

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE M.S.K. JAISWAL

Writ Petition Nos.16330, 16504, 16660, 16849, 16886, 16984, 17059,
17061, 17141, 17164, 17178, 17182, 17198, 17199, 17202, 17207, 17209,
17210, 17212, 17213, 17383, 17481, 17714, 17963, 17994, 18153, 19180,
and 30013 of 2015; 37417, 38634 and 40438 of 2017

DATED:02-02-2018

W.P. No.16330 of 2015

Between:

P.B. Karunakar
and others

... Petitioners

And

The State of Telangana
Rep. by its Principal Secretary to Government
Department of Energy, Government of Telangana,
Secretariat, Hyderabad
and others ... Respondents

COUNSEL FOR THE PETITIONERS:

Sri Vedula Venkata Ramana, Senior Counsel, for M/s. Bharadwaj
Associates
Sri C.V. Mohan Reddy, Senior Counsel, for Sri C. Suman
Sri D.V. Sitarama Murthy, Senior Counsel, for Mr. N. Ashwani
Kumar
Dr. K. Lakshmi Narasimha
Sri S.S. Bhatt
Sri C. Raghu
Sri. M. Srinivasulu, Party-in-person
Sri S.S. Meera, Party-in-person

COUNSEL FOR THE RESPONDENTS:

Sri D. Prakash Reddy, Advocate General (TS) and
Sri G. Vidyasagar, Senior Counsel,
Sri Dammalapati Srinivas, Advocate General (AP)
(for the petitioners in W.P. Nos.17963, 17994 and
And 18153 of 2015)

THE COURT MADE THE FOLLOWING:

COMMON JUDGMENT:*(per the Hon'ble Sri Justice C.V. Nagajuna Reddy)*

This batch of writ petitions involves disputes pertaining to allocation of employees of the power sector undertakings (for short, “the power utilities”) in the States of Telangana and Andhra Pradesh. The disputes arose in the wake of the division of the erstwhile State of Andhra Pradesh into two States, namely, the State of Telangana and the residuary State of Andhra Pradesh.

2. Before proceeding further, it is necessary to refer to the details of the writ petitions hereunder.

W.P. Nos.16330, 16504, 16984, 17059, 17141, 17481 and 17714 of 2015 have been filed by the employees of the Southern Power Distribution Company of Telangana Limited (TSSPDCL), who are 288 in number in all these writ petitions together, *inter alia* to declare Letter No.686/HR.A1/2015, dt.6.6.2015, issued by the Government of Telangana, unilaterally approving guidelines for final allocation of the employees based on nativity of employees as per Service Register (initial cadre/appointment orders); the consequential list prepared based on such guidelines, vide Lr.No.CMD/TSTRANSCO/CGM(HRD)/DS(P,L,IR&R/CC. D. No.1586-5/2015, dated 9.6.2015, of the Chairman &

Managing Director, Transmission Corporation of Telangana Limited (TSTRANSCO) and Generation Corporation of Telangana Limited (TSGENCO), and Memo No.CGM (HRD)/GM(Adm.IR&L) AS(Estt.)PO-Estt/547-D2/15, dated 10.6.2015 of TSSPDCL relieving the petitioners as illegal, arbitrary, unconstitutional and contrary to the provisions of the Andhra Pradesh Reorganisation Act, 2014 (hereinafter referred to as, “the Reorganisation Act”) and to set aside the same and also to direct the respondents to continue the petitioners in TSSPDCL in their respective places with all consequential benefits. Similarly, W.P. Nos.17164, 17198, 17199, 17202, 17207, 17209, 17210, 17212 and 17213 of 2015 have been filed by the employees of the TSNPDCL, who are 75 in number; W.P. Nos.16660, 17182, and 30013 of 2015, have been filed by the employees of the TSTRANSCO, who are 197 in number; and W.P. Nos.16849, 16886, 17061, 17178, 17383 and 19180 of 2015 have been filed by the employees of TSGENCO, who are 457 in number, mainly aggrieved by the aforesaid Letter dt.6.6.2015 of the Government of Telangana and the consequential orders dt.9.6.2015 and 10.6.2015 of the Telangana State power utilities, seeking the similar prayer as referred to above.

3. The APTRANSCO filed W.P. No.17963 of 2015 aggrieved by Letter dt.6.6.2015 of the Government of Telangana as well as the consequential orders passed by the TSTRANSCO on 9.6.2015 and 10.6.2015 and to declare the same as illegal, arbitrary, contrary to the Reorganisation Act and also without jurisdiction, and for a consequential direction to the TSTRANSCO to constitute a joint committee along with the petitioner as ordained in the Meeting held on 20.3.2015 in the presence of Additional Secretary, Ministry of Home Affairs, Government of India. The APGENCO filed W.P. No.17994 of 2015 aggrieved by Letter dt.6.6.2015 of the Government of Telangana, and the consequential proceedings issued in TGOO No.92/CGM/A, IS & ERP)/2015, dt.10.6.2015 of the TSGENCO and to declare the same as illegal, arbitrary, contrary to the Reorganisation Act as well as the Minutes dt.20.3.2015 of inter se parties, and set aside the same and to direct the Union of India to issue necessary directions to the State of Telangana and TSGENCO to abide by the Minutes dt.20.3.2015 in all aspects. W.P. Nos.18153 of 2015 is filed by APSPDCL and APEPDCL to declare the action of State of Telangana, TSSPDCL and TSNPDCL in issuing proceedings vide Letter dt.6.6.2015 of the Government of Telangana and

consequential orders dt.09.6.2015 and 10.06.2015 of TSSPDCL and 'TSNPDCL, as illegal, null and void and contrary to the provisions of the Reorganisation Act and to direct TSSPDCL to constitute a Joint Committee along with the petitioners as ordained in the meeting held on 20.3.2015 in the presence of the Additional Secretary to Government of India, Ministry of Home Affairs, to determine the modalities for division of the employees.

4. W.P. No.37417 of 2017 is filed by one of the employees of the APTRANSCO to declare the action of the respondents in not declaring her as local candidate belonging to the State of Telangana and also to declare the action of respondents Nos.1 to 3 in the writ petition in not relieving her to join in the TSTRANSCO, Hyderabad, as illegal and arbitrary, and for a direction to the said respondents to relieve her forthwith and also for a direction to the TSTRANSCO to permit her to join duty in TSTRANSCO, Hyderabad. W.P. Nos.38634 and 40438 of 2017 have been filed by employees, 46 in number in all, of APSPDCL to declare the action of the TSSPDCL and its Chief General Manager (HRD) in not allowing them to submit the options on par with other employees in terms of the order dt.3.11.2017 in W.P. No.16504 of 2015 and batch as illegal,

arbitrary and contrary to the order dt.17.06.2014 in W.P. No.15678 of 2014 and consequently to direct the TSSPDCL and its CGM(HRD) to permit them to submit their options on par with other employees.

For convenience, the employees who filed the writ petitions are referred to as the petitioners/employees.

5. The background facts leading to these disputes are summarized hereunder: In the undivided State of Andhra Pradesh, the Andhra Pradesh State Electricity Board (for short, “the Board”) was created under the provisions of the Electricity (Supply) Act, 1948 (hereinafter referred to as “the Electricity Supply Act”). The Board was carrying on the activities of generation, transmission, distribution and supply of electricity to its consumers. The employees connected with all these activities were working under the administrative control of the Board in the various parts of the State of Andhra Pradesh. The State of Andhra Pradesh was one of the few States which has introduced electricity reforms by enacting the Andhra Pradesh Electricity Reform Act, 1998 (hereinafter referred to as “the Electricity Reform Act”). The Electricity Reform Act provided for formation of separate companies for generation, transmission, distribution and supply by unbundling the

activities of the Board. As a first step towards this direction, the Board was divided into two companies, namely, A.P. Transmission Corporation (APTRANSCO) and A.P. Generation Corporation (APGENCO) with effect from 01.02.1999. The APGENCO was entrusted with the activity of power generation and the APTRANSCO with transmission, distribution and supply. With effect from 1.4.2000 the APTRANSCO was further unbundled with the incorporation of four distribution companies, namely, A.P. Central Power Distribution Company Limited (APCPDCL), A.P. Southern Power Distribution Company Limited (APSPDCL), A.P. Eastern Power Distribution Company Limited (APEPDCL) and A.P. Northern Power Distribution Company Limited (APNPDCL). While the activity of transmission alone was retained with the APTRANSCO, the four distribution companies were entrusted with the functions of distribution and supply of electricity to the end consumers. The employees working in the erstwhile A.P.State Electricity Board were allotted to the respective organizations on permanent basis and had been working under the control of their respective organizations.

6. Under the Reorganisation Act, the State of Telangana has been carved out of the undivided State of Andhra Pradesh. Ten out of twenty-three Districts have been included in the State of Telangana and the remaining thirteen Districts were included in the residuary State of Andhra Pradesh. Three villages, viz., Bhurgampadu, Seetharamanagaram and Kondreka in Bhurgampadu Mandal in Khammam District, which was made part of the State of Telangana, have been included in the State of Andhra Pradesh. The Reorganisation Act has received the assent of the President on 01.03.2014 and the same came into force with effect from 04.03.2014. Under Section 3 of the Reorganisation Act, the State of Telangana was formed on and from the appointed day, i.e, 02.06.2014, the day on which the notification to that effect, was issued in the Official Gazette. In this context, the salient features of the Reorganisation Act, which are relevant for the purpose of the present cases, are briefly referred hereunder.

7. Hyderabad is made common capital for both the States for a period not exceeding ten years from the appointed day. The Reorganisation Act envisaged a new capital for the State of Andhra Pradesh. The Governor shall be the common Governor for both the States for such period as may be

determined by the President. The existing High Court is renamed as the High Court of Judicature at Hyderabad and made the common High Court for both the States till a separate High Court is constituted for the State of Andhra Pradesh. The Judges of the High Court are treated as the Judges of the common High Court. Part VI of the Act provided for apportionment of assets and liabilities between the two States. Part VII pertains to the provisions as to the Corporations included in the Ninth Schedule. The provisions from Sections 68 to 75 of the Reorganisation Act fall under this part. Under Section 68, the companies and the corporations specified in the Ninth Schedule constituted for the existing State of Andhra Pradesh shall, on and from the appointed day, continue to function in those areas in respect of which they were functioning immediately before that day and the assets, rights and liabilities of these companies and the corporations shall be apportioned between the successor States in the manner provided in Section 53 of the Reorganisation Act. Section 68(1) falling under Part-VII (Provisions as to certain corporations) provided that companies and corporations specified in the Ninth Schedule constituted for the existing State of Andhra Pradesh shall, on and from the appointed day,

continue to function in those areas in respect of which they were functioning immediately before that day, under sub-section (2) thereof, the assets and liabilities of the companies and corporations referred to in sub-section (1) shall be apportioned between the successor States in the manner provided in section 53.

8. Part VIII deals with the provisions as to services. Under this part, separate provisions have been made for the All India Service Officers and the persons falling under other services in connection with the affairs of the existing State of Andhra Pradesh. Section 76 deals with the All India Services while Section 77 pertains to the employees serving in connection with the affairs of the existing State of Andhra Pradesh. For these categories, the power of fixation of cadre strength, composition and allocation of officers was vested in the Central Government. As regards the employees of the public sector undertakings, which include the power utilities involved in these writ petitions, Section 82 made a separate provision. Sections 68 and 82, which deal with the distribution of assets and the employees of the undertakings specified in the Ninth Schedule relevant for the present case, read as follows:

“68. Provisions for various companies and corporations:- (1) The companies and corporations specified in

the Ninth Schedule constituted for the existing State of Andhra Pradesh shall, on and from the appointed day, continue to function in those areas in respect of which they were functioning immediately before that day, subject to the provisions of this section.

(2) The assets, rights and liabilities of the companies and corporations referred to in sub-section (1) shall be apportioned between the successor States in the manner provided in section 53.”

“82. Provision for employees of Public Sector Undertakings etc.:- On and from the appointed day, the employees of State Public Sector Undertakings, corporations and other autonomous bodies shall continue to function in such undertaking, corporation or autonomous bodies for a period of one year and during this period the corporate body concerned shall determine the modalities for distributing the personnel between the two successor States.”

Section 92 of the Act falling under Part X relating to Infrastructure and Special Economic Measures, which has a bearing on the issues involved in these cases, reads as follows:

“92. Successor States to follow principles, guidelines, etc., issued by Central Government: - The principles, guidelines, directions and orders issued by the Central Government, on and from the appointed day, on matters relating to coal, oil and natural gas and power generation, transmission and distribution as enumerated in the Twelfth Schedule shall be implemented by the successor States.”

9. The Twelfth Schedule is divided into three divisions; i.e., A – Coal, B – Oil and Gas, and C - Power. Clauses 1 to 7 of Division C relating to power *inter alia* deal with the division of assets and infrastructure of generation, transmission and load dispatch centre. Clause 8, which is relevant for the present purpose, reads as follows:

“8. The districts of Anantapur and Kurnool which fall within the jurisdiction of the AP Central Power Distribution Company

Ltd. will now be reassigned to the AP South Power Distribution Company Ltd.”

10. We shall now discuss the measures taken by the undivided State of Andhra Pradesh before the appointed day. The name of the Central Power Distribution Company of Andhra Pradesh was changed as Southern Power Distribution Company of Telangana Limited, under a certificate of incorporation issued by the Registrar of Companies, Hyderabad, on 27.05.2014. G.O. Ms. No.24, Energy (CC) Department, dt.29.05.2014, was issued re-assigning the distribution business of Anantapur and Kurnool Districts which fell within the residuary State of Andhra Pradesh under Clause - C of the Twelfth Schedule. Under this G.O., apart from reassigning the assets and liabilities of the erstwhile APCPDCL situated in the two Districts of Anantapur and Kurnool, various other measures were taken, which include reassigning of sanctioned posts in various offices like, Circle Office, Division Office, Sub-Division Office etc. situated in the said two Districts to APSPDCL and apportionment of sanctioned posts of the Kurnool Zonal Office to APSPDCL and TSSPDCL and also the sanctioned posts of the erstwhile APCPDCL Corporate Office.

11. The undivided State of Andhra Pradesh issued G.O. Ms. No.25, dt.29.05.2014 which *inter alia* provided as follows: (i) Transfer of functions presently being carried out by APGENCO in the area of Telangana State to TGGENCO from the effective date. (ii) Transfer of Power Plants (Thermal, Hydel and Solar) located in Telangana Region to TGGENCO on as is where is basis as per clause C1 of the Twelfth Schedule read with Section 92 of the Reorganisation Act. (iii) Division of sanctioned Technical posts at Headquarters among Thermal and Hydel Projects as per the original sanction of posts in APGENCO. (iv) Transfer of all sanctioned posts for Telangana Region Projects located in Telangana State to TGGENCO with effect from the effective date. (v) Principles were laid down for division of posts at APGENCO Head Quarters in respect of sanctioned technical posts and sanctioned common services posts at Head Quarters. (vi) The Transfer of employees between two GENCOs to be made following the guidelines meant for Government employees and continuance of employees and all the staff working at various Plants/Locations and Training Institute at Dr.NTTPS as on the effective date pending such transfer.

12. The undivided State of Andhra Pradesh also issued G.O. Ms. No.26, dt.29.05.2014 and G.O. Rt. No.223, dt.30.5.2014. Under the former G.O., a separate TRANSCO was created for the State of Telangana while continuing the APTRANSCO for the residuary State of Andhra Pradesh with effect from 02.06.2014. The functions carried out by the APTRANSCO in the area of Telangana stood transferred to TSTRANSCO. The assets and liabilities were also transferred to the two TRANSCOs. Clause 2 of the said G.O. authorized the “CMD of APTRANSCO” to take further necessary action for transfer of functions, assets, liabilities, posts and employees to TSTRANSCO. Under G.O. Rt. No.223, dt.30.5.2014, a Three-Member Expert Committee headed by Smt. Sheela Bhide, IAS (Retd.) was constituted for ensuring preparation of demerger plan for equitable transfer of assets and liabilities.

13. The erstwhile APCPDCL issued C.O.O.CGM (HRD) MS. No.318, dt.31.05.2014 to give effect to G.O. Ms. No.24, dt.29.5.2014. The said proceedings provided that all the employees working in Anantapur and Kurnool Districts will continue in the same places till the final allotment of employees to the respective DISCOMs is completed. Accordingly, various cadres of personnel were identified and they were provisionally

allotted to their respective places of working on “provisional order to serve” basis. A separate proceeding vide C.O.O.COM (HRD) Ms. No.319, dt.01.6.2014 was issued giving effect to the re-assignment of the sanctioned posts in operational units in Anantapur and Kurnool Districts, allocation of posts in Corporate Office, Kurnool Zonal Office and CGRF – Rural of APSPDCL.

14. While the power utilities of both the States were functioning in pursuance of various proceedings issued by the undivided State of Andhra Pradesh and APCPDCL as referred to above, the CMD of APTRANSCO addressed letter dt.26.11.2014 to the CMD of TSTRANSCO requesting him to nominate officers from the latter Corporation for constituting a joint committee along with officers of APTRANSCO for finalization of allocation of employees. In response thereto, the Director of TSTRANSCO has addressed letter dt.20.12.2014 to the CMD of APTRANSCO nominating four of its officers for constitution of a Joint Committee.

15. While there was no headway for constitution of a Joint Committee thereafter, the TSTRANSCO issued T.O.O. (Per.CGM/HRD), Ms. No.12 (Personnel Services), Dt.21.01.2015 constituting a common committee comprising

some personnel of TSTRANSCO, TSGENCO, TSSPDCL, and TSNPDCL to undertake the activities of collection of employees data, fixation of norms to establish the nativity and any other activity entrusted by the Chairman of the Committee. On 19.02.2015 the CMD (FAC) of APTRANSCO addressed a letter to the CMD of TSTRANSCO constituting a joint committee with four functionaries each of APTRANSCO and TSTRANSCO. The said letter *inter alia* indicated modalities for allocation of employees. In reply to the said letter, the CMD of TSTRANSCO informed the CMD of APTRANSCO that the TSTRANSCO has already constituted a Committee which after holding a series of meetings recommended that the nativity recorded in the Service Register of the individual in respect of initial cadre/appointment orders shall be taken as the basis for determining the native District, that the employees data has been obtained from the Telangana State power utilities in the prescribed format and that the Committee has decided to consolidate the employees data obtained from the Telangana power utilities, place the same in the website and seek objections, if any, from the employees within one week from the date of placing the data in the website, so as to finalize the same. Referring to Section 82 of the Reorganisation Act, the

CMD of TSTRANSCO informed that as per the said provision, the Telangana State power utilities decided to formulate modalities for final allocation of employees. He has also informed that the modalities proposed by the APTRANSCO to be adopted by the Joint Committee constituted for bifurcation of posts and employees are not acceptable to the Telangana State power utilities.

16. Consequent on diversion of seven Mandals of Khammam District to the residuary Andhra Pradesh State as per the amendment made to the Reorganisation Act, TSNPDCL has issued proceeding in N.O.O.(CHM-HRD) Ms. No.40, dt.05.3.2015, handing over the distribution network and relevant records in respect of the Seven Mandals to the authorities of APEPDCL. With reference to letter dt.04.03.2015 of the CMD, TSTRANSCO, the CMD, APTRANSCO, vide his letter dt.18.03.2015 informed the former that the nativity recorded in the service register cannot be the criterion for division of employees and renewed his request for participating in the Joint Committee constituted earlier. On 20.03.2015 the Meeting of the Chief Secretaries of both the State Governments in the presence of Additional

Secretary, Ministry of Home Affairs, Government of India, took place. Paragraph 24 of the Minutes reads as follows:

“Energy Dept.

24. The Secretary to Govt., Energy Department, Govt. of Andhra Pradesh raised the issue of division of employees among power sector utilities of A.P. and Telangana. It was agreed that division of employees would be done as per section-82 of A.P. Reorganization Act, 2014 by a joint committee of power utilities of both the States.”

17. On 26.3.2015 the Chief Secretary of State of Andhra Pradesh addressed a letter to his counterpart wherein he has referred to the list prepared and placed in the website of TSTRANSCO. He has requested the Chief Secretary of the Telangana State to instruct the concerned authorities of Telangana State power utilities not to proceed unilaterally and form a joint committee with the Andhra Pradesh State power utilities to finalize the bifurcation of employees in the power sector within the framework of the Reorganisation Act. However, it appears, on 30.05.2015 the CMD of the TSTRANSCO submitted his report framing the guidelines for allocation of employees in the power sector of the State of Telangana to the Secretary of the Energy Department of the State and in response to the said report, the latter vide his letter dt.6.6.2015 communicated the approval of the guidelines as per which the nativity (place of birth) of the employees as per the

Service Register was made the basis for final allocation of the employees. On 9.6.2015 the CMD of the TSTRANSCO informed the CMD of the APTRANSCO that as per the guidelines issued by the State of Telangana the final list has been prepared and placed in the website and that following such proceedings, relieving orders were issued to the employees working in the Telangana State power utilities, who are not the natives of the Telangana State by the respective Telangana State power utilities.

18. Calling in question the aforementioned action of the Telangana State power utilities, this batch of writ petitions came to be filed. The earliest writ petition was filed by nine employees of the erstwhile CPDCL on 10.06.2015. Initially the writ petition came up before a learned single Judge. On a reference made by him, the said writ petition along with other writ petitions filed subsequently by similarly placed employees was listed before a Division Bench. The interlocutory applications filed for interim relief were considered and the Division Bench on 12.06.2015 granted an ad interim order in favour of the petitioners. Later, by a detailed order dt.22.09.2015, the Bench disposed of the miscellaneous applications with the following directions.

- i) “The petitioner-employees, and all other employees who are relieved pursuant to impugned orders in this batch of cases, shall be continued in service in the power utilities of the State of Telangana.
- ii) Their salaries and other emoluments as per their service conditions shall be borne by the State of Andhra Pradesh and the State of Telangana in the ratio of 58.32 : 41.68.
- iii) The Principal Secretaries of the departments of Energy of both the States of Andhra Pradesh and Telangana are directed to take suitable steps required for arranging payment of salaries and arrears of salaries of the employees in the ratio of 58.32 : 41.68.
- iv) The arrears of salaries of such employees also shall be paid within a period of four weeks from today in the same ratio i.e., 58.32 : 41.68.”

19. The power utilities of the respective States filed special leave petitions vide SLP (C) No.35299-35302 and 33782-33784 of 2015. At the first instance, the Supreme Court without interfering with the order of the Division Bench desired that the writ petitions be disposed of early by this Court. Meanwhile, another Division Bench of this Court by its order dt.11.3.2016 appointed a Joint Committee headed by Justice D.M. Dharmadhikari, former Judge of the Supreme Court, for preparation and consideration of modalities for allocation of the employees. Thereafter, the Supreme Court disposed of the SLPs by modifying the order of the Division Bench with the following directions.

“The order of the High Court is modified so far as it related to the directions regarding salary to the extent of 58.32 per cent

payable by the State of Andhra Pradesh and the State of Telangana is directed to ensure that full salary is paid to the employees who are employed and working with the respective power utility units. In other respect the interim order passed by the High Court shall continue to operate.

This arrangement shall continue till the final orders to be passed by the High Court. The reimbursement, if any, to be made to the State of Andhra Pradesh by the State of Telangana or vice versa shall be ordered by the High Court while passing final orders. It is needless to say that the High Court shall ensure that writ petitions are disposed of at the earliest, preferably within eight weeks' time.

With the aforesaid limited modification and observations, the special leave petitions are disposed of.”

20. The Committee headed by Justice Dharmadhikari after deliberations prepared draft modalities. As no consensus was reached between the power utilities of the two States, Justice Dharmadhikari has forwarded the draft guidelines along with the Minutes to the Registry of this Court, vide letter dt.2.5.2016.

21. On 24.11.2016 TSSPDCL issued a Memo preparing a seniority list in the cadre of Divisional Engineers, after deleting the names of the employees who are the natives of the residuary State of Andhra Pradesh for effecting promotions. Some of the aggrieved employees have filed W.P. No.17581 of 2017 assailing the said Memo. By order dt.9.6.2017 this Court has suspended the said Memo and directed that the promotions shall be effected as per the original seniority prepared in the year 2013. Later, certain promotions were effected by the

TSSPDCL. The aggrieved employees filed W.P. No.24196 of 2017. By order dt.21.7.2017 a learned single Judge of this Court has suspended the said promotions while issuing *suo motu* notice of contempt. Several other similar writ petitions were filed which are pending before this Court.

22. On behalf of the employees – petitioners, Messrs C.V. Mohan Reddy, Vedula Venkata Ramana, D.V. Sitarama Murthy learned Senior Counsel, Dr. K. Lakshmi Narasimha, S.S. Bhatt, and C. Raghu, learned counsel, made their submissions. Mr. M. Sreenivasulu, petitioner/party-in-person in W.P. No.30013 of 2015 and Mr. S.S. Meera, petitioner/party-in-person in W.P. No.39068 of 2015, also made their submissions.

Mr. Dammalapati Srinivas, learned Advocate General for the State of Andhra Pradesh, appeared and made his submissions for APTRANSCO, APGENCO, APSPDCL, and APEPDCL. Mr. D. Prakash Reddy, learned Advocate General for the State of Telangana, and Mr. G. Vidyasagar learned Senior Counsel, advanced their submissions on behalf of the respective Telangana State power utilities.

23. Before referring to the respective contentions advanced by the learned counsel for the parties, it is pertinent to mention that as the contentions of the learned counsel are advanced in

consonance with the respective pleadings of the parties, we do not find the necessity of making a formal reference to the pleadings.

24. Dr. K. Lakshmi Narasimha, learned counsel appearing for some of the employees of TSSPDCL and TSNPDCL submitted that while in principle his clients are not opposing the allocation, they are mainly challenging the arbitrary action of the Telangana Government and its power utilities in unceremoniously relieving the petitioners on the wholly unsustainable ground of nativity. While conceding that with the exclusion of the two Districts, namely, Anantapur and Kurnool from the APCPDCL, the necessity for TSSPDCL, its successor, to relieve the excess staff has arisen, the learned counsel submitted that under Section 82 of the Reorganisation Act “the corporate body concerned” has to prescribe modalities for allocation and that such modalities must be fair, rational and reasonable. He has referred to and relied upon the guidelines of the Kamalnadhan Committee prepared and followed for the allocation of the State Government employees and submitted that guidelines on similar lines need to be laid down for allocation of the employees of the power utilities in question. He has further urged that as the concept of ‘nativity’ followed

as the criterion being patently contrary to Articles 14 and 16 of the Constitution of India, all the impugned proceedings need to be declared as unconstitutional and both the corporate bodies, namely, APSPDCL and TSSPDCL may be directed to jointly lay down the criteria for allocation of the employees between the two companies. Referring to the TSNPDCL, he submitted that with the diversion of seven Mandals of Khammam District to the residuary State of Andhra Pradesh, the allocation only to the extent of proportionate cadre for those Mandals has to be undertaken following a mutually acceptable criterion.

25. Mr. Vedula Venkata Ramana, learned Senior Counsel appearing for the State Level Cadre employees of GENCO and TRANSCO, submitted that “the corporate body concerned” under Section 82 of the Reorganisation Act are only APTRANSCO and APGENCO and that therefore the purported criteria fixed by the State of Telangana, vide letter dt.6.6.2015 of the Secretary to the Government of Telangana, Energy Department, is without jurisdiction and the same is not sustainable, that in the matter of allocation of employees of State public utilities under Section 82 of the Reorganisation Act, the State Governments have not been assigned any role and that the period of one year mentioned in Section 82 of the

Act has to be construed as directory and not mandatory as no consequences for non-compliance with the said provision have been envisaged. In support of his submission he has placed reliance on the judgment of the Supreme Court in **State, represented by Inspector of Police, Chennai v. N.S. Gnaneswaran**¹. That though TSGENCO and TSTRANCO were incorporated on 29.5.2014, by deemed fiction the original corporate bodies, i.e., APGENCO and APTRANSCO continued to exist till the allocation of employees is made and that therefore while setting aside the impugned proceedings APGENCO and APTRANSCO may be directed to determine the modalities and allocate the employees among the four Corporations based on such modalities.

26. Mr. Dammalapati Srinivas, learned Advocate General for the State of Andhra Pradesh, after narrating the background pertaining to the incorporation of the Transmission and Generation companies under the Electricity Reform Act, submitted that under Section 24 of the said Act the State Government is empowered to frame a scheme for transfer of employees to TRANSCO, GENCO and Distribution Companies and other companies, that Section 185 of the

¹ (2013) 3 SCC 594

Electricity Act 2003 (hereinafter referred to as “the Electricity Act”) saved the Electricity Reform Act to the extent its provisions are not inconsistent with the provisions of the former Act and that therefore the State Government of Andhra Pradesh continues to have the power to distribute the personnel. That the State Government framed a scheme for division of employees between AP and TS GENCOs, that G.O. Ms. No.25, dt.29.5.2014 provided that guidelines framed for allocation of State Government employees have to be followed in the matter of allocation of employees of the power utilities, that under G.O. Ms. No.29 dt.31.5.2014 posts were divided and that G.O. Ms. No.25 read with G.O.Ms. No.29 contains a complete scheme for APGENCO and similarly G.O. Ms. No.26 which applies to TRANSCO employees also contains the basis for allocation. The learned Advocate General further submitted that the impugned proceedings of the Telangana Government and its power utilities are contrary to G.O. Ms. Nos.25, 26, 28 and 29. He has further submitted that though a joint committee was formed for TRANSCO employees, no division could take place. That for NPDCL, as no part of the territories originally covered by the area of operation of the said company has been transferred to the

Andhra Pradesh Distribution Companies except the seven Mandals falling in Khammam District and as a result no division of assets and liabilities took place except to the extent of the seven Mandals in Khammam District, the question of division of the employees needs to be confined only in respect of the seven Mandals. As regards the erstwhile CPDCL, argues the learned Advocate General, the division of the employees only to the extent of Anantapur and Kurnool needs to be undertaken. Referring to Section 82 of the Reorganisation Act, the learned Advocate General submitted that G.O. Ms. Nos.25, 26, 28, and 29 were issued prior to the appointed date, i.e., 2.6.2014, that the said provision which operates only from the appointed day for a period of one year, does not apply to the present situation. He has referred to the constitution of Sheela Bhide Committee for distribution of assets and liabilities under G.O. Rt. No.223, dt.30.5.2014 and proceedings dt.30.8.2016 of the Government of India extending the term of the said Committee for division of assets and liabilities and also the employees. He has also referred to the Minutes of the Meeting dt.20.3.2015 with the Additional Secretary, Ministry of Home Affairs, Government of India and also the Minutes of the various Meetings taken place between the power utilities of

both the States and submitted that the action of the Government of Telangana and its power utilities is contrary to the earlier understanding of the parties for constitution of a joint committee for determining the modalities by such committee. He has finally urged that the question of further division of employees for distribution except to the extent of the two Districts of Anantapur and Kurnool would not arise, and if division of the employees is inevitable for TRANSCOs and GENCOs, proper modalities are required to be fixed in respect thereof.

27. Mr. D.V. Sitarama Murthy, learned Senior Counsel appearing for the petitioners in W.P. No.16849, 16886 and 17383 of 2015, who are the employees of the erstwhile APGENCO, referred to Sections 53, 68, 73, 80 and 82 and the Ninth Schedule of the Reorganisation Act and submitted that the principle of fair and equitable treatment to all the persons effected by the provisions of Section 48 of the Act need to be adhered to while making allocation. While analysing Section 82 of the Act, the learned Senior Counsel submitted that it comprises two main aspects, namely, (1) continuance of all employees in the same corporate body till the modalities for distribution of personnel between the two successor bodies are

determined and distribution is made; and (2) “the corporate bodies concerned” which means APGENCO and APTRANSCO as they existed prior to the appointed day, are entitled to determine the modalities for distribution of employees. He accordingly urged that all the impugned proceedings issued contrary to the scheme of the Reorganisation Act are liable to be struck down.

28. Mr. C.V. Mohan Reddy, learned Senior Counsel appearing for the petitioners in W.P. Nos.16504, 17141 and 17714 of 2015, who are the employees of the erstwhile APCPDCL submitted that the statutory division has taken place as per the Division C of Clause 8 of Schedule XII by transferring Anantapur and Kurnool Districts to the APSPDCL and therefore no further allocation of the employees need be made and consequently Section 82 of the Reorganisation Act has no application insofar as the employees of the erstwhile APCPDCL are concerned. Insofar as TSSPDCL is concerned, while the allocation of employees under G.O. Ms. No.24, dt.29.5.2014 is adhoc/provisional, the allocation of posts is permanent. He has further submitted that there are three options available to TSSPDCL, viz., (1) to retain all the employees (2) to call for options in respect of 407 identified

posts under G.O. Ms. No.24, dt.29.5.2014, and (3) to retrench the surplus employees. He has further submitted that an employer cannot transfer its employees to another employer without the latter's consent and that in any event nativity cannot be the ground for transfer of an employee. In support of his submissions, the learned Senior Counsel has placed reliance on the judgments in **B.C.C.P. Mazdoorsangh v. N.T.P.C.**², **Jawaharlal Nehru University v. Dr. K.S. Jawatkar**³ and **Kailash Chand Sharma v. State of Rajasthan**⁴.

29. Mr. M. Srinivasulu, the petitioner/party-in-person in W.P.No.30013 of 2015 submitted that all the respective corporate bodies must come to a mutual understanding and determine the guidelines and that till such guidelines are determined, the Telangana State power utilities must be directed to continue to pay the salaries.

30. Mr. S.S. Meera, the petitioner/party-in-person in W.P. No.39068 of 2015 filed assailing the promotions effected in TSGENCO, was critical of the action of the Telangana State in wasting public money by spending Rs.800 crores on salaries of the relieved employees without extracting work from them. He

² (2007) 14 SCC 234

³ (1989) Supp. (1) SCC 679

⁴ (2002) 6 SCC 562

has referred to certain provisions including Section 82 of the Reorganisation Act, and the tripartite agreement entered between the Government of Andhra Pradesh, the A.P.S.E.B., and the Engineers and Workers' Unions and submitted that no allocation can be made and promotions effected contrary to the statutory provisions and the tripartite agreement.

31. While adding to the submissions of Mr. C.V. Mohan Reddy, Mr. S. Sriram Reddy, learned counsel, submitted that in view of the allocation of cadre for Anantapur and Kurnool Districts, only 392 employees can be allotted to APSPDCL as against which 303 employees in excess of the said number were relieved.

32. Sri D. Prakash Reddy, the learned Advocate General for the State of Telangana, after narrating the background leading to the bifurcation of the power utilities and renaming of the CPDCL as TSSPDCL and reconstitution of the NPDCL by transferring seven Mandals to the State of Andhra Pradesh and EPDCL in Khammam District, has submitted that the 'nativity' criterion followed by the Telangana State power utilities has not caused any prejudice to the employees and sought to support the decision of the Telangana State power utilities as approved by the Telangana State Government to relieve the employees

who declared their nativity as falling within the residuary State of Andhra Pradesh at the time of their joining the service. The learned Advocate General while fairly submitting that as per the scheme of the Reorganisation Act, new power utilities for the State of Telangana should not have been incorporated till the process of allocation of assets and liabilities and employees is concluded, however, submitted that to save the situation, the expression 'corporate body concerned' in Section 82 of the Reorganisation Act shall be read down as 'corporate bodies concerned' and also the expression 'the two successor States' must be construed as 'the two successor corporate bodies' and that the corporate bodies of both the States shall determine the modalities for distributing the personnel between them.

33. We have considered the respective submissions of the learned Counsel for the parties advanced in conformity with the pleadings raised in these cases. Upon such consideration, the following Points emerge for determination:

1. Whether the Telangana State Power Utilities and the Telangana State Government have jurisdiction to issue the impugned proceedings relieving certain employees ?
2. What is the meaning to be assigned to the words 'corporate body concerned' and "between the two

successor States” in Section 82 of the A.P. Reorganisation Act 2014 ?

3. Whether ‘nativity’ would be a criterion for the purpose distribution of employees between the Power Utilities of the respective States of Telangana and Andhra Pradesh ?
4. Whether the division of employees of the TSSPDCL need not be undertaken in view of clause C(8) of the Twelfth Schedule ?
5. Whether any of the employees of the NPDCL can be allotted to the APEPDCL or to any of the distribution companies of the State of Andhra Pradesh ?

Re Points 1 & 2:

34. As could be seen from the scheme underlying the Reorgnsisation Act referred to earlier, unlike the All India Service Officers and the other State cadre Officers, the employees of public sector undertakings stand apart as regards their distribution between the undertakings consequent upon their division. In this regard, Section 82 of the Act is a stand alone provision which squarely governs the determination of modalities and the distribution of personnel. The Act does not lay down any criteria for this purpose. It has completely left this aspect for determination by the ‘corporate body concerned’.

35. Let us test the submission of the learned Advocate General for the State of Andhra Pradesh that the State Government of Andhra Pradesh has jurisdiction to divide the employees of the power utilities. This submission is based on Section 24 of the Electricity Reform Act and Section 185 of the Electricity Act. The Electricity Reform Act was enacted by the Legislative Assembly of the erstwhile State of Andhra Pradesh which has received the assent of the President. As reflected from its objects and reasons, the main purpose of the enactment was *inter alia* to unbundle the integrated power sector, reorganisation of generation, transmission and distribution functions into compact commercially viable entities, providing operational, managerial and functional autonomy to the successor entities. The said Act provided for constitution of separate corporations for generation, transmission and also subsidiary or associated transmission and supply companies or corporations for distribution and supply of energy. It provided for conditions for distribution of assets, liabilities and employees of the parent Electricity Board among the newly created Corporations. For the purpose of distribution of employees among these entities, Section 24 is incorporated, and the same reads as under :

“Provisions relating to Personnel:

- (1) The State Government may by a transfer scheme provide for the transfer of the personnel to APTRANSCO, generating company or companies, distribution or other companies hereinafter referred to as the transferee company or companies; on the vesting of properties, rights and liabilities in such transferee companies as provided under Section 23.
- (2) Upon such transfer scheme the personnel, shall hold office or service under the transferee company on terms and conditions that may be determined in accordance with the transfer scheme:

Provided that such terms and conditions on the transfer shall not in any way be less favourable than those which would have been applicable to them if there had been no such vesting:

Provided further that any such scheme under sub-sections (1) and (2) shall be consistent with the tripartite agreements entered into between the Government, A.P.S.E.B. and the employees.

Explanation:- For the purposes of this section as well as the transfer scheme the term “personnel” shall mean all persons who on the effective date are the employees of the Board.”

36. As seen from its provisions, Section 24 governs only transfer of personnel from the State Electricity Board to the TRANSCO, GENCO and Distribution and other companies. The phrase ‘State Government’ in Section 24, as defined under Section 2(m) as ‘the Government of the State’, was the undivided State of Andhra Pradesh and there is no gainsaying the fact that its jurisdiction was confined to preparation of a transfer scheme providing for the transfer of personnel from the A.P. State Electricity Board to Transmission, Generation

and Distribution companies. It is quite obvious that when the Electricity Reform Act was enacted, the further division of the Transmission, Generation and Distribution companies was beyond anybody's comprehension or contemplation. Therefore, the submission that under the said provision, the undivided State of Andhra Pradesh is conferred with the power of transfer of personnel to the newly created power utilities of the State of Telangana consequent on its creation, is far fetched, to say the least. No doubt, provisions of the Electricity Reform Act not inconsistent with the Electricity Act 2003 are saved by the latter Act. But, as observed above, while Section 24 of the Electricity Reform Act has assigned the limited power of distribution of personnel of the Board among the power utilities created in place of the Board, it does not empower the State Government to further distribute the personnel between the existing power utilities and the utilities to be created consequent on the division of the State. Conferring such power on the undivided State of Andhra Pradesh would be stretching the provisions of Section 24 to an extent not envisaged by the Electricity Reform Act itself. The fallacy of this submission is further exposed by Section 107 of the Reorganisation Act. This provision gave the provisions of

the said Act overriding effect on any other law, notwithstanding anything inconsistent therewith. As Section 82 of the Reorganisation Act empowers the 'corporate body concerned' to determine the modalities for division of the employees, Section 24 of the Electricity Reform Act will have no effect. Thus, viewed from any angle, the undivided State of Andhra Pradesh had no jurisdiction to distribute the employees between the power utilities of the States of Telangana and Andhra Pradesh.

37. In any event, it is not the contention of the learned Advocate General that before the appointed day, the undivided State of Andhra Pradesh has distributed the personnel on a permanent basis. On the contrary, under G.O.Ms.Nos.25 and 26 dated 29-5-2014 issued by the undivided State of Andhra Pradesh creating Generation and Transmission companies for the newly created State of Telangana, no permanent allocation of the employees was made. Clauses 6(b) and 7 of G.O.Ms.No.25, pertaining to the creation of the TSGENCO, read as follows:

6(b) Allocation of sanctioned Common Services Posts at Headquarters:

- i. A ratio for allotment of common services staff for ANDHRA/TELANGANA, will be worked out by dividing the "Sanctioned Strength in the Region" with the

“Total Sanctioned Strength of APGENCO excluding Head Quarters”.

- ii. Based on this principle, head quarter posts transferred to both GENCOs are listed in Annexure-B.

7. Transfer of employees between two GENCOs: The guidelines meant for Government employees shall be followed for permanent transfer of employees between two GENCOs. Pending such transfer of employees, all staff working at various Plants/Locations and Training Institute at Dr. NTTPS as on effective date shall continue to work there and draw their salaries accordingly. Staff working at Head Quarter, to the extent of posts in TG GENCO, shall be permanently transferred to TG GENCO as on effective date duly following the Government guidelines issued for allotment of staff.

(emphasis added)

As regards the Transco employees, Clause 5 of G.O.Ms.No.26, is as follows:

“Transfer of posts to TG TRANSCO: All the posts related to District, Field and Zonal offices including Central Training Institute at Hyderabad located in Telangana State shall stand transferred to TG TRANSCO with effect from Effective date. Posts at AP TRANSCO Head Quarter shall be divided between two Transcos based on population ratio of respective States. Based on this principle, head quarter posts transferred to TG TRANSCO is listed in Annexure-C.”

38. The erstwhile Government of Andhra Pradesh also issued G.O.Ms.No.24, dated 29-5-2014 reassigning Anantapur and Kurnool Districts which formed part of APCPDCL and which fall within the residuary State of Andhra Pradesh under the Reorganisation Act to APSPDCL. Clauses II and III of this G.O. read as follows:

II. Employees: All the employees working in Kurnool and Ananthapur circles on the appointed day will continue to work in the same places till the final allotment of employees as to the respective DISCOMS is completed in accordance with

guidelines to be issued by government separately in this regard. Their salaries will be paid by APCPDCL and reimbursed by APSPDCL on monthly basis till the final allotment is completed. Provisional allocation of staff will be done as per State Government guidelines.

III. Posts:

- (i) All the Sanctioned posts of the operational units shown below in the districts of Ananthapur and Kurnool will be reassigned to APSPDCL.
 - a. Circle Office
 - b. Division Office
 - c. Sub-Division Office
 - d. Section Office
 - e. Electricity Revenue Office
 - f. M&P, Transformers, Construction, DPE, Assessment Officers
- (ii) Kurnool Zonal Office: The Zonal office caters to Kurnool, Ananthapur and Mahabubnagar districts. The sanctioned posts of the Kurnool Zonal office will be apportioned between APSPDCL and APCPDCL, by considering the weighted average of the cost drivers identified by APERC for allocating the Employee costs and A&G costs viz.,
 - a. 20% to number of consumers existing.
 - b. 10% to number of DTRs existing
 - c. 70% to Length of lines and number of sub-stations.
This cost is allocated between number of sub-stations and length of lines in the ratio of 70 : 30

For calculating the ratio of each of the above parameters, the values of Kurnool and Ananthapur are taken in the numerator and that of Kurnool, Ananthapur and Mahabubnagar in the denominator. The percentage of posts to be transferred to APSPDCL is at Annexure 1.
- (iii) APCPDCL Corporate Office: For apportioning the sanctioned posts of the corporate office, the values of the above three parameters of Kurnool and Ananthapur are taken in the numerator and that of entire APCPDCL in the denominator. One post of Director will be transferred to SPDCL. The percentage of posts to be transferred to APSPDCL is at Annexure-2. Details are at Annexure-1.
- (iv) Consumer Grievances Redressal Forum (Rural): This office caters to Kurnool, Ananthapur, Mahabubagar, Medak and Nalgonda districts. For the apportioning of

the posts of this office, the values of the above three parameters of Kurnool and Ananthapur are taken in the numerator and that of Kurnool, Ananthapur, Mahabubnagar, Medak and Nalgonda are taken in the denominator. The percentage of posts to be transferred to APSPDCL are at Annexure-1.”

(emphasis added)

Following the said G.O., APCPDCL issued proceedings vide C.O.O.CGM (HRD) MS.No.318, dated 31-5-2014 wherein it has *inter alia* directed that the personnel mentioned therein have been identified for being issued provisional order to serve under APSPDCL. Para-5 of the said proceedings reads thus:

“Further, the following personnel in various cadres of APCPDCL have been identified for being issued provisional order to serve in APSPDCL.”

The above noted proceedings without any cavil of doubt show that while posts were distributed among the successor power utilities, the personnel were only ordered to serve provisionally till their distribution on permanent basis is made. Therefore, as on the appointed date i.e., 2-6-2014, as the employees were not distributed on a permanent basis among the power utilities of the two States, their distribution has to be necessarily made as per Section 82 of the Reorganisation Act. Indeed, the power utilities of both the States are conscious of this fact is evident from their constituting the joint committee for determining the modalities and also the understanding reached between them in the joint meeting of the two Chief

Secretaries held on 20.3.2015 in the presence of the Additional Secretary, Ministry of Home Affairs, Government of India, as reflected in para 24 of the Minutes of the Meeting referred to earlier. This also shows that the plea raised based on Section 24 of the Electricity Reform Act is a pure afterthought.

39. A doubt would arise as to when the State Government has no power for distribution of the personnel between the two successor bodies, whether it has the power to distribute the posts. Neither of the successor States nor the successor power utilities have challenged the validity of these G.Os., allocating the posts among the successor power utilities. Even during the hearing, neither of the two Advocates General has either taken the stand that there was no allocation of the posts, nor advanced any submission against such allocation. Therefore, there could be no impediment for the allocation of the employees based on the allocation of the posts made in the aforementioned G.Os. In the alternative, if the joint committee of the power utilities feel that amendments or adjustments to the allocation of posts made under the aforementioned three GOs are necessary, they shall be free to do so based on the consensus.

40. We would next consider the submission of the learned Advocate General for the State of Andhra Pradesh on the non-applicability of Section 82 of the Reorganisation Act. It is his submission that Section 82 becomes operational only if distribution of personnel between the successor power utilities did not take place as on the appointed date and that as such distribution has already taken place as on the said date, Section 82 does not apply in the instant cases. As regards the first limb of his submission, in the light of the unequivocal findings rendered by us hereinbefore that no distribution of the personnel on permanent basis has taken place, this part of the submission is without any merit. Even otherwise, the interpretation sought to be placed on Section 82 by the learned Advocate General does violence to the said provision. Section 82 is incorporated in order to achieve dual purposes, namely, (i) to confer power on the “corporate body concerned” to determine the modalities for distributing the personnel and (ii) to facilitate smooth functioning of the public sector undertakings despite the division of the State by allowing their employees to continue to function for a period of one year before they are distributed among the successor bodies. This provision cannot be understood as enabling any authority,

including the State Governments, other than the 'corporate body concerned' to do any act either to pre-empt the operation of this provision or to frustrate the purposes for which it is enacted. Therefore, in our opinion, even if any distribution of personnel took place before the appointed day, the same falls foul of the provisions of Section 82 of the Reorganisation Act and has to be necessarily declared as *ultra vires* the said provision.

41. It is appropriate at this stage to consider the submission of Mr. Vedula Venkataramana that the period of one year stipulated in Section 82 of the Reorganisation Act is only directory and not mandatory. No doubt, Section 82 prescribed a period of one year for the corporate body concerned to determine the modalities for distributing the personnel between the two successor States and permitted continuance of the employees of the corporate bodies concerned to continue to function during that period. In **N.S. Gnaneswaran** (1 supra) the Supreme Court held that while determining whether a provision is mandatory or directory, in addition to the language used therein, the Court has to examine the context in which the provision is used and the purpose it seeks to achieve. That it may also be necessary to find out the intent of the

legislature for enacting it and the serious and general inconveniences or injustice to persons relating thereto from its application. It was further held that the law which creates public duties is directory but if it confers private rights it is mandatory.

42. An identical question with reference to Section 82 of the Reorganisation Act was considered by a Division Bench of this Court in **G. Rama Mohan Rao v. Government of Andhra Pradesh**⁵ which held that the period of one year is directory and not mandatory. It would be instructive to reproduce the relevant portion of the judgment hereunder.

“84. The question whether Section 82 of the 2014 Central Act is mandatory or directory depends on the intention of the legislature, and not upon the language in which the intent is clothed. (Crawford on Statutory Construction--Article 261 at p. 516; *State of U.P. v. Manbodhan Lal Srivastava* : 1958 SCR 533 :AIR 1957 SC 912; *State of M.P. v. Pradeep Kumar* : (2000) 7 SCC 372; *Govindlal Chhaganlal Patel v. Agricultural Produce Market Committee*: AIR 1976 SC 263. One must look into the subject-matter and consider the importance of the provision disregarded, and the relation of that provision to the general object intended to be secured. (*State of Mysore v. V.K. Kangan* : (1976) 2 SCC 895 : AIR 1975 SC 2190). In ascertaining the real intention of the Legislature, the Court may consider, *inter alia*, the nature and the design of the statute, and the consequences which would follow from construing it one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstance, namely, that the statute provides for a contingency of the non-compliance with the provisions; the fact that the non-compliance with the provisions is or is not visited by some penalty, the serious or trivial consequences that flow therefrom and, above all, whether the object of the legislation will be defeated or furthered. (*State of U.P. v. Babu Ram Upadhyaya* : 1961 (2) SCR 679 : AIR 1961 SC 751;

⁵ 2017 (3) ALT 1 (DB)

May George v. Tahsilda r. (2010) 13 SCC 98 : (2010) 4 SCC (Civ) 774; *Dattatraya Moresbwar v. State of Bombay*: AIR 1952 SC 181; *Raza Buland Sugar Co. Ltd. v. Municipal Board, Rampur* : AIR 1965 SC 895; and *V.K. Kangan v. State of Mysore*: (1976) 2 SCC 895 : AIR 1975 SC 2190.”

85. The reason behind the provision is an aid to the ascertainment of the legislative intention. If the provision is couched in prohibitive or negative language, it can rarely be directory, the use of peremptory language in a negative form is per se indicative of the intent that the provision is to be mandatory. (Crawford, the Construction of Statutes; *Lachmi Narayan v. Union of India* (1976) 2 SCC 953). Where the statute provides that failure to observe a particular provision would lead to a specific consequence, the provision has to be construed as mandatory. (*Sharif-ud-Din v. Abdul Gani Lone*: AIR 1980 SC 303; *Bahvant Singh v. Anand Kumar Sharma* : (2003) 3 SCC 433; *Bhavnagar University v. Palitana Sugar Mill (P) Ltd.* : (2003) 2 SCC 111; *Chandrika Prasad Yadav v. State of Bihar* : AIR 2004 SC 2036; *May George v. Tahsildar* : (2010) 13 SCC 98 : (2010) 4 SCC (Civ) 774.”

86. If a provision is mandatory, it must be strictly construed and followed, and an act done in breach thereof will be invalid. But if it is directory, the act will be valid although its non-compliance may give rise to some other penalty, if any, provided by the Statute. A mandatory enactment must be obeyed or fulfilled exactly, but non-compliance of a directory provision would not affect the validity of the act done in breach thereof. (*Ram Deen Maurya (Dr.) v. State of U.P.* : (2009) 6 SCC 735). Where a statute requires that a thing shall be done in the prescribed manner or form, but does not set out the consequences of non-compliance, the question whether the provision is mandatory or directory has to be adjudged in the light of the intention of the legislature as disclosed by the object, purpose and scope of the statute. (*Bhikraj Jaipuria v. Union of India*: AIR 1962 SC 113). The fact that no consequences of non-compliance are stated in the statute, is a factor tending towards a directory construction. (*Bahvant Singh v. Anand Kumar Sharma*: (2003) 3 SCC 433); Sutherland's Statutory Construction, 3rd Edn., Vol. 3).

87. The prescription of a one year period in Section 82, for the State public sector undertakings of the erstwhile Government of A.P. to determine modalities for distribution of its personnel between the two successor States, is only to ensure that the employees of each of these Corporate bodies are distributed between both the successor States at the earliest. Since Section 82 neither prescribes any consequence, for the failure of the corporate bodies to determine the modalities

within the said period of one year, nor does it stipulate any time period for the actual allocation of these employees to the successor States, it is evident that the prescription of a one year period in Section 82 is only directory, and the mere fact that the one year period has elapsed, does not prohibit any of these public sector undertakings from determining modalities for, or for the actual, allocation of its employees between the two successor states thereafter.”

43. We shall now test the stand of the Telangana State and its power utilities *qua* the proceedings issued by them and impugned in these Writ Petitions.

The sequence of events as unfolded and narrated *supra* would reveal that correspondence ensued between the TRANSCOs of both the States, vide letter dated 26-11-2014 of the CMD of APTRANSCO, letter dated 20-12-2014 of the Director of TSTRANSCO and letter dated 19-2-2015 of the CMD of APTRANSCO. The tenor and the contents of this correspondence would reveal two aspects, namely, (i) recognition by both parties of the fact that no distribution of employees has taken place, and (ii) the existence of need for making such distribution through a Joint Committee. Having nominated its Officers to be part of the Joint Committee on 20-12-2014, the TSTRANSCO has made a sudden *volte face* by issuing T.O.O.(Per CGH/HRD) Ms.No.12, dated 21-1-2015, constituting a common Committee comprising only the officials of the Telangana power utilities for the preparation of

modalities and final allocation of employees. They however failed to explain this sudden change in their approach.

44. Sections 68 and 82 of the Reorganisation Act, construing in their true purport, do not envisage incorporation of new companies/corporations for the newly created State of Telangana without distribution of the assets and liabilities and the personnel. This is indeed fairly conceded by the learned Advocate General for the State of Telangana. Both these Sections, in our opinion, are in the nature of transitional provisions to facilitate smooth transition of the activities from the pre-existing bodies to the successor bodies by way of distribution of assets and liabilities and employees. The proper way of effectuating these provisions would be to undertake the exercise of distribution of assets and liabilities and also the personnel after determining the modalities by the ‘corporate body concerned’ while incorporating the successor bodies. Though Section 82, which deals with the distribution of personnel, does not make a reference to the Ninth Schedule, it is implied therefrom that the “corporate body concerned” referred to in the said provision is the body which is included in the Ninth Schedule. These provisions thus leave us in no doubt that the phrase ‘corporate body concerned’ referred to in

Section 82 is referable to the corporate bodies which are included in the Ninth Schedule which is charged with the responsibility of distributing the assets and liabilities and the employees among the successor bodies. In the present context, such corporate bodies are those specified at Sl.Nos.5, 6 and 30 to 33 thereof, i.e., APGENCO, APTRANSCO, EPDCL, SPDCL, CPDCL and NPDCL respectively. Therefore, the newly created bodies, namely, TSGENCO, TSTRANSCO, and the Distribution companies of the State of Telangana have no authority or jurisdiction to reallocate/relieve any of the employees working under their jurisdiction.

45. As regards the submission of Mr. C.V. Mohan Reddy that an employer cannot transfer the services of his employees without the latter's consent, there is no quarrel on the proposition laid down in **B.C.C.P. Mazdoorsangh** (2 supra), **Dr. K.S. Jawatkar** (3 supra) and **Kailash Chand Sharma** (4 supra). However, in the light of our conclusion that the impugned actions of the Telangana State power utilities are without authority or jurisdiction, it is not necessary to deal with this aspect.

46. The next aspect to be considered under these points is whether the phrase 'corporate body concerned' needs to be

read down and what is the meaning to be ascribed to the words 'between the two successor States' in Section 82 of the Reorganisation Act?

In the light of the observations made and the findings rendered hereinbefore, it is clear that the corporate bodies mentioned at Sl.Nos.5, 6 and 30 to 33 in the Ninth Schedule alone had the competence to determine the modalities for distributing the personnel between the successor bodies. The ground situation however is otherwise. Even before the appointed day, the said corporate bodies were divided with the incorporation of Genco and Transco for the State of Telangana and with the diversion of Anantapur and Kurnool Districts to APSPDCL and fresh incorporation of TSSPDCL and consequently, the original corporate bodies ceased to exist. Before such cessation, the corporate bodies concerned neither determined the modalities nor made the final distribution of the personnel. In this admitted fact situation, there is no possibility of the original corporate bodies to determine the modalities and distribute the personnel as they ceased to exist with effect from 02.06.2014.

47. The doctrine of reading down has been well established in our jurisprudence. In **Bhim Singhji and others v. Union**

of India⁶, the Supreme Court speaking through Justice Krishna

Iyer held:

“.....reading down meanings of words with loose lexical amplitude is permissible as part of the judicial process. To sustain a law by interpretation is the rule. To be trigger-happy in shooting at sight every suspect law is judicial legicide. Courts can and must interpret words and read their meanings so that public good is promoted and power misuse is interdicted.”

In **B.R. Enterprises v. State of U.P.**⁷, the Supreme

Court held:

"First attempt should be made by the Courts to uphold the charged provision and not to invalidate it merely because one of the possible interpretations leads to such a result, howsoever attractive it may be. Thus, where there are two possible interpretations, one invalidating the law and the other upholding, the latter should be adopted. For this, the Courts have been endeavouring, sometimes to give restrictive or expansive meaning keeping in view the nature of legislation, may be beneficial, penal or fiscal etc. Cumulatively it is to subserve the object of the legislation. Old golden rule is of respecting the wisdom of legislature that they are aware of the law and would never have intended for an invalid legislation. This also keeps Courts within their track and checks individual zeal of going wayward. Yet in spite of this, if the impugned legislation cannot be saved the Courts shall not hesitate to strike it down. Similarly, for upholding any provision, if it could be saved by reading it down, it should be done, unless plain words are so clear to be in defiance of the Constitution. These interpretations spring out because of concern of the Courts to salvage a legislation to achieve its objective and not to let it fall merely because of a possible ingenious interpretation. The words are not static but dynamic. This infuses fertility in the field of interpretation. This equally helps to save an Act but also the cause of attack on the Act. Here the Courts have to play a cautious role of weeding out the wild from the crop, of course, without infringing the Constitution. For doing this, its historical background, the purpose of enacting such a provision, the mischief, if any

⁶ (1981) 1 SCC 166

⁷ (1999) 9 SCC 700

which existed, which is sought to be eliminated....This principle of reading down, however, will not be available where the plain and literal meaning from a bare reading of any impugned provisions clearly shows that it confers arbitrary, uncanalised or unbridled power."

In **Calcutta Gujarati Education Society v. Calcutta Municipal Corporation**⁸, the Supreme Court observed:

"35. The rule of "reading down" a provision of law is now well recognized. It is a rule of harmonious construction in a different name. It is resorted to smoothen the crudities or ironing out the creases found in a statute to make it workable. In the garb of "reading down", however, it is not open to read words and expressions not found in it and thus venture into a kind of judicial legislation. The rule of reading down is to be used for the limited purpose of making a particular provision workable and to bring it in harmony with other provisions of the statute. It is to be used keeping in view the scheme of the statute and to fulfil its purposes."

In **Suresh Kumar Koushal v. NAZ Foundation and others**⁹, the Supreme Court held that the Courts would preferably put into service the principle of "reading down" or "reading into" the provision to make it effective, workable and ensure the attainment of the object of the Act.

48. In **Babu Manmohan Das Shah v. Bishun Das**¹⁰, the Supreme Court, adopting the ordinary rule of construction held that "the provisions of a statute must be construed in accordance with the language used therein unless there are compelling reasons such as where the literal construction would

⁸ (2003) 10 SCC 533

⁹ (2014) 1 SCC 1

¹⁰ AIR 1967 SC 643

reduce the Act to absurdity or prevent manifest legislative purpose from being carried out.” In **Municipal Corporation of Greater Bombay v. Indian Oil Corporation**¹¹, the Supreme Court while adopting purposive construction of the definition of the word ‘building’ for the purpose of levy of property tax under the Bombay Municipal Corporation Act to include oil storage tanks to be ‘building’, held that “the language of a statutory provision is not a static vehicle of ideas and concepts and as ideas and concepts change, as they are bound to do in any country like ours with the establishment of a democratic structure based on egalitarian values, the meaning and content of the statutory provision undergo a change. The law does not operate in a vacuum. It cannot be interpreted without taking into account the social, economic and political setting in which it is intended to operate. The judge has to inject flesh and blood in the dry skeleton provided by the legislature and invest it with a meaning which will harmonise the law with the prevailing concepts and values and make it an effective instrument for delivering justice.”

49. Though the legislative intention underlying Section 82 of the Reorganisation Act appears to be to entrust the function of

¹¹ 1991 Supp (2) SCC 18

determining the modalities and distribution of employees to the original corporate bodies, as a result of the action of the undivided State of Andhra Pradesh in hurriedly incorporating the corporations for the State of Telangana and making them function, this intention got frustrated. As a result of the said action, an irreversible situation has arisen where restoration of the original corporate bodies is an impossibility. Wittingly or unwittingly, the corporate bodies of both the States after incorporation of new companies for the State of Telangana, as aforesaid, have initiated an effort to constitute a Joint Committee for determining the modalities. The State of Telangana and its entities however retraced their steps and resorted to unilateral action of determining the modalities on their own without involving their counterpart bodies of the residuary State of Andhra Pradesh. The main legislative intent behind Section 82 of the Reorganisation Act being to distribute the personnel among the entities following their division, such purpose will get defeated if this Court merely stops with invalidating the action of the Telangana State entities impugned in these Writ Petitions without showing a way out to carry forward the purpose and object of Section 82 and make the provision workable. Therefore, this Court is left with no

option other than reading down Section 82 of the Act. The learned Advocate General for the State of Telangana and all other Counsel for the petitioners-employees commended this view of ours, for construing the phrase 'corporate body concerned' as 'corporate bodies concerned' of both the States of Telangana and the State of Andhra Pradesh. Such construction would not only further the object of Section 82 but also facilitates the power utilities of both the States to resume the action of determination of modalities from the stage where it was stopped after 20-12-2014, when the TSTRANSCO has nominated its Officers for constitution of a Joint Committee.

50. As regards the meaning to be ascribed to the words 'the two successor States' in Sections 68(2) and 82 of the Reorganisation Act, we are of the considered view that these words reflect inappropriate legislative drafting. In the case of the employees of public sector undertakings their personnel have to be distributed among the undertakings i.e., existing and newly created ones and therefore the question of distributing the personnel between 'the two successor States' does not arise. Again in this context we need to press into service the doctrines of reading down and *casus omissus* by reading the said phrase as

‘between the two successor public sector undertakings’. Our view of this stands fortified by a Division Bench Judgment of this Court in **G. Rama Mohan Rao** (5 supra). In its painstaking Judgment, the Division Bench held as under :

“When read in the context of Section 82, the modalities for distributing the personnel between the two successor States can only mean the modalities for distributing the personnel between the two State Public Sector Undertakings, Corporations and Autonomous Bodies, and not distribution of such personnel between the respective State Governments, as that would make employees of such Corporations/Undertakings/Companies etc., employees of the Governments of the two successor States. Accepting the construction placed on Section 82 by Sri M. Surender Rao, Learned Senior Counsel, would mean that Parliament has, by enacting the 2014 Central Act now prescribed a new mode of appointment in the State Services. Such a convoluted construction of Section 82 would result in absurdity for the reason that, if that was indeed the intention of Parliament, it was wholly unnecessary for a separate provision to be made for employees of public sector undertakings in Section 82, apart from Section 77 which brings within its ambit those employed in State Services. As the Legislative intent of Section 82 is to continue these employees, in the legal entities constituted by the successor States, the *casus omissus* in Section 82 can be supplied, and in the context of the earlier part of the very same Section, the words “*distributing the personnel between the two successor States*” can be conveniently read as “*distributing the personnel between the two successor State public sector undertakings, corporations and other autonomous bodies*”. While this Court would, ordinarily, refrain from adding words to a Statute as that would fall within the exclusive domain of Parliament, we are satisfied that the *casus omissus* must be supplied and the creases therein ironed, to clear the cobweb of ambiguity in Section 82 and to avoid absurdity.”

51. For the foregoing reasons, we hold point No.1 in the negative and against the Telangana State Government and the Telangana State power utilities. Under point No.2, we hold that the phrase “corporate body concerned” shall be read as

“corporate bodies concerned” and the words “between the two successor States” have to be construed as “two successor corporations/companies.”

Re Point 3.

52. The sole basis for the action of the Telangana State power utilities relieving certain employees with an advise to them to join in the A.P. State Power Utilities was the fact that the places of birth indicated by them at the time of their joining in service presently fall within the residuary State of Andhra Pradesh. No other method, such as, seniority, as adopted by the Kamalnadhan Committee for dividing the State Government employees or the modalities followed by the Prathyush Sinha Committee for dividing All India Service Officers, has been followed.

53. Article 16(2) of the Constitution of India forbids a person from being rendered ineligible for or discriminated against in respect of any employment or office under the State *inter alia* only on the ground of place of birth or residence or any of them, subject, however to the exception envisaged under clause (3) of Article 16 which enables the Parliament to make any law prescribing in regard to a class or classes of employment or appointment to an office under the Government, or any local

or other authority within a State or Union territory, any requirement as to residence within that State or Union Territory, prior to such employment or appointment.

54. In **A.V.S. Narasimha Rao v. State of A.P.**¹², a Constitution Bench of the Supreme Court struck down the law made by the Parliament in pursuance of clause (3) of Article 16 making a special provision for domicile within the Telangana region of the State of Andhra Pradesh for the purpose of public employment within that region, under Section 3 of the Public Employment (Requirement as to Residence) Act, 1957 and the Rules made thereunder, and making a person ineligible for appointment to a post within the Telangana area under the State Government of A.P. or to a post under a local authority in the said area unless he had been continuously residing within the said area for a period of not less than 15 years immediately preceding the prescribed date, as *ultra vires*. The order of the then State Government relieving all 'non-domicile' persons appointed on or after 1.11.1956 to certain categories of posts reserved for domiciles of Telangana under the said Act and the Rules was also struck down by the Apex Court. Referring to Article 16(2), the Supreme Court observed:

¹² (1969) 1 SCC 839

“The intention here is to make every office or employment open and available to every citizen, and inter alia to make offices or employment in one part of India open to citizens in all other parts of India. The third clause then makes an exception.

...

The legislative power to create residential qualification for employment is thus exclusively conferred on Parliament. Parliament can make any law which prescribes any requirement as to residence within the State or Union Territory prior to employment or appointment to an office in that State or Union Territory. Two questions arise here. Firstly, whether Parliament, while prescribing the requirement, may prescribe the requirement of residence in a particular part of the State; and, secondly, whether Parliament can delegate this function by making a declaration and leaving the details to be filled in by the rule-making power of the Central or State Governments.”

While repelling the argument that absolute power was given to Parliament to make any law as regards residential requirement, the Supreme Court held:

“...By the first clause equality of opportunity in employment or appointment to an office is guaranteed. By the second clause, there can be no discrimination, among other things, on the ground of residence. Realising, however, that sometimes local sentiments may have to be respected or sometimes an inroad from more advanced States into less developed States may have to be prevented, and a residential qualification may, therefore, have to be prescribed, the exception in clause (3) was made. Even so that clause spoke of residence within the State. The claim of Mr Setalvad that Parliament can make a provision regarding residence in any particular part of a State would render the general prohibition lose all its meaning. The words ‘any requirement’ cannot be read to warrant something which could have been said more specifically. These words bear upon the kind of residence or its duration rather than its location within the State. We accept the argument of Mr Gupte that the Constitution, as it stands, speaks of a whole State as the venue for residential qualification and it is impossible to think that the Constituent Assembly was thinking of residence in districts, taluqas, cities, towns or villages. The fact that this clause is an exception and came as an amendment must dictate that a narrow construction upon the exception should be placed as indeed the debates in the Constituent Assembly also seem to indicate.”

Frowning upon the “sons of the soil” policies pursued by some State Governments, the Supreme Court in **Pradeep Jain**

v. Union of India¹³ held:

“...What is fundamental, as an enduring value of our polity, is guarantee to each of equal opportunity to unfold the full potential of his personality. Anyone anywhere, humble or high, agrestic or urban, man or woman, whatever be his language or religion, place of birth or residence, is entitled to be afforded equal chance for admission to any secular educational course for cultural growth, training facility, speciality or employment. It would run counter to the basic principle of equality before the law and equal protection of the law if a citizen by reason of his residence in State A, which ordinarily in the commonality of cases, would be the result of his birth in a place situate within that State, should have opportunity for education or advancement which is denied to another citizen because he happens to be resident in State B. It is axiomatic that talent is not the monopoly of the residents of any particular State; it is more or less evenly distributed and given proper opportunity and environment, everyone has a prospect of rising to the peak. What is necessary is equality of opportunity and that cannot be made dependent upon where a citizen resides. If every citizen is afforded equal opportunity, genetically and environmentally, to develop his potential, he will be able in his own way to manifest his faculties fully leading to all round improvement in excellence. The philosophy and pragmatism of universal excellence through equality of opportunity for education and advancement across the nation is part of our founding faith and constitutional creed.”

...

“There is therefore at present no parliamentary enactment permitting preferential policies based on residence requirement except in the case of Andhra Pradesh, Manipur, Tripura and Himachal Pradesh where the Central Government has been given the right to issue directions setting residence requirements in the subordinate services. Yet, in the face of Article 16(2) some of the States are adopting ‘sons of the soil’ policies prescribing reservation or preference based on domicile or residence requirement for employment or appointment to an office under the Government of a State or any local or other authority or public sector corporation or any other corporation which is an instrumentality or agency of the State. Prima facie this would seem to be constitutionally impermissible though we do not wish

¹³ (1984) 3 SCC 654

to express any definite opinion upon it, since it does not directly arise for consideration in these writ petitions and civil appeal.”

55. In **Kailash Chand Sharma** (4 supra), the State of Rajasthan has provided for 10, 10 and 5 marks for appointment as teachers in favour of Domiciles of Rajasthan, Residents of district and Residents of rural area of district respectively. After discussing various judgments, including **A.V.S. Narasimha Rao** (12 supra) and **Pradeep Jain** (13 supra), the Supreme Court observed:

“13. Before proceeding further we should steer clear of a misconception that surfaced in the course of arguments advanced on behalf of the State and some of the parties. Based on the decisions which countenanced geographical classification for certain weighty reasons such as socio-economic backwardness of the area for the purpose of admissions to professional colleges, it has been suggested that residence within a district or rural areas of that district could be a valid basis for classification for the purpose of public employment as well. We have no doubt that such a sweeping argument which has the overtones of parochialism is liable to be rejected on the plain terms of Article 16(2) and in the light of Article 16(3). An argument of this nature flies in the face of the peremptory language of Article 16(2) and runs counter to our constitutional ethos founded on unity and integrity of the nation. Attempts to prefer candidates of a local area in the State were nipped in the bud by this Court since long past. We would like to reiterate that residence by itself — be it within a State, region, district or lesser area within a district cannot be a ground to accord preferential treatment or reservation, save as provided in Article 16(3). It is not possible to compartmentalize the State into districts with a view to offer employment to the residents of that district on a preferential basis. At this juncture it is appropriate to undertake a brief analysis of Article 16.

14. Article 16 which under clause (1) guarantees equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State reinforces that guarantee by prohibiting under clause (2) discrimination on the grounds only of religion, race, caste, sex, descent, place of birth,

residence or any of them. Be it noted that in the allied article — Article 15 — the word “residence” is omitted from the opening clause prohibiting discrimination on specified grounds. Clauses (3) and (4) of Article 16 dilute the rigour of clause (2) by (i) conferring an enabling power on Parliament to make a law prescribing the residential requirement within the State in regard to a class or classes of employment or appointment to an office under the State, and (ii) by enabling the State to make a provision for the reservation of appointments or posts in favour of any backward class of citizens which is not adequately represented in the services under the State. The newly introduced clauses (4-A) and (4-B), apart from clause (5) of Article 16 are the other provisions by which the embargo laid down in Article 16(2) in somewhat absolute terms is lifted to meet certain specific situations with a view to promote the overall objective underlying the article. Here, we should make note of two things: firstly, discrimination only on the ground of residence (or place of birth) insofar as public employment is concerned, is prohibited; secondly, Parliament is empowered to make the law prescribing residential requirement within a State or Union Territory, as the case may be, in relation to a class or classes of employment. That means, in the absence of parliamentary law, even the prescription of requirement as to residence within the State is a taboo. Coming to the first aspect, it must be noticed that the prohibitory mandate under Article 16(2) is not attracted if the alleged discrimination is on grounds not merely related to residence, but the factum of residence is only taken into account in addition to other relevant factors. This, in effect, is the import of the expression “only”.

56. In **Nikhil Himthani v. State of Uttarakhand**¹⁴, the Apex Court while dealing with certain clauses in the Bulletin issued by the Department of Medical Education, Government of Uttarakhand, *inter alia* prescribing domicile as a criterion in the matter of admission into MBBS course observed as under:

“15. We are thus of the considered opinion that to exclude the petitioner from consideration on the basis of his merit only on the ground that he was not admitted to the MBBS course through the Uttarakhand PMT would be to deny him equality of opportunity in matter of admission to the postgraduate medical course and to violate his right to equality under Article 14 of the

¹⁴ (2013) 10 SCC 237

Constitution as explained by this Court in *Pradeep Jain v. Union of India* [(1984) 3 SCC 654] .

16. We now come to Clauses 2 and 3 of the eligibility criteria in the Information Bulletin. Under Clauses 2 and 3, a domicile of Uttarakhand who has passed MBBS from a medical college of some other State having been admitted either through the 15% all-India quota or through the pre-medical test conducted by the State Government concerned has been made eligible for admission to a postgraduate medical course in the State quota. Obviously, a candidate who is not a domicile of Uttarakhand State is not eligible for admission to the postgraduate course under Clauses 2 and 3 of the eligibility criteria. Preference, therefore is given only on the basis of residence or domicile in the State of Uttarakhand under Clauses 2 and 3 of the eligibility criteria and such preference on the basis of residence or domicile within a State has been held to be violative of Article 14 of the Constitution in *Pradeep Jain v. Union of India* [(1984) 3 SCC 654] and *Magan Mehrotra v. Union of India* [(2003) 11 SCC 186].”

57. In **Charu Khurana v. Union of India**¹⁵ dealing with gender discrimination against women by the Cine Costume Make-up Artists and Hair Dressers’ Association of Mumbai, the Supreme Court has profitably referred and relied upon the judgments in **Pradeep Jain** (13 supra) and **Nikhil Himathani** (14 supra). Referring to the argument of Mr. L. Nageswara Rao, the then Additional Solicitor General, the Supreme Court held that unless a special provision, such as Article 371-D of the Constitution empowering the President to issue an order making different provisions in the matter of public employment and education for various parts of the State is made, the State or any other entity cannot indulge in such discrimination as it

¹⁵ (2015) 1 SCC 192

invites the frown of Articles 14, 15 and 21 of the Constitution of India.

58. No decision reflecting the contra position of law has been cited by any of the counsel for the Telangana State power utilities justifying the adoption of “nativity” as the criterion for relieving the writ petitioners - employees from their respective power utilities. As held by the Supreme Court in the aforesaid judgments, in the absence of any law made by Parliament in exercise of its power conferred by Article 16(3) prescribing ‘domicile’ or ‘residence’ as an eligibility criterion, it is not permissible for either the State Government of Telangana or its power utilities to adopt ‘nativity’ as a criterion. In our opinion, even the Parliament cannot make any law to curtail the right of equality of the persons after their entering the employment based on nativity or domicile. Therefore, the criterion adopted by the Telangana power utilities falls foul of the constitutional mandate prescribed under Article 16(2) of the Constitution.

Re Point No.4:

59. The two Districts of Anantapur and Kurnool which were part of APCPDCL before the creation of the State of Telangana have been reassigned to the APSPDCL by clause C(8) of the Twelfth Schedule. The submission of Sri C.V.

Mohan Reddy that in view of the said provision the need for division of the employees between the APSPDCL and the TSPDCL is obviated and the application of Section 82 of the Act has got excluded, is without any merit. Under clause C(8) of the Twelfth Schedule, the division was confined only to the territorial areas of the said two Districts. Neither the assets and liabilities nor the employees have been distributed by the said provision. Evidently, keeping this in mind, the A.P. State Government, before the appointed day, has merely divided the cadre strength between the two DISCOMS by G.O.Ms.No.24, dated 29-5-2014 while clearly envisaging therein the final allotment of the employees in future. It has also allowed the employees working in the said two Districts to continue to work in the same places till the final allotment of the employees to the respective DISCOMS is completed. It is therefore imperative that the allocation between the APSPDCL and the TSPDCL is made in the same way as allocation of the employees between the TRANSCOs and GENCOs of the two States is to be made after determining the modalities for such allocation.

Re Point No.5:

60. By G.O.Ms.No.315, dated 1-9-2014, the residuary State of Andhra Pradesh has included certain Mandals and Villages of Khammam District of the combined State of Andhra Pradesh in the East and West Godavari Districts. The Revenue Mandal of Kuknoor and Velairpadu and six villages of Burgumpadu Mandal were included in the Jangareddygudem Revenue Division, and Bhadrachalam Revenue Mandal except Bhadrachalam Revenue village, Revenue Mandals of Kunavaram, Chintoor and Vararamachandrapuram were included in the Rampachodavaram Revenue Division of the East Godavari District. All these areas were part of APNPDCL and though continued to be part of NPDCL of Telangana State. Following the said G.O., the Secretary to Government, Energy Department, Telangana Secretariat issued letter dated 25-02-2015 requesting the TSNPDCL to transfer the Distribution Network of the aforementioned Mandals to the APEPDCL. Accordingly, the TSNPDCL has issued N.O.O. (CGM-HRD) Ms.No.40, dated 5-3-2015. With regard to the bifurcation of staff, the said proceedings reads as under :

“With regard to the bifurcation of the staff, the Superintending Engineer/Opn/Khammam is directed to ensure that the staff presently working in 7 mandals from TSNPDCL and belonging to Telangana State will come back to Telangana

State and any staff from TSNPDCL and belonging to those (7) Mandals and if willing shall continue there. However, the Superintending Engineer/Opn/Khammam is directed to obtain option in the enclosed format from the employees who belongs to 7 Mandals and opt to be retained in the 7 Mandals amalgamated in APEPDCL.”

61. It is not in dispute that except the assets situated in the transferred Mandals and Villages referred to above, the division in any other manner is not involved with regard to the NPDCL of the State of Telangana. Therefore, as rightly pointed out by the learned Advocate General for the State of Andhra Pradesh, there cannot be allocation of employees between the said Company and the Distribution Companies of the State of Andhra Pradesh except to the extent of the staff working in those transferred Mandals and Villages. The final allocation with respect to those employees also needs to be done following the modalities that may be determined by the Corporate bodies of both the States.

62. In the light of the reasons given and findings rendered hereinabove, except W.P. Nos.37417, 38634 and 40438 of 2017, all other writ petitions are allowed in the following terms.

- (i) The impugned orders are declared as unconstitutional and unenforceable and they are accordingly set aside.

- (ii) The TRANSCOs and GENCOs of the States of Telangana and Andhra Pradesh and the TSSPDCL and APSPDCL shall either continue the existing joint committee or constitute a fresh joint committee/committees to determine modalities for the division of the employees within two months from today, without taking the “nativity” as the criterion.
- (iii) The division of the employees based on the criteria determined by the joint committee/committees shall be completed within four months from today.
- (iv) Till the division takes place as directed in (iii) supra, the employees working in the Telangana State power utilities, who were relieved, must be allowed to work on par with other employees without any discrimination, in any aspect.
- (v) The increments and all other service benefits, such as, Earned Leave Encashment, Leave Travel Concession etc., must be extended to these employees, if not already extended based on the impugned orders, and their seniority must

be restored with continuity of service forthwith.

They are also entitled to be considered for promotions subject to their eligibility and entitlement so long as they continue to work in the respective power utilities of the State of Telangana.

- (vi) The payments made by the Andhra Pradesh State power utilities towards salaries and other allowances, if any, of the petitioners -employees in pursuance of the interim orders of this Court, till the orders were modified by the Supreme Court, shall be reimbursed by the respective Telangana State power utilities, to their counterparts of the Andhra Pradesh State power utilities within three months from today.

63. As regards W.P. Nos.37417, 38634 and 40438 of 2017, the entitlement of the petitioners therein for being allocated to the places of their choice shall depend upon the modalities to be determined by the joint committee/committees and the allocations made based on such modalities. They shall accordingly stand disposed of.

As separate writ petitions have been filed questioning the promotions given by the Telangana State power utilities, the validity of such promotions shall be determined in those writ petitions separately.

As a sequel to disposal of the writ petitions, the pending miscellaneous applications in these writ petitions shall stand disposed of as infructuous.

C.V. NAGARJUNA REDDY, J

M.S.K. JAISWAL, J

02.02.2018

am/ bnr

Note: LR copies to be marked.

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