



In the High Court of Punjab and Haryana, at Chandigarh

1. Civil Writ Petition No. 20439 of 2020 (O&M)

U.T. Powermen Union, Chandigarh

... Petitioner(s)

Versus

Union of India and Others

... Respondent(s)

AND

2. Civil Writ Petition (PIL) No. 54 of 2022

Federation of Sectors Welfare Association, Chandigarh

... Petitioner(s)

Versus

Union of India and Others

... Respondent(s)

RESERVED ON: 31.08.2024
PRONOUNCED ON: 06.11.2024

CORAM: Hon'ble Mr. Justice Sheel Nagu, Chief Justice.
Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Ashwani Kumar Chopra, Senior Advocate
with Mr. Akshit Chaudhary, Advocate.
for the petitioner (in CWP-20439-2020).

Mr. Dhiraj Chawla and Mr. Akshit Dhiman, Advocates
for the petitioner (in CWP-PIL-54-2022).

Mr. Satya Pal Jain, Additional Solicitor General of India
with Mr. Dheeraj Jain, Senior Panel Counsel and
Ms. Neha Sharma, Senior Panel Counsel
for respondent-Union of India.

Mr. Assem Rai, Advocate
for respondent No.6 (in CWP-20439-2020).

Mr. Sumeet Mahajan and Mr. Chetan Mittal, Senior Advocates
with Mr. Saksham Mahajan, Mr. Saurabh Gautam, Ms. Shrishti
Rai, Mr. Rohit Khanna, Mr. Shrey Sachdeva and Ms. Rabani
Attri, Advocates for respondent No.7 (in CWP-20439-2020).

Mr. Amit Jhanji, Senior Standing Counsel
with Mr. Sumeet Jain, Additional Standing Counsel,
Mr. Himanshu Arora, Panel Counsel and Ms. Zaheen Kaur,
Advocate for the respondent-U.T., Chandigarh.

Anil Kshetarpal, J.

1. Brief Facts of the Case

1.1 Through this common order, with the consent of the learned counsel representing the parties, two connected petitions i.e. CWP No. 20439 of 2020 and CWP (PIL) No. 54 of 2022 shall stand disposed of.

1.2 In the considered opinion of this Court, the following two issues require adjudication: -

- I) While interpreting the statutory provisions, whether the Court is bound by the pleadings of the parties and stand adopted by them during the hearing, particularly when a prima facie opinion of the Court is conveyed, and their comments/suggestion/submissions have been specifically sought in order to give them a fair opportunity?
- II) Whether in the absence of the Electricity Board, prior finalization of the Scheme envisaged under Section 131 of the Electricity Act, 2003 (hereinafter referred to as “the 2003 Act”) is mandatory before inviting bids for privatization of the electricity supply?

1.3 Under Section 4 of the Punjab Reorganization Act, 1966 (hereinafter referred to as “the 1966 Act”), The Union Territory of Chandigarh (UT Chd.) was formed. Section 67 of the 1966 Act reads as

under: -

“67. Provisions as to certain Corporations. —(1) The following bodies corporate constituted for the existing State of Punjab, namely:—

(a) the State Electricity Board constituted under the Electricity Supply Act, 1948 (54 of 1948); and

(b) the State Warehousing Corporation established under the Warehousing Corporations Act, 1962 (58 of 1962), 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 and to such directions as may, from time to time, be issued by the Central Government.

(2) Any directions issued by the Central Government under sub-section (1) in respect of the Board or the Corporation may include a direction that the Act under which the Board or the Corporation was constituted shall, in its application to that Board or Corporation, have effect subject to such exceptions and modifications as the Central Government thinks fit.

(3) The Board or the Corporation referred to in sub-section (1) shall cease to function as from, and shall be deemed to be dissolved on, the 1st day of November, 1967, or such earlier date as the Central Government may, by order, appoint; and upon such dissolution, its assets, rights and liabilities shall be

apportioned between the successor States in such manner as may be agreed upon among them within one year of the dissolution of the Board or the Corporation, as the case may be, or if no agreement is reached, in such manner as the Central Government may, by order, determine.

(4) Nothing in the preceding provisions of this section shall be construed as preventing the Government of any of the successor States from constituting at any time on or after the appointed day, a State Electricity Board or a State Warehousing Corporation for that State under the provisions of the Act relating to such Board or Corporation; and if such a Board or a Corporation is so constituted in any of the successor States before the dissolution of the Board or the Corporation referred to in sub-section (1),—

(a) provision may be made by order of the Central Government enabling the new Board or the new corporation to take over from the existing Board or Corporation all or any of its undertakings, assets, rights and liabilities in that State, and

(b) upon the dissolution of the existing Board or Corporation, any assets, rights and liabilities which would otherwise have passed to that State by or under the provisions of sub-section (3) shall pass to the new Board or the new corporation instead of to that State.”

1.4 Under the aforesaid provisions, the electricity supply and the assets of the Board located in the area of Union Territory, Chandigarh, (UT Chd.) vested in the Chandigarh Administration which did not form its own Electricity Board but continued to manage the distribution of electricity through its Electricity Department. With effect from 10.06.2003, Sections 1 to 120 and Sections 122 to 185 of the 2003 Act came into force, whereas the remaining Sections came into force subsequently. As per para No.3 of the objects and reasons, the policy of encouraging private sector's participation in generation, transmission and distribution has been adopted which reads as under: -

“3. With the policy of encouraging private sector participation in generation, transmission and distribution and the objective of distancing the regulatory responsibilities from the Government to the Regulatory Commissions, the need for harmonising and rationalising the provisions in the Indian Electricity Act, 1910, the Electricity (Supply) Act, 1948 and the Electricity Regulatory Commissions Act, 1998 in a new self-contained comprehensive legislation arose. Accordingly it became necessary to enact a new legislation for regulating the electricity supply industry in the country which would replace the existing laws, preserve its core features other than those relating to the mandatory existence of the State Electricity Board and the responsibilities of the State Government and the State Electricity Board with respect to regulating licensees.

There is also need to provide for newer concepts like power trading and open access. There is also need to obviate the requirement of each State Government to pass its own Reforms Act. The Bill has progressive features and endeavours to strike the right balance given the current realities of the power sector in India. It gives the State enough flexibility to develop their power sector in the manner they consider appropriate. The Electricity Bill, 2001 has been finalised after extensive discussions and consultations with the States and all other stake holders and experts.”

1.5 The Government of India issued a notification on 22.06.2004 empowering the Administrators/Lieutenant Governors of the Union Territories to exercise the power and discharge the functions of the State Government within their respective territories. A Joint Electricity Regulatory Commission on 28.04.2016 made recommendations to the UT Chd. for initiating action on corporatization of the Electricity Wing. On 03.02.2020, the Chief Engineer-cum-Special Secretary approved the proposal and recommended for the issuance of DNIT for appointment of consultant for corporatization and restructuring of Chandigarh Electricity Department. The Union Home Minister sent a letter on 05.05.2020 to the Union Minister of Power to take up the matter of privatization of Power Departments in the Union Territories in a time bound manner. Pursuant thereto, the Union Minister of Power held a meeting on 12.05.2020 taking up the matter of privatization of the power distribution. The Prime Minister announced a

special economic package of ₹20,00,000/- crores equivalent to 10% of the country's GDP giving a clarion call for "Atamnirbhar Bharat" or "Self-Reliant India" movement and stated that eight sectors including the power sector required structural reforms. The Advisor, UT Chandigarh, affirmed the proposal for the said privatization and informed that bids for the appointment of transaction advisory for corporatization of the Electricity Wing of Chandigarh had already been floated. The Union Ministry of Finance on 16.05.2020 also announced various structural reforms including the privatization of the distribution in power sector in the Union Territories. On 20.05.2020, the Union Ministry of Power also requested the Union Territories to take decision of corporatization and privatization of the electricity distribution function, immediately. Thereafter, a High Level Steering Committee was constituted on 10.06.2020 and M/s Deloitte Touche Tohmatsu India Private Limited (a Japanese entity) was appointed as Transaction Advisor on 01.07.2020 for assistance in the privatization of the Electricity Wing of the Union Territory, Chandigarh. Thereafter, on 20.07.2020, the first meeting of the High-Level Steering Committee directed to ensure completion of process of privatization by 30.12.2020. Thereafter, a meeting to review the status of the privatization of Power Departments/DISCOMs in the Union Territories, was held under the Chairmanship of the Minister of State for Power on 21.08.2020 and one of the major action points emanating from the discussion was to ensure the release of bid documents before 01.10.2020 and complete the entire process

draft transfer scheme on 03.09.2020 and a communication was sent to the Union Ministry of Power for decision to be taken on several key points raised by the Chandigarh Administration. A second meeting of the High-Level Steering Committee on privatization of the Power Department in Union Territory, Chandigarh, took place on 17.09.2020. A draft Standard Bidding Document (SBD) for the selection of bidders for the purchase of majority shares was issued on 20.09.2020 which provided for privatization of the distribution licenses comprising the draft Request for Proposal (RFP) with the drafts of Employee Transfer Scheme, Shareholder Agreement, Shareholder Acquisition Agreement for the sale of 100% stake, policy directions by the Union Territory, Chandigarh and Bulk Supply Agreement seeking comments from all the stakeholders by 05.10.2020 which was extended up to 12.10.2020. The Superintending Engineer, Electricity Operation Circle had also forwarded SBD along with all other documents to all the stakeholders inviting their comments. Ultimately, the Transaction Advisor, on 29.09.2020, submitted the Chandigarh Electricity Reforms Transfer Scheme to the Administration of U.T. Chandigarh, along with the draft Policy Directions, draft Shareholder Acquisition Agreement and RFP for the selection for bidder for purchase of 100% share in SPV for the distribution and retail sale of electricity in the Union Territory, Chandigarh.

1.6 Thereafter, on 10.11.2020, notice inviting the bids for purchase of 100% shares in the distribution company from the interested entities fulfilling the qualification requirements and other conditions set out in the

RFP which was part of the SBD was issued. The U.T. Powermen Union,

Chandigarh, which is a union of the employees of U.T. Power Department, filed a civil writ petition *inter-alia* questioning the correctness of the office memorandum issued on 10.05.2020, decision taken by the Union of India on 12.05.2020 and prayed for quashment of the notice issued by the U.T. Chandigarh inviting the bids, which came up for hearing on 01.12.2020 and was admitted for regular hearing while staying the operation and effect of office memorandum dated 10.05.2020 and notice inviting the bids dated 10.11.2020. Subsequently, respondent No.7-Electricity Distribution Limited, the highest bidder, became a party to the writ petition. The detailed pleadings have been filed by the parties.

2. Arguments advanced by the Learned Counsels representing the parties

2.1 Heard the learned counsel representing the parties, at length and with their able assistance, perused the paper-book while evaluating, analyzing and considering the respective stand taken by the learned counsel representing the parties.

2.2 The learned counsel representing the parties have made oral and written submissions. In substance, non-compliance of the provisions of Section 131 of the 2003 Act which falls in Part XIII has been alleged. It is contended that before notice inviting bids was issued, the transfer scheme was neither finalized nor approved which was mandatory. Moreover, the company, as envisaged under Section 131, was not in existence before the bids were invited. The Electricity Wing of UT Chd. is in profits and 100% sale of the stakes in favor of the private entity is not appropriate.

is no mandatory requirement that an electricity supply company must be incorporated prior to finalization of the transfer scheme. They have also challenged the locus standi of the petitioners and submit that the policy decision dated 16.05.2020 has not been challenged. While referring to the objects and reasons of the 2003 Act, it is contended that for initiating the process of corporatization and subsequent privatization the loss-making electricity department is not *sine qua non*. In the end, it was contended that a policy decision should not be interfered with by the Court in exercise of its power of judicial review.

2.4 Mr. Sumeet Mahajan, Advocate, has submitted that Section 131(2) of the 2003 Act is a standalone provision and the requirements of the same has already been fulfilled.

3. Analaysis and Evaluation of the Arguments of the learned Counsel representing the parties.

3.1 Before analyzing the arguments of the learned counsel representing the parties, it is significant to note that the 2003 Act has been divided in XVIII parts including part XIII which provides for the reorganization of the Board. As already noticed, in U.T. Chandigarh, the Electricity Board was never created. Section 131 of the 2003 Act provides for vesting of the property of the Board in the State Government. It is in that context a transfer scheme is envisaged. Section 131(2) is dependent upon sub-Section (1) because it provides that the property which has vested in the State Government under sub-Section (1) shall be re-vested by the State Government in a government company or in a company or companies in

is also not applicable. Similarly, Section 132 also provides for the use of proceeds of sale or transfer of the Board etc. Section 133 is a provision related to the officers and employees in the transfer scheme. Proviso to Section 133(2) lays down that such terms and conditions on transfer shall not be in any way be less favorable than those which would have been applicable to them if there had been no transfers under the transfer scheme. Section 134 starts with a non obstante clause which overrides the provisions of the Industrial Disputes Act, 1947, or any other law in the matters related to the transfer of the employment of the officers/employees. Thus, it is evident that Part-XIII of the 2003 Act is not applicable in the present case. It is also evident from the reading of para 3 of the ‘statement of objects and reasons’ that the policy of encouraging the private sectors’ participation in generation, transmission and distribution was one of many objects while enacting the ‘2003 Act’.

3.2 It has been clarified that the Chandigarh Power Distribution Company was incorporated on 23.04.2022. The immovable assets of the Electricity Wing of U.T. Chandigarh are not proposed to be transferred. One of the arguments firmly contended by the petitioners’ counsel is that the Court cannot go beyond the stand taken by the respective parties.

3.3 It is significant to note that a Constitutional Court, while interpreting the statutory provisions, is not bound by the pleadings or the stand taken by the respective parties. Once the Statute is capable of its literal interpretation, the Court is expected to follow the same irrespective of the stand taken by the parties. The provisions are required to be interpreted

while understanding their scope, intent and uninfluenced by the respective stands of the parties.

3.4 For arguments sake, even if it is assumed that part XIII of the 2003 Act is applicable, still there is no substance in the petitioner's submissions. Section 131 of the 2003 Act is extracted as under:-

“Section 131. (Vesting of property of Board in State Government): --- (1) With effect from the date on which a transfer scheme, prepared by the State Government to give effect to the objects and purposes of this Act, is published or such further date as may be stipulated by the State Government (hereafter in this Part referred to as the effective date), any property, interest in property, rights and liabilities which immediately before the effective date belonged to the State Electricity Board (hereinafter referred to as the Board) shall vest in the State Government on such terms as may be agreed between the State Government and the Board.

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

company or companies being State Transmission Utility or generating company or transmission licensee or distribution licensee, as the case may be.

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

(3) Notwithstanding anything contained in this section, where,-

(a) the transfer scheme involves the transfer of any property or rights to any person or undertaking not wholly owned by the State Government, the scheme shall give effect to the transfer only for fair value to be paid by the transferee to the State Government;

(b) a transaction of any description is effected in pursuance of a transfer scheme, it shall be binding on all persons including third parties and even if such persons or third parties have not consented to it.

(4) The State Government may, after consulting the Government company or company or companies being State

Transmission Utility or generating company or transmission licensee or distribution licensee, referred to in sub-section (2) (hereinafter referred to as the transferor), require such transferor to draw up a transfer scheme to vest in a transferee being any other generating company or transmission licensee or distribution licensee, the property, interest in property, rights and liabilities which have been vested in the transferor under this section, and publish such scheme as statutory transfer scheme under this Act.

(5) A transfer scheme under this section may-

(a) provide for the formation of subsidiaries, joint venture companies or other schemes of division, amalgamation, merger, reconstruction or arrangements which shall promote the profitability and viability of the resulting entity, ensure economic efficiency, encourage competition and protect consumer interests;

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

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

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

undertaking; or

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

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

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

(e) mention the functions and duties of the transferee;

(f) make such supplemental, incidental and consequential provisions as the transferor considers appropriate including provision stipulating the order as taking effect; and

(g) provide that the transfer shall be provisional for a stipulated period.

(6) All debts and obligations incurred, all contracts entered into and all matters and things engaged to be done by the Board, with the Board or for the Board, or the State Transmission Utility or generating company or transmission licensee or distribution licensee, before a transfer scheme becomes effective shall, to the extent specified in the relevant transfer scheme, be deemed to have been incurred, entered into

or done by the Board, with the Board or for the State Government or the transferee and all suits or other legal proceedings instituted by or against the Board or transferor, as the case may be, may be continued or instituted by or against the State Government or concerned transferee, as the case may be.

(7) The Board shall cease to be charged with and shall not perform the functions and duties with regard to transfers made on and after the effective date. Explanation.- For the purpose of this Part, - (a) "Government company" means a Government Company formed and registered under the Companies Act, 1956. (b) "company" means a company to be formed and registered under the Companies Act, 1956 to undertake generation or transmission or distribution in accordance with the scheme under this Part."

3.5 On the careful reading of Section 131(1) of the 2003 Act, it is evident that a transfer scheme shall come into effect from the date it is published, or such future date as may be stipulated. However, Section 131 (1) deals with the transfer of the property and interest, rights and obligations of the Board in the State Government. Section 131(2) provides for re-vesting of property, interest, rights or liabilities which vested in the State Government in a government company or in a company or companies in accordance with the transfer scheme. Section 131 does not envisage existence of a transfer scheme before inviting bids. In fact, the transfer

scheme is required to be drawn up the transfer under Section 131(4) after identifying a transferee. As per Section 131(5), the transfer scheme is required to include the various provisions as enlisted in Sub Section (5). While interpreting a statutory provision, the Court is not expected to draw inferences based on assumptions and presumptions. Unless there is a categorical provision explicitly requiring the existence of a transfer scheme before the bids to identify the transferee, the Court would not interfere. The Courts shall avoid filling in perceived gaps or adding meaning that is not explicitly provided by the statute, as this could lead to unintended legal outcomes.

3.6 The petitioners are the employees of the U.T. Electricity Department. Proviso to Section 133 of the 2003 Act itself ensures that the service conditions of the employees shall not be any way be less favorable than those which would have been applicable to them if there had been no transfer under the transfer scheme. Similarly, Section 131(2) of the 2003 Act is not a standalone provision as submitted by Mr. Sumeet Mahajan, Senior Advocate. On reading of Section 131(2) it is evident that sub-Section (2) is intrinsically linked to sub-Section (1) as is evident from the first sentence of sub-Section (2).

3.7 Moreover, the scope of judicial review in a policy decision is extremely narrow. In para 46 and 47, the Supreme Court in ***Balco Employees union (Registered) v. Union of India and Others (2002) 2 SCC 333***, held that it is neither within the domain of the Courts nor scope of

policy is appropriate or whether better public policy can be evolved. The relevant paragraphs read as under:-

“46. It is evident from the above that it is neither within the domain of the Courts nor the scope of the judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are our Courts inclined to strike down a policy at the behest of a petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical.

47. Process of disinvestment is a policy decision involving complex economic factors. The Courts have consistently refrained from interfering with economic decisions as it has been recognised that economic expediencies lack adjudicative disposition and unless the economic decision, based on economic expediencies, is demonstrated to be so violative of constitutional or legal limits on power or so abhorrent to reason, that the Courts would decline to interfere. In matters relating to economic issues, the Government has, while taking a decision, right to "trial and error" as long as both trial and error are bona fide and within limits of authority. There is no case made out by the petitioner that the decision to disinvest in BALCO is in any way capricious, arbitrary, illegal or uninformed. Even though the workers may have interest in the

manner in which the Company is conducting its business, inasmuch as its policy decision may have an impact on the workers' rights, nevertheless it is an incidence of service for an employee to accept a decision of the employer which has been honestly taken and which is not contrary to law. Even a government servant, having the protection of not only Articles 14 and 16 of the Constitution but also of Article 311, has no absolute right to remain in service. For example, apart from cases of disciplinary action, the services of government servants can be terminated if posts are abolished. If such employee cannot make a grievance based on part III of the Constitution or Article 311 then it cannot stand to reason that like the petitioners, non-government employees working in a company which by reason of judicial pronouncement may be regarded as a State for the purpose of part III of the Constitution, can claim a superior or a better right than a government servant and impugn its change of status. In taking of a policy decision in economic matters at length, the principles of natural justice have no role to play. While it is expected of a responsible employer to take all aspects into consideration including welfare of the labour before taking any policy decision that, by itself, will not entitle the employees to demand a right of hearing or consultation prior to the taking of the decision.”

4. Decision

4.1 In view of the foregoing discussion, this Court finds no merits in both the writ petitions. Hence, both the writ petitions are dismissed.

4.2 The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

(Sheel Nagu)
Chief Justice

November 6th, 2024

“DK”

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No