

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

% *Judgment Reserved on : January 08, 2015*
Judgment Pronounced on : January 27, 2015

+ **LPA 811/2014**

TATA POWER DELHI DISTRIBUTION LTD Appellant

Represented by: Mr.A.S.Chandhiok, Sr. Advocate
instructed by Mr.Anupam Varma,
Mr. Nikhil Sharma & Mr. Rahul
Kinra, Advocates

versus

DELHI STATE ELECTRICITY
WORKERS UNION & ORS

..... Respondents

Represented by: Mr.Vedanta Verma, Advocate for R-1
Ms.Meenakshi Midha, Advocate with
Mr.Siddhartha Nagpal, Advocate for
R-2
Ms.Zubeda Begum, Advocate for
Pension Trust/R-3

LPA 812/2014

BSES YAMUNA POWER LTD Appellant

Represented by: Mr.Sandeep Sethi, Sr. Advocate
instructed by Mr.Anupam Varma,
Mr. Nikhil Sharma & Mr. Rahul
Kinra, Advocates

versus

DELHI STATE ELECTRICITY
WORKERS UNION & ORS

..... Respondents

Represented by: Mr.Vedanta Verma, Advocate for R-1
Ms.Meenakshi Midha, Advocate with
Mr.Siddhartha Nagpal, Advocate for
R-2
Ms.Zubeda Begum, Advocate for

Pension Trust/R-3

LPA 813/2014

BSES RAJDHANI POWER LTD Appellant
Represented by: Mr.Sandeep Sethi, Sr. Advocate
instructed by Mr.Anupam Varma,
Mr. Nikhil Sharma & Mr. Rahul
Kinra, Advocates

versus

DELHI STATE ELECTRICITY
WORKERS UNION & ORS Respondents
Represented by: Mr.Vedanta Verma, Advocate for R-1
Ms.Meenakshi Midha, Advocate with
Mr.Siddhartha Nagpal, Advocate for
R-2
Ms.Zubeda Begum, Advocate for
Pension Trust/R-3

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. CM No.14539/2013 filed by the first respondent who was the writ petitioner of W.P.(C) No.1698/2010, invoking the provisions of Order VI Rule 17 of the Code of Civil Procedure, and praying that it be permitted to amend the writ petition has been allowed by the learned Single Judge vide impugned order dated May 20, 2014. The appellants in the three appeals who were respondents No.3 to 5 in the writ petition have filed the three captioned appeals laying a challenge to the order dated May 20, 2014.
2. The principal grievance of the appellants is that the impugned order is perfunctory and does not give the reasons for the conclusions arrived at.

The conclusion arrived is that the amendment sought for amplify the averments already made in the writ petition and also took into account subsequent facts and that the cause of action embedded in the tripartite agreement dated October 28, 2000 is not altered. The other conclusion is that a fresh writ petition would be maintainable with reference to the pleadings sought to be incorporated, post amendment, to the writ petition. On facts, appellants contended that a new cause of action was sought to be introduced by way of the proposed amendments and reliefs were claimed in relation thereto which were barred by limitation.

3. It is trite that conclusions need to be supported with reasons and since learned counsel for the parties were permitted to argue on the merits of the application for amendment filed by the first respondent, we have taken upon ourselves the task of adjudicating CM No.14539/2013 after giving reasons for our conclusion.

4. As would be required, as the take of point while deciding an application seeking permission of the Court to amend a writ petition, we identify the take of point: and the same has to be the cause pleaded in the writ petition as filed. Thereafter, to note the amendments sought for and then decide whether the amendments are necessary for the purpose of determining the real questions in controversy between the parties. The reason being that Order VI Rule 17 of the Code of Civil Procedure empowers a Court to permit either party to alter or amend her pleadings in such manner and on such terms as may be just, and mandates that all such amendments shall be permitted to be made that may be necessary for purpose of determining the real questions in controversy between the

parties. Lastly to see whether the proposed amendments seek to introduce a new cause of action which was barred by limitation.

5. The first respondent in the appeals before us was the writ petitioner and is a registered and recognized trade union representing the cause of its members who were the erstwhile employees of the erstwhile Delhi Electricity Supply Undertaking which was later on constituted into a statutory board called the Delhi Vidyut Board. When the writ petition was filed only two respondents were impleaded in the writ petition, being : (i) Government of NCT of Delhi (respondent No.1), and (ii) Delhi Vidyut Board Employees Terminal Benefit Fund (respondent No.2).

6. Case pleaded in the writ petition by the writ petitioner is that pursuant to Sections 14 and 15 of the Delhi Electricity Reforms Act, 2000, the Delhi Vidyut Board was unbundled and reorganized. The respondent No.1 notified a transfer scheme in exercise of its power under Section 15 read with Section 16 and Section 60 of the Delhi Electricity Reforms Act, 2000 compulsorily transferring the employees of the Delhi Vidyut Board to corporations/successor companies. To allay the fear of unbundling of Delhi Vidyut Board into separate companies a tripartite agreement dated October 28, 2000 was executed between the writ petitioner and the first respondent under which the benefit of existing service conditions were guaranteed to the transferred employees, which agreement was reflected in Rule 6(1) of the Transfer Scheme Rules. As per the tripartite agreement the first respondent was to create a pension fund in the form of a trust and this gave birth to the respondent No.2 in the writ petition. The mandate of Section 16 of the Delhi Electricity Reforms Act, 2000 was reiterated in clause 3 of the tripartite agreement. After respondent No.2 was incorporated, to give effect

to the tripartite agreement and the mandate of law, a corpus of ₹1329 crores was advised by the consultant: SBI Caps for purpose of providing terminal and retiral benefits to the employees of erstwhile Delhi Vidyut Board who got compulsorily transferred to the successor companies when the Delhi Vidyut Board was unbundled. The amount of the corpus fund advised to be created by SBI Caps was based on the actuarial valuation carried out by M/s.Charan Gupta, an Actuarial Consultancy Service. Under the tripartite agreement the first respondent was obliged to discharge the pension liability of the employees of the Delhi Vidyut Board by paying a lump sum onetime payment to the pension fund so that from the fund pension, service gratuity and retirement gratuity could be paid to the employees who would superannuate under the transferee companies in due course of time.

7. That the trust deed under which respondent No.2 was created stipulates that the trustees shall arrange for an actuarial valuation of the fund every year by a qualified actuary to determine the solvency of the fund. A Board of Trustees was appointed by the Lt.Governor to manage the respondent No.2-fund.

8. Fearing that the shortfall in the corpus of the pension fund may result in the employees of the erstwhile Delhi Vidyut Board, who was transferred to the successor companies, may not receive the terminal benefits, the writ petitioner filed W.P.(C) No.5040/2002 praying that the corpus of the fund should be enhanced so that the employees receive the terminal benefits. The writ petition was disposed of on September 16, 2002 in view of the assurance given by the first respondent that it would guarantee augmentation in the fund if at any stage there was a shortfall therein.

9. At a meeting held on June 25, 2003, the trustees of the second respondent decided to go for an actuarial valuation of the fund, for which M/s.Ashok Charan, who had done the earlier actuarial valuation was entrusted with the task to submit a valuation report in respect of the liabilities of the fund as on December 30, 2003. The report was submitted which was considered by the trustees of the fund on May 15, 2004 as also on July 28, 2004. That the second respondent took a decision for a second opinion to be furnished and accordingly appointed Mr.M.L.Sondhi, an actuary consultant, who estimated liabilities of the fund as on July 01, 2002 and April 01, 2007 as per a report dated September 13, 2007; bringing out that as of July, 2002 the under funded liabilities were to the extent of ₹1,253.54 crores. The trustees met on January 17, 2008 and examined the report to understand the difference between the amount indicated as the liability of the fund by M/s.Ashok Charan and Mr.M.L.Sondhi. The reason why the report submitted by Sh.M.L.Sondhi should be accepted were pleaded and it was highlighted that the respondent No.1 had guaranteed payment to meet any shortfall and thus it was prayed that a mandamus should be issued to the Government of NCT of Delhi to meet the shortfall in the corpus of the fund.

10. From a perusal of the pleadings in the writ petition we find that a passing reference has been made in paragraph 5, to Rule 6 of the Transfer Scheme. We simply highlight at this stage that the reference is to Rule 6 of the Delhi Electricity Reform (Transfer Scheme) Rules, 2001.

11. In the writ petition, as noted above, only the Government of NCT of Delhi and the Delhi Vidyut Board Employees Terminal Benefit Fund, 2002 were impleaded as the sole respondents, being respondent No.1 and

respondent No.2 respectively. The appellants of the three appeals: (i) Tata Power Delhi Distribution Ltd., (ii) BSES Yamuna Power Ltd., and (iii) BSES Rajdhani Power Ltd. were not impleaded as respondents in the writ petition.

12. The Government of NCT of Delhi filed CM No.734/2011 in the writ petition, invoking the provisions of Order I Rule 10 of the Code of Civil Procedure highlighting that if the writ petitioner succeeded, the three power companies would be adversely affected, and having not been impleaded as respondents, would entail a dismissal of the writ petition, and thus it was desirable to implead the three as respondents. It was pleaded that as per the Delhi Electricity Reforms Act, 2000, the Delhi Electricity Reforms (Transfer Scheme) Rules, 2001 and the tripartite agreement, the successor companies of Delhi Vidyut Board were liable to make contribution to the fund even for the past period. It was pleaded that in the decision reported as 2010 (IV) SCALE 546 K.R.Jain Vs. GNCTD & Ors., the Supreme Court held on May 03, 2010, that the transferee companies on unbundling of the Delhi Vidyut Board were liable to contribute to the fund.

13. The writ petitioner was advised by the counsel to oppose the application, pleading that the scope of the writ petition was restricted to the short funding by the Government of NCT Delhi towards the actuarial valuation and thus it was pleaded by the writ petitioner that the wider issue projected by the Government of NCT Delhi as arising for consideration in the writ petition was not arising.

14. CM No.734/2011 was allowed on September 05, 2011, clarifying that the stands of the Government of NCT Delhi and the writ petitioner qua impleadment of : (i) Tata Power Delhi Distribution Ltd., (ii) BSES Yamuna

Power Ltd., and (iii) BSES Rajdhani Power Ltd., was left open qua the scope of the writ petition. The three companies distributing electricity in Delhi were impleaded as respondent Nos.3 to 5. Three more companies named Delhi Transco Ltd., Genco (Indraprastha Power Generation Company) and DPCL (Delhi Power Company Ltd.) were impleaded as respondents No.6 to 8.

15. CM No.14539/2013 was filed by the writ petitioner thereafter praying to the Court that it may be permitted to insert paras 3A and 3B, after existing paragraph 3 of the writ petition; substitute existing paragraph 4 as proposed to be substituted; insert paragraph 4a and 4b thereafter; insert paragraphs 5A, 6A, 7A, 9A and 19A after existing paragraphs 5, 6, 7, 9 and 19 respectively; and after existing paragraph 24 insert paragraphs 24A to 24W. It was further prayed that after the existing grounds, grounds h to n as proposed may be permitted to be added and existing prayer (a) be substituted as proposed i.e. mandamus may be issued to respondents No.3 to 7 to fund the respondent No.2-fund.

16. A pen profile of the proposed amendments may now be drawn up.

17. Expanding upon paragraph 3 of the existing writ petition where it is simply pleaded that under the Delhi Electricity Reforms Act, 2000, the Delhi Vidyut Board was unbundled into statutory corporations, in proposed paragraph 3A sought to be inserted, Section 16 of the Delhi Electricity Reforms Act, 2000 has been sought to be pleaded by reproducing the same. The purpose is to focus the attention of the reader that as per Section 16, the transfer of the personnel of the Delhi Vidyut Board under a transfer scheme to a transferee company would be with the vesting of the properties as also rights and liabilities in the company as per the transfer scheme. In the

proposed to be inserted paragraph 3B, it is sought to be pleaded that to give effect to the Delhi Electricity Reforms Act, 2000, the first step was a Request for Qualification Documents for privatization of electricity in Delhi to be prepared, giving the status of the Delhi Vidyut Board and the manner of its privatization, which included transfer of past, present and future liabilities.

18. In the existing paragraph 4 of the writ petition where it is pleaded that a transfer scheme was notified in terms of Sections 15, 16 and 60 of the Delhi Electricity Reforms Act, 2000, the proposed to be changed paragraph has pleadings to the effect that the transfer scheme envisaged by the said Sections was given teeth statutorily in the form of the Delhi Electricity Reforms (Transfer Scheme) Rules, 2001, and of which Rules, Rule 6(8) and 6(9) were proposed to be pleaded by a verbatim reproduction thereof, to highlight that in all statutory schemes and employment related matters, which included terminal benefits, the relevant transferee shall stand substituted for the Delhi Vidyut Board in relation to the services of the personnel statutorily transferred to the transferee and that the Government of NCT of Delhi shall make appropriate arrangements as regards the funding to be made so that the existing pensioners are paid the dues and so are future pensioners. In the proposed to be incorporated paras 4a and 4b, it is sought to be pleaded that after the selection process of private bidders was completed a shareholder's agreement was executed with private companies, enjoining upon the successor companies to adhere to the provisions of the transfer scheme with further pleading that Delhi Vidyut Board was unbundled into six companies; being : (i) Discom 1 (BSES Yamuna Power Ltd.), (ii) Discom 2 (BSES Rajdhani Power Ltd.), (iii) Discom 3 (TATA

Power Delhi Distribution Ltd.), (iv) Transco (Delhi Transco Ltd.), (v) Genco (Indraprastha Power Generation Co.Ltd.), and (vi) DPCL (Delhi Power Company Ltd.). It is further pleaded that whereas DPCL holds 49% shares in Discom 1, Discom 2 and Discom 3 respectively, it holds 100% shares in Genco and Transco.

19. After the existing paragraph 5, wherein the tripartite agreement dated August 28, 2010 has been pleaded and a brief reference has been made to Rule 6 of the Delhi Electricity Reform (Transfers Scheme) Rules, 2001, and Clause 3(d) of the tripartite agreement has been highlighted to bring home the point that the Government of NCT of Delhi was obliged to make good the shortfall in the pension fund, in the proposed to be added paragraphs 5A, the pleadings are that the pension fund was created as a part of the power reform mechanism envisaged under the Delhi Electricity Reform Act, 2000 and the Delhi Electricity Reform (Transfers Scheme) Rules, 2001 and that the scheme of the Act of unbundling required assets as well as liabilities, actual and contingent, existing on the date of transfer to vests in the successor companies.

20. In the existing paragraph 6 of the writ petition, the mandate of Section 16 of the Delhi Electricity Reform Act 2000 and that of the tripartite agreement has been pleaded, and in the proposed to be inserted paragraph 6A, pleadings concerning the applicability and the mandate of law enshrined in Rule 6(8) and Rule 6(9) of the Delhi Electricity Reform (Transfer Scheme) Rules, 2001 are sought to be incorporated.

21. Existing pleadings in paragraph 7 of the writ petition are concerning the steps taken in terms of the tripartite agreement to appoint a consultant and create a corpus of the pension fund. Proposed to be inserted paragraph

7A seeks to introduce the pleading emanating from Rule 6(8) of the Delhi Electricity Reform (Transfer Scheme) Rules, 2001 concerning the liability of the successor companies. Interlinked pleadings qua the interplay of clause 3(d) (4) of the Tripartite Agreement are sought to be incorporated.

22. Existing para 9 of the writ petition contains pleadings regarding obligation of the first respondent, under the tripartite agreement, to pay a lump sum one-time payment in the pension fund, and the proposed to be added paragraph 9A seeks to plead that while creating the corpus certain expenditure such as medical reimbursement and LTC payments to the retired employees was not factored in.

23. The proposed to be inserted paragraph 19A is to make further pleadings with respect to the actuarial valuations as per the report dated September 13, 2007 in respect of which pleadings have been made in the existing paragraph 17 of the writ petition.

24. In the proposed to be inserted paragraph 24A to 24W, the amendments are that since the three Discoms have already been impleaded as respondents, the amounts which were claimed from them by the Government as per the various letters annexed as Annexure P-11 collectively are required to be paid by the companies to the fund. Pleadings are sought to be incorporated with respect to the decisions taken by the regulatory commission while fixing the tariff and factoring therein the liability of the three Discoms to contribute to the pension fund. Extracts from the tariff orders are sought to be pleaded verbatim.

25. As noted above, mirroring the further pleadings grounds h to n are sought to be incorporated and existing clause prayer (a) sought to be substituted as prayed for i.e. the mandamus to be issued to respondent

No.1 and respondents No.3 to 7 to jointly and severely fund the second respondent as per the latest actuary valuation.

26. In the writ petition the pleadings would evince that the case of the writ petitioner is that a decision was taken to privatize the generation, transmission and distribution of electricity in Delhi and for which the Delhi Electric Reforms Act, 2000 was promulgated. A reference has been made to various Sections of the Delhi Electric Reforms Act, 2000 to plead that the existing Delhi Vidyut Board, which hitherto fore was discharging the statutory obligation of generating, transmitting and distributing electricity in Delhi was to be wound up by the process of disinvestment and companies would take over the generation, transmission and distribution of electricity in Delhi. The statutory provisions regulated the transfer schemes to be framed concerning reconstruction and mandated that the scheme would specifically deal with the rights and liabilities comprised in the new companies which would be formed. The writ petition has heavily relied upon Section 15 and Section 16 of the Delhi Electric Reforms Act, 2000 and relevant would it be for us to note sub-Sections 3, 6, 7 and 9 of Section 15 and sub-Section 1 and sub-Section 2 of Section 16. They read as under:-

“15(3) Such of the rights and powers to be exercised by the Board under the Electricity (Supply) Act, 1948 (Central Act 54 of 1948), as the government may, by notification in the official gazette, specify, shall be exercisable by a company or companies established as the case may be, under Section 14, for the purpose of discharge of the functions and duties with which it is entrusted.

15(6) A transfer scheme may -

(a) provide for the formation of subsidiaries, joint venture, companies or other schemes of divisions, amalgamation, merger, reconstruction or arrangements;

(b) define the property, interest in property, rights and liabilities to be allocated -

(i) by specifying or describing the property, rights and liabilities in question,

(ii) by referring to all the property, interest in property, rights and liabilities comprised in a specified part of the transferor's undertaking, or

(iii) partly in one way and partly in the other:

Provided that the property, interest in property, rights and liabilities shall be subject to such further transfer as the government may specify;

(c) provide that any rights, or liabilities specified or described in the scheme shall be enforceable by or against the transferor or the transferee;

(d) impose on any licensee an obligation to enter into such written agreements with, or execute such other instruments in favour of any other subsequent licensee as may be specified in the scheme;

(e) make such supplemental, incidental and consequential provisions as the transferor licensee considers appropriate including provision specifying the order in which any transfer or transaction is to be regarded as taking effect;

(f) provide that the transfer shall be provisional subject to the provisions of Section 18.

15(7) All debts and obligations incurred, all contracts entered into and all matters and things done by, with or for the Board, or a company or companies established as the case may be, under

Section 14 or generating company or distribution company or companies before 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 government or the transferee and all suits or other legal proceedings instituted by or against the Board or transferor, as the case may be, may be continued or instituted by or against the government or concerned transferee, as the case may be.

15(9) The Board shall cease to exist with the transfer of functions and duties specified and with the transfer of assets as on the effective date.

x x x

(1) The government may by a transfer scheme provide for the transfer of the personnel from the Board to a company or companies established as the case may be, under Section 14 and distribution companies (hereinafter referred to as "transferee company or companies") on the vesting of properties, rights and liabilities in a company or companies established, as the case may be, under Section 14 or the distribution companies.

(2) Upon such transfers the personnel shall hold office in the transferee company on terms and conditions that may be specified in the transfer scheme subject, however, to the following, namely:

(a) that the terms and conditions of the service applicable to them in the transferee company shall not in any way, be less favourable than or inferior to those applicable to them immediately before the transfer;

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

(c) that the benefits of service accrued before the transfer shall be fully recognized and taken in account for all purposes including the payment of any and all terminal benefits."

27. In the writ petition a passing reference has been made to the Delhi Electricity Reforms (Transfer Scheme) Rules, 2001 with respect to the pleading that the said Rules were to give flesh and blood to the skeleton structure provided by the Delhi Electricity Reforms Act, 2000. A brief reference has been made to Rule 6.

28. Relevant would it be for us to highlight clauses b, c, h and k of Rule 2, sub-Rule 2 of Rule 3 and sub-Rule 8 and 9 of Rule 6 of the Rules, which read as under:-

“(b) "assets" includes all rights, interests and claims of whatever nature as well as block or blocks of assets of the Delhi Vidyut Board;

(c) "Board" means the Delhi Vidyut Board constituted under Section 5 of the Electricity (Supply) Act, 1958 (54 of 1948);

(h) "DISCOMS" means and includes DISCOM 1, DISCOM 2 and DISCOM 3 collectively.

(k) "liabilities" include all liabilities, debts, duties, obligations and other outgoings including contingent liabilities, statutory liabilities and government levies of whatever nature, which may arise in regard to dealings before the date of the transfer in respect of the specified undertakings;

x x x

3(2) Nothing in Sub-rule (1) shall apply to rights, responsibilities and obligations in respect of the personnel and personnel related matters, which have been dealt in the manner provided under Rule 6.

x x x

6(8) Subject to Sub-rule (9) below, in respect of all statutory and other schemes and employment related matters, including the

provident fund, gratuity fund, pension and any superannuation fund or special fund created or existing for the benefit of the personnel and the existing pensioners, the relevant transferee shall stand substituted for the Board for all purposes and all the rights, powers and obligations of the Board in relation to any and all such matters shall become those of such transferee and the services of the personnel shall be treated as having been continuous for the purpose of the application of this sub-rule.

6(9) The government shall make appropriate arrangements as provided in the tripartite agreements in regard to the funding of the terminal benefits to the extent it is unfunded on the date of the transfer from the Board. Till such arrangements are made, the payment falling due to the existing pensioners shall be made by the TRANSCO, subject to appropriate adjustments with other transferees.

For the purpose of this sub-rule, the term -

(a) "existing pensioners" mean all the persons eligible for the pension as on the date of the transfer from the Board and shall include family members of the personnel as per the applicable scheme; and

(b) "terminal benefits" mean the gratuity, pension, dearness and other terminal benefits to the personnel and existing pensioners."

29. Meaningfully read, the pleadings in the writ petition bring out that when the Government was contemplating unbundling of the Delhi Vidyut Board for handing over the generation, transmission and distribution of electricity to companies, the erstwhile employees of the Delhi Vidyut Board expressed apprehension and reservation regarding their service conditions and therefore the Union was taken into confidence. The assurance of

service conditions being protected was reduced into writing when a tripartite agreement dated October 28, 2000 was executed.

30. Focusing in the writ petition that the Government of NCT of Delhi had undertaken to fund any shortfall in the pension fund which was created, there is a passing reference to the proportionate burden being passed on to the successor companies and for which we may highlight that in paragraph 20 of the writ petition it has been specifically pleaded that though the responsibility of the corporate entities and the trust, the Government of NCT of Delhi has specifically guaranteed that terminal benefits shall be paid to the employees of the erstwhile Delhi Vidyut Board.

31. If we focus on the pleadings of paragraph 19 of the writ petition it would be apparent that there are pleadings concerning events up to the year 2008 with reference to actuarial valuation reports concerning the liabilities concerning terminal benefits payable to the employees of the erstwhile Delhi Vidyut Board and the matter being under consideration as to which actuarial valuation report needs to be accepted and what amount needs to be quantified to augment the fund.

32. The proposed amendments seek to expand upon the somewhat brief pleadings in the writ petition to bring out that after the Delhi Electric Reforms Act, 2000 and the Delhi Electricity Reforms (Transfer Scheme) Rules, 2001 were promulgated, as a first step of privatization, the Request for Qualification (RFQ) documents for privatization of electricity distribution in Delhi were floated, giving in detail the status of the Delhi Vidyut Board, and the manner of privatization thereof, wherein it was specifically brought to the notice of the bidders that Delhi Vidyut Board was being offered to private companies as a going concern on business valuation

method, transferring all the past, present and future liabilities including that of existing employees as well as the retirees. The transfer scheme was notified on November 21, 2001, under which the distribution companies, generation, transmission and holding companies were identified, and as regards distribution 3: Discom 1, Discom 2 and Discom 3 were notified.

33. There are various schedules attached to the scheme 2001 and we find that the distribution undertaking, its assets, liabilities and proceedings concerning the distribution are specified in Part III in Schedule H.

34. Whilst it may be true that the three Discoms as also Genco, Transco and the holding company have not been impleaded as respondents, but there are specific averments in paragraph 20, as noted above, that the said transferee company have to share the burden, notwithstanding the Government of NCT of Delhi standing guarantee to make good any shortfall in the fund. In other words there are brief pleadings in the writ petition that the principal liability is that of the six transferee companies which came into being when Delhi Vidyut Board was unbundled.

35. It is apparent that this was the foundation when CM No.734/2011 was allowed by the learned Single Judge, without giving reasons as to why the application was allowed, vide order dated September 05, 2011 impleading the six companies which took over the assets and liabilities of Delhi Vidyut Board on it being unbundled, as per the schedule of the scheme of unbundling were impleaded.

36. The decision to implead the six successor companies as respondents was premised on the language, though no expressly stated in the order, of Order I Rule 10 (2) of the Code of Civil Procedure which enjoins upon a Court to implead a party in a suit whose presence before the Court would be

necessary in order to enable the Court to effectually and completely adjudicate upon and *settle all the questions involved in the suit*, and for which determination the Court had kept in mind the interest of the successor-in-interest companies with respect to the pleadings of the existing parties; and the interest being of a kind which required their presence.

37. Why the three appellants and three other companies which were the successor-in-interest of the Delhi Vidyut Board were impleaded as respondents was that keeping in view the pleadings in the writ petition filed by the first respondent it was imperative that they should be impleaded as respondents inasmuch as if the mandamus was issued in the writ petition as prayed for the right and interest of the said six companies was likely to be affected inasmuch as the second respondent could have called upon the six companies to make proportionate contributions to augment the fund. The Government of NCT of Delhi which had guaranteed to make good any shortfall in the fund was obviously interested that the said six companies should be impleaded as respondents, and we find that in the application filed by the Government of NCT of Delhi to seek impleadment of the six companies it was pleaded that the principal liability to make good any shortfall in the fund is that of the six successor companies when Delhi Vidyut Board was unbundled. The importance of the amendments prayed for has thus to be understood with reference to the law to implead a party in a pending litigation keeping in view the possibility of the interest of the party concerned which may be effected by a decision taken, and we simply highlight that it would then become imperative for the Court to ensure that parties amend their respective pleadings so as to enable the Court to

effectively settle all the issues which arise for consideration and affecting the right or interest of the parties.

38. It also must not be lost sight of that the six companies were impleaded way back in the year 2011, under an order which was not appealed against and hence has attained finality.

39. That apart, as we have already highlighted thrice above, in paragraph 20 of the writ petition there are pleadings that to make good any shortfall in the corpus of the second respondent-fund the responsibility was that of the six successor-in-interest companies to make good the shortfall in the fund.

40. It would have been a quixotic situation if the six successor-in-interest companies were impleaded as respondents but without clarificatory pleadings post their impleadment and thus to remove the dreamy situation which had come into being, the dawn of awakening warranting the sun to rise by illuminating, so that the six newly impleaded respondents could be clearly shown, what issues of law and fact were in focus requiring a response from them. It is trite that purpose of pleadings is to bring out the stand of the parties with clarity so that each knows the stand of the other and is not taken by surprise as held in the decision reported as (2008)17 SCC 491 Bachhaj Nahar vs. Nilima Mandal & Anr.; (1998) 8 SCC 315 D.M. Deshpande & Ors. Vs. Janardhan Kashinath Kadam and (1987) 2 SCC 555 Ram Sarup Gupta Vs. Bishun Narain Inter College & Anr.

41. While discussing the importance of stating clear pleadings with regard to any party in a litigation, the Supreme Court in Bachhaj Nahar's case (supra) held as follows:

“12. The object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being

shifted during trial. Its object is also to ensure that each side is fully alive to the questions that are likely to be raised or considered so that they may have an opportunity of placing the relevant evidence appropriate to the issues before the court for its consideration. This court has repeatedly held that the pleadings are meant to be given to each side intimation of the case of the other so that it be met, to enable courts to determine what is really at issue between the parties, and to prevent any deviation from the course which litigation on particular causes must take.”

42. In addition to the general law of pleadings stated above, the Court has a duty to ensure that pursuant to an impleadment under Order 1 Rule 10(2), relevant pleadings stating the case against the newly added parties is included by way of an amendment by the plaintiff/petitioner under Sub-rule 4 of Rule 10 of Order II of the Code of Civil Procedure, which reads as under:-

“Where a defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the Court thinks fit, on the original defendant.”

43. The High Court of Andhra Pradesh had an occasion to render a decision with respect to Order 1 Rule 10 (4) of the Code of Civil Procedure. The opinion is reported as 1993 (3) ALT 44 S.V. Krishna Reddy Vs. S. Mariam Bee.

44. The plaintiff was seeking specific performance of an agreement to sell against the Defendant No.1, who had entered into a partition with Defendant No.2 to 4 with respect to the suit property. The plaintiff sought to add Defendant No.2 to 4 as parties and contended that there cannot be a

joint family among Muslims and that the partition deed was a sham. Accordingly, the plaintiff sought amendment of his reliefs in the plaint. The High Court set aside the order of the Subordinate judge disallowing the impleadment and the amendment and placing reliance on Order 1 Rule 10(4) allowed the amendment in the reliefs in addition to the impleadment.

45. Thus, the writ petitioner was even otherwise obliged to amend the writ petition in view of the fact that the six successor-in-interest entities when Delhi Vidyut Board was unbundled were impleaded as respondents vide order dated September 05, 2011 when CM No.734/2011 filed by the Government of NCT of Delhi was allowed. Not having done so might have given cause for the six companies to contend that though they have been made parties, the pleadings in the writ petition do not make out a sufficient case against them. Alternatively, if the case against the six companies was argued on the existing pleadings, it could have been attacked on the ground that the arguments are outside the pleadings. Looked at from any angle, it was imperative for the petitioner to suitably amend its petition so that the newly impleaded parties were made aware of the case they have to meet.

46. It may be true that the writ petitioner opposed the application filed by the Government of NCT of Delhi seeking impleadment of the six successor-in-interest of the Delhi Vidyut Board by taking a stand that it was claiming a relief only against the Government of NCT of Delhi, but that would be a legal stand ill-advisedly taken on wrong legal advice given by the counsel, and it is trite that a party would not be bound by a wrong legal advice given by the counsel as held in the decision reported as 157 (2009) DLT 267 Purchasing Management International Vs. Rajat Pandhi & Anr.

47. In the decision reported as (2002) 3 SCC 605 in Fritiz T.M. Clement & Anr. Vs. Sudhakaran Nadar, the Supreme Court held that where the plaint was rather cryptic and lacking in relevant particulars, though the basic case had been set out, it is apparent that the plaint has been drafted causally and without care, for which the party should not be penalized.

48. With respect to the nature of the pleadings sought to be incorporated post amendment, we find that the amendments made are of two-fold nature : firstly, to amplify the averments made in the writ petition and secondly, to add subsequent facts and events. It is settled law that in both cases, amendments ought to be normally allowed.

49. In the decision reported as (2007) 6 SCC 737 Ramchandra Sakhamam Mahajan Vs. Damodar Trimbak Tanksale it was held that where an amendment sought for would enable the Court to pin pointedly consider the real dispute between the parties and would enable it to render a decision more satisfactorily to its conscience, it ought to be allowed, even if belated. To the same effect is the law declared in the decision reported as (2002) 5 SCC 175 Jayanti Roy Vs. Dass Estate Pvt. Ltd., where the Supreme Court, setting aside the decision of the High Court dismissing a revision petition filed against the order passed by the Trial Court disallowing an application to amend the pleadings, observed that where the appellant sought to *explain* the nature of her possession and occupation by way of the amendment, the same ought to have been allowed.

50. The well settled principles mentioned above were elucidated by the Supreme Court in the decision reported as (2006) 6 SCC 498 Baldev Singh Vs. Manohar Singh in the following words:

“8. It is well settled by various decisions of this Court as well as the High Courts in India that Courts should be extremely liberal in granting the prayer for amendment of pleadings unless serious injustice or irreparable loss is caused to the other side. In this connection, reference can be made to a decision of the Privy Council in Ma Shwe Mya v. Maung Mo AIR 1922 PC 249 in which the Privy Council observed:

All rules of courts are nothing but provisions intended to secure the proper administration of justice and it is, therefore, essential that they should be made to serve and be subordinate to that purpose, so that full powers of amendment must be enjoyed and should always be liberally exercised, but nonetheless no power has yet been given to enable one distinct cause of action to be substituted for another, nor to change by means of amendment, the subject-matter of the suit.

8. Keeping this principle in mind, let us now consider the provisions relating to amendment of pleadings. Order 6, Rule 17 of the Code of Civil Procedure deals with amendment of pleadings which provides that the Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. A bare perusal of this provision, it is pellucid that Order 6 Rule 17 of the Code of Civil Procedure consists of two parts. The first part is that the Court may at any stage of the proceedings allow either party to amend his pleadings and the second part is that such amendment shall be made for the purpose of determining the real controversies raised between the parties. Therefore, in view of the provisions made under Order 6, Rule 17 of the Code of Civil Procedure it cannot be doubted that wide power and unfettered discretion has been conferred on the Court to allow amendment of the pleadings to a party in such manner and on such terms as it appears to the Court just and proper. While dealing with the prayer for amendment, it would also be necessary to keep in mind that the Court shall allow amendment of pleadings if it finds that delay

in disposal of suit can be avoided and that the suit can be disposed of expeditiously.”

51. On the subject of incorporating subsequent facts by amending an existing pleading, arose as an issue in the decision reported as (1984) 3 SCC 352 Vineet Kumar Vs. Mangal Sen Wadhera. The respondent/plaintiff had filed a suit for eviction and arrears of rent on the ground that building in question was not covered under the Rent Control legislation as ‘new buildings’ were exempted under the Act. The exemption expired during the pendency of the litigation. The appellant sought to amend the pleadings and seek benefit of the same. Relying upon an earlier decision reported as (1975) 1 SCC 770 Pasupuleti Venkateswaralu Vs Motor and General Traders, the Court observed:

“15...It is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding. Equally clear is the principle that procedure is the handmaid and not the mistress of the judicial process. If a fact, arising after the lis has come to court and has a fundamental impact on the right to relief for the manner of moulding it, if brought diligently to the notice of the tribunal it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equity justifies bending the rules of procedure, where no specific provision or fairplay is not violated, with a view to promote substantial justice-subject of course to the absence of other disentitling factors or just circumstances, Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial Court. If the litigation pends the power exists, absent other special circumstances repelling resort to that course in law or justice. Rulings on this point are legion, even as situations for applications of this equitable rule are myriad. We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities the Court can, and in many

cases must, take cautious cognizance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed.”

52. The Supreme Court allowed the appellant to take benefit of the subsequent facts opining that where the amendment does not constitute an addition of a new cause of action, or raise a new case, but amounts to no more than adding to the facts already on record, the amendment should be allowed.

53. It is also no longer *res integra* that amendments under Order 6 Rule 17 can be allowed ‘at any stage’ as held in the decision reported as (2002) 7 SCC 559 *Sampath Kumar Vs. Ayyakannu* where a relevant amendment was allowed even after 11 years of institution of the suit, in order to avoid multiplicity of suits.

54. There is another important facet that compels us to allow the amendments sought by the writ petitioner. In adjudicating a writ petition, strict rules of the Code of Civil Procedure do not apply, only the broad principles of the provisions enshrined therein are applicable, such as amendment of pleadings, impleadment of necessary and proper parties, res-judicata, etc. It is also not gainsaid that the power of the writ court is wide and discretionary, though of course has to be reasonably exercised. Thus, where the amendments sought to be made are germane to the issue and assist in adjudicating on the issues raised, they ought to be allowed. This is precisely the situation in the present case.

55. In the decision reported as 1994 (4) AD (Delhi) 221 Scindia Potteries and Services Ltd Vs. Deputy Land and Development Officer it was observed as follows:

“9. The answer is simple. There is nothing in Article 226 of the Constitution to preclude a High Court from exercising such power which avoids if possible, a multiplicity of judicial proceedings and since a High Court ought not to decide a writ petition under Article 226 of the Constitution without the person who would be vitally affected by its judgment being before it as a respondent, such person may appear at the hearing or make a prior application and ask for leave to join the proceedings and when it so happens the Court shall, notwithstanding Section 141 of the Code and despite there being no rule of the High Court in that direction, in exercise of its inherent powers on the analogy of Order 1 Rule 10 of the Code, and following the general principles of justice proceed to make him a respondent.”

56. Similarly in the decision reported as 129 (2006) DLT 314 Larsen and Tourbo Ltd. Vs. UOI, it was held:

“8. It is trite that the provisions of CPC do not strictly apply to the writ proceedings but the principles contained therein are persuasive and relevant and must be kept in view. Civil suits are restricted to a determination of the rights of the parties before the court. Writ proceedings have much wider dimension since the State or the Authority or the body against which the Orders are directed, must be seen as having failed in performing a public function. Almost in every conceivable case where the State enters in a contract, especially those which have a commercial content, another citizen or party would be directly or indirectly affected. What has to be seen in writ proceeding is whether the rights of the applicants/intervenors are more likely than not to be directly affected by the outcome. Learned counsel for the petitioner has soundly contended that it

is really the interim Order which is adversely touching the applicant. This is also the stand taken by the learned Counsel for the state of Orrisa.

9. The legally pragmatic solution, therefore would be to direct the State Government to process and decide the Neepaz application for the grant of a mining lease without any apprehension that such a action would violate the interim orders of this court. This solution is, however, not acceptable to the learned Counsel for the Petitioner. If that is so, then there appears to be no alternative other than impleading Neepaz in these proceedings.”

57. The same view was echoed by a Division Bench of this Court in the decision reported as 135 (2006) DLT 414 (DB) Ex.Rect./GD Vinod Kumar Vs. Union of India & Ors. where the Court held that the provisions of Section 16-20 CPC would not be applicable to writ jurisdiction *strict senso*; writ proceedings are only governed by principles analogous to those contained in the Code of Civil Procedure.

58. Regarding the contention that the amendments prayed for cannot be allowed because the cause of action sought to be introduced was time barred, we leave the issue open for the reason it is trite that a proceeding against a party would be deemed to be instituted when a party is impleaded in a pending proceedings and unless directed to be retrospective, and for which Section 21 of the Limitation Act, 1963 may be referred to. It would be open to the appellants to take a defence of the bar of limitation, and if raised it would be open to the writ petitioner to rely upon the decisions reported as (2008) 13 SCC 213 Kusumam Hotels Pvt. Ltd. Vs. Kerela State Electricity Board and (2007) 5 SCC 447 Southern Petrochemical Industries

Co. Ltd. Vs. Electricity Inspector & Etio wherein it was held that statutory dues are not subject to the law of limitation for recovery. It would be open to the writ petitioner to plead with reference to the statutory provisions of the Delhi Electric Reforms Act, 2000 and the Delhi Electricity Reforms (Transfer Scheme) Rules, 2001 to urge that the dues have a statutory flavour, and needless to state said issue would be decided by the learned Single Judge.

59. Accordingly, we dismiss the appeals but without any order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

JANUARY 27, 2015
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