneficial to the amplitude of legislative powers. The broad and liberal spirit should inspire those whose duty is to interpret the Constitution to find whether the impugned Act is relatable to any entry in the relevant List."

19. Further, the Apex Court has laid down that while determining the legislative competence of legislature, the pith and substance of legislation has to be looked into. The doctrine of pith and substance has been laid down in ***E.V.Chinnaiah v. State of A.P*** [(2005(1) SCC 394]. The following was laid down in paragraphs 29 and 30, which read as under:

"29*. One of the proven methods of examining the legislative competence of an enactment is by the application of doctrine of pith and substance. This doctrine is applied when the legislative competence of a Legislature with regard to a particular enactment is challenged with reference to* *the Entries in various lists and if there is a challenge to the legislative competence the Courts will try to ascertain the pith and substance of such enactment on a scrutiny of the Act in question. (See: Kartar Singh v. State of Punjab 1994 (3) SCC 569). In this process, it is necessary for the Courts to go into and examine the true character of the enactment, its object, its scope and effect to find out whether the enactment in question is genuinely referable to the field of legislation allotted to the State under the constitutional scheme.*

30. Bearing in mind the above principle of the doctrine of pith and substance, if we examine the impugned Act then we notice that the Preamble to the Act says that it is an Act to provide for rationalisation of reservations to the Scheduled Castes in the State of Andhra Pradesh to ensure their unified and uniform progress in the society and for matters connected therewith and incidental thereto. The Preamble also shows that the same is being enacted with a view to give effect to Article 38 (2) found in Part IV of the Directive Principles of the State Policy of the Constitution. If the objects stated in the enactment were the sole criteria for judging the true nature of the enactment then the impugned enactment satisfies the requirement on application of the doctrine of pith and substance to establish the

State's legislative competence, but that is not the sole criteria. As noted above, the Court will have to examine not only the object of the Act as stated in the statute but also its scope and effect to find out whether the enactment in question is genuinely referable to the field of legislation allotted to the State.

20. The Apex Court has further held that it is the pith and substance of legislation, which decides the matter. The following was laid down by the Apex Court in paragraph 22 of the judgment in [(1996)7 SCC 637]:

"22. The doctrine of pith and substance, though applied in determining the true character of the statutes under List III (Concurrent List) of the respective legislative topics of the State legislature and the Parliament. It was extended for consideration of the true character of the legislation even under the same legislative list. In all cases, therefore, the name given by the legislature in the impugned enactment is not conclusive on the question of its competence to make it. It is the pith and substance of the legislation which decides the matter which needs to be decided with reference to the provisions of the statute itself."

21. In view of the law laid down by the Apex Court as noted above, we are of the clear opinion that Sections 7, 8 and 9 of the Act, 2003 are referable to Entry 38 of List III, i.e., electricity and it cannot be said that they are beyond legislative competence of the Union Parliament. Section 131 of the Act, 2003 relates to reorganisation of Board and the reorganisation of the Board is to be effected by preparing a transfer scheme by the State Government to give effect to the objects and purpose of the Act. Section 131 envisages that property and interest in property, rights and liabilities which were vested in erstwhile Board shall be vested in the State Government and the State Government shall revest in a Government company or any company or companies in accordance with the transfer scheme. The provision is again relating to electricity and the matters incidental thereto. The said provision is also clearly covered by the subject 'electricity' under Entry 38.

22. As noted above, the apprehension of the petitioner that the State rivers, water storage and water shall vest in the company which is constituted under Section 131 of the Act, 2003 is misconceived. The rights, which are revested in the company are only those rights, which were vested in erstwhile Board. The State Government still have full legislative competence over the State rivers, water and water storage. The State in its counter affidavit has already explained the above aspects which clearly dispel the doubt raised by the petitioner in the Writ Petition. Taking the pith and substance of the above provisions of the Electricity Act, the legislation clearly falls in List III of Entry 38, i.e., “electricity” and the Union Parliament has full legislative competence to legislate on the subject of electricity. The Government orders referred to in the Writ Petition and challenged are all consequential step to give effect the provision of Section 131 of the Act, 2003 to which no exception can be taken.

23. In view of the foregoing discussion, we are of the view that the petitioners are not entitled to any of the reliefs as claimed in the Writ Petition. The provisions of Sections 7, 8, 9 and 131 of the Act, 2003 cannot be held to be unconstitutional, void or inoperative.

In the result, both the Writ Petitions are dismissed.

**ASHOK BHUSHAN
CHIEF JUSTICE**

**A.M.SHAFFIQUE
JUDGE**

vgs