



2024:DHC:8103



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Decided on: 21st October, 2024*+ **W.P.(C) 2200/2002**MADHYA PRADESH STATE
ELECTRICITY BOARD

..... Petitioner

versus

UOI & ORS.

..... Respondent

+ **W.P.(C) 5789/2005**

CHHATTISGARH STATE ELECTRICITY

..... Petitioner

versus

UOI & ORS.

..... Respondent

Appearances:

Mr. Raj Kumar Mehta, Ms. Himanshi Andley, Advocates for CSE.

Mr. Sakesh Kumar, Ms. Gitanjali N. Sharma, Advocates for MPSEB.

Mr. Kirtiman Singh, CGSC with Mr. Varun Rajawat, Mr. Waize Ali Noor, Mr. Ranjeev Khatana, Advocates for UoI.

Ms. Swati Surbhi & Mr. Abhishek Pandey, Advocates for State of Chhattisgarh in Item No. 1.

CORAM:**HON'BLE MR. JUSTICE PRATEEK JALAN****JUDGMENT****I. Background:**

1. These writ petitions concern the allocation of power between the States of Madhya Pradesh and Chhattisgarh, pursuant to reorganisation of the erstwhile State of Madhya Pradesh under the Madhya Pradesh Reorganisation Act, 2000 [“the Act”].

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2. Under Section 75(2) of the Act, the Central Government was empowered to determine the share of the successor states, in the entitlement of the erstwhile State of Madhya Pradesh, to power produced by Central Government undertakings [“Central sector power”]. The Union of India [“UOI”] issued a provisional allocation order on 31.01.2001, which has been challenged by Madhya Pradesh State Electricity Board [“MPSEB”] in W.P.(C) 2200/2002. The final order was issued by the UOI on 03.11.2004. This is the subject matter of challenge by the Chhattisgarh State Electricity Board [“CSEB”] in W.P.(C) 5789/2005.¹

II. Facts:

3. The erstwhile State of Madhya Pradesh was reorganised into two successor states - the States of Madhya Pradesh and Chhattisgarh, by virtue of the Act, with effect from 01.11.2000. The Act provided for the allocation of assets and liabilities between the two states. Section 58 of the Act provides for the constitution of State Electricity Boards [“SEB”] in each of the successor states. It contemplates the division of assets, rights and liabilities of the erstwhile Electricity Board between the successor states by mutual agreement, failing which by a manner in which the Central Government may deem fit.

¹ In the course of final hearing, a contention was raised by UOI that the disputes raised are amenable to the exclusive jurisdiction of the Supreme Court under Article 131 of the Constitution. By an order dated 10.04.2024, however, the petitions were held to be maintainable, having regard *inter-alia* to the judgments of the Supreme Court in *State of Meghalaya v. Union of India* [2023 SCC OnLine SC 613], *Tashi Delek Gaming Solutions Ltd. & Anr. v. State of Karnataka & Ors.* [(2006) 1 SCC 442] and *Union of India v. State of Rajasthan* [(1984) 4 SCC 238].



4. Section 75 provides for the management and development of power and water resources by the Central Government, keeping in mind the likely disadvantages that may have been caused by reason of formation of the successor states. The present case concerns exercise of power under Section 75(2), which reads as follows:-

“75(2) The Central Government shall within a period of three months from the appointed day, by order, also determine the share of the successor States in the entitlement of the existing State of Madhya Pradesh to power produced by the Central Government undertakings having due regard to the likely disadvantage which might have been occasioned to any successor State as a result of modified arrangements for generation and supply of electric power.”

5. This power was first exercised by the UOI on 31.01.2001. Out of the total allocation of 1614 MW of Central sector power [generated from five power stations], the State of Madhya Pradesh was allocated 1116 MW, whereas the State of Chhattisgarh was allocated 498 MW. The allocation from each of the power stations was provided in the following table:-

“Central sector power station	State in which located	Installed Capacity (MW)	Allocation (MW)		
			Undivided MP	MP MW(%)	Chhattisgarh MW(%)
Korba STPS	Chhattisgarh	2100	610	302 (14.38%)	308* (14.67%)
Vindhyachal STPS	MP	2260	658	552* (24.43%)	106 (4.69%)
Kakrapar APS	Gujarat	440	93	70 (15.91%)	23 (5.22%)
Kawas-I GPS	Gujarat	644	137	104 (16.15%)	33 (5.12%)
Gandhar-I GPS	Gujarat	648	116	88 (13.58%)	28 (4.32%)
Total		6092	1614	1116	498”



It was stated in the order as follows: -

“The above allocation has been worked out in accordance with the existing sharing formula taking into consideration data for one year (as available) in the absence of data for five years, as required, and hence the allocation is on provisional basis.”

6. There were some revisions to the allocation from time to time. Provisional allocations dated 31.01.2001 and 08.02.2002 were challenged by MPSEB in W.P.(C) 2200/2002. By an order dated 10.08.2004, the Court noted the submission of the learned counsel for UOI that a final order would be passed expeditiously, after giving a hearing on all issues to both the SEBs.

7. Pursuant to this order, the views of both the State Governments were heard by the Union of India on 28.09.2004. In supersession of earlier orders, the allocation of Central sector power between the two states was revised by the order dated 03.11.2004, with 1408.2 MW going to the State of Madhya Pradesh and 210 MW going to the State of Chhattisgarh, as per the following table:-

	<i>“Undivided M.P.</i>	<i>Madhya Pradesh</i>	<i>Chhattisgarh</i>
<i>Korba STPS</i>	<i>610</i>	<i>400</i>	<i>210</i>
<i>Vindhyachal</i>	<i>658</i>	<i>658</i>	-
<i>Kakrapara</i>	<i>93</i>	<i>93</i>	-
<i>Kawas CCGTI</i>	<i>139.2</i>	<i>139.2</i>	-
<i>Gandhar CCGTI</i>	<i>118</i>	<i>118</i>	-
	<i>1618.2</i>	<i>1408.2</i>	<i>210”</i>



8. As the challenge by CSEB in W.P.(C) 5789/2005 is against the final order dated 03.11.2004, that petition was taken up for hearing first.

III. Re: W.P.(C) 5789/2005

A. Submissions of learned counsel for the parties

9. Mr. R.K. Mehta, learned counsel for CSEB, submitted that the final allocation reduced the allocation of the State of Chhattisgarh from 498 MW to 210 MW, by deviating from the established formula for allocation of Central sector power, known as the “Gadgil Formula,” which had correctly been employed in the first allocation dated 31.01.2001. He referred to communication of the UOI dated 27.04.2000, which explained the formula for allocation of Central sector power, evolved in the late 1970s, in the following manner:-

A) 15% unallocated and kept at the disposal of the UOI.

B) 10% to the state in which the power station is situated.

C) 75% amongst the states of the region, in accordance with energy consumption and Central Plan Assistance given to the state during the previous 5 years.

10. Mr. Mehta submitted, and it was not disputed, that this formula had been followed until the allocation dated 31.01.2001, albeit on the basis of data from one year rather than five years. He contended that, applying the same formula with five years’ data, the allocation of the State of Chhattisgarh would rise to 503 MW, but the UOI reduced the allocation



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to 210 MW, without giving any reasons or rationale for the aforesaid departure from the pre-existing formula, or for the data actually used.

11. Mr. Kirtiman Singh, learned Central Government Standing Counsel, submitted that Section 75(2) of the Act does not prescribe any particular formula upon which the allocation is required to be made, but only lays down a general guideline that “*the likely disadvantage which might have been occasioned to any successor State as a result of modified arrangements for generation and supply of electric power*” be considered while making the allocation. He produced the relevant record, pursuant to the direction of the Court dated 21.11.2023. He argued that the final allocation had been undertaken on the basis of the power consumption ratio between the two states, which has been held to be a valid basis for allocation in *M.P. SEB v. Union of India*.² The allocation has then been adjusted for the State sector power already available to each of the States.

12. With reference to the original allocation of 31.01.2001, Mr. Singh submitted that the formula employed contemplated 10% of the plant capacity to be allocated to the home state and the balance 90% to be distributed amongst the states on the basis of two metrics - being population and energy consumption, each of which was given equal weightage. He explained that the population component was computed in the ratio of 72:28 and the energy consumption ratio as 79:21, between the States of Madhya Pradesh and Chhattisgarh respectively. Although the original allocation was thus on the basis of the pre-existing formula, Mr. Singh submitted that the communication of the UOI dated 27.04.2000,

² (2006) 10 SCC 736.



relied upon by Mr. Mehta, itself shows that the formula was not intended to be applied perennially.

13. Mr. Singh drew my attention to the following averments in the affidavit filed by UOI in reply to W.P.(C) 5789/2005:-

*“16-19 It is humbly submitted that after reorganization of the State of Madhya Pradesh the generating stations were allocated to the reorganised State Electricity Boards of Madhya Pradesh (MPSEB) and Chhattisgarh (CSEB) on the principle of geographical nexus as agreed to by these two States. Both the States agreed to allocation of state sector generating capacity on the basis of geographical nexus Accordingly 31.90% of the generating capacity of the undivided State passed to the State of Chhattisgarh as against the power consumption of 22.97% in the State. **The allocation of power from Central Sector Generating Station was made considering the consumption pattern of Madhya Pradesh and Chhattisgarh. As against the consumption ratio of 22.97% Chhattisgarh got 26.97% of total capacity** (including power from Central Section Generating Stations). The table showing the manner in which power has been allocated to the State of Chhattisgarh and Madhya Pradesh is annexed as Annexure R-2.*

*20-23 In reply to para 20-23 it is humbly submitted that a temporary arrangement for allocation of power to the successor States of Madhya Pradesh and Chhattisgarh from the Central Generating Stations was made by the provisional order dated 31.1.2001. **While issuing the final order on 3.11.2004 the 10% share of home State i.e., Chhattisgarh in Korba STPS was given to Chhattisgarh. The remaining share of undivided Madhya Pradesh in the generating stations of CPSUs had been allocated to reorganised Madhya Pradesh considering the fact that reorganised State of Madhya Pradesh got less share in the state sector projects i.e., Madhya Pradesh got 61.1% of installed capacity of State sector project as against power consumption ratio of 77.03%.**”³*

14. Mr. Singh submitted that the final allocation of Central sector power, based upon the power consumption ratio, was then adjusted for the State sector power available to each State. According to him, such



adjustment was justified to compensate for the consequences of reorganisation of the State on generation and supply of electric power, and was thus within the considerations mandated by Section 75(2) of the Act.

15. Mr. Sakesh Kumar, learned counsel for MSEB, supported the submissions of Mr. Singh, and also relied upon the judgment of the Supreme Court in *M.P. SEB v. Union of India*.⁴

16. In rejoinder, Mr. Mehta submitted that the UOI was not entitled to rely upon the material produced, as the order dated 03.11.2004 was itself silent on the basis of allocation. He relied upon the judgment of the Supreme Court in *Mohinder Singh Gill v. Chief Election Commr.*,⁵ to contend that reasons which are not apparent from the order, cannot be supplemented by way of an affidavit.

17. Mr. Mehta reiterated that the pre-existing formula ought to have been used, even for the final allocation based upon the five-year data, which was erroneously ignored. Mr. Mehta lastly submitted that the adjustment of the allocation based on the availability of the State sector power was unjustified, as the statutory provision is concerned only with the allocation of Central sector power. He argued that such an adjustment is tantamount to taking an irrelevant factor into account, contrary to the statutory scheme.

B. Analysis

³ Emphasis supplied. In the course of arguments, Mr. Singh states that the figure of “61.1%” quoted above should read 66.8%.



18. The procedural objection raised by Mr. Mehta, with regard to reliance upon the material placed on record is, in my view, misconceived. The UOI has placed on record relevant extracts from its records to enable the Court to examine the decision-making process. The role of the writ Court is to judicially review the process by which a decision is made, for which the writ of certiorari requires the authorities to produce the record before the Court for its examination. This is exactly what has been done in the present case.⁶

19. The judgment in *Mohinder Singh Gill*,⁷ cited by Mr. Mehta, concerns a decision of the Election Commission to cancel an election in one constituency and order a re-poll. The decision of the Commission did not contain the reasons which led to it, but the Chief Election Commissioner filed an affidavit before the Supreme Court, explaining the grounds for his decision. In this context, the Court held as follows:

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji [Commr. of Police, Bombay v. Gordhandas Bhanji, 1951 SCC 1088 : AIR 1952 SC 16] :

“Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant

⁴ *Supra* (note 2).

⁵ (1978) 1 SCC 405.

⁶ The material considered by the Court has also been supplied to all counsel.

⁷ *Supra* (note 5).



to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.”

Orders are not like old wine becoming better as they grow older.”

20. It is clear from the above that the concern of the Court was that reasons cannot subsequently be assigned, to justify an arbitrary or capricious exercise of power. This principle does not forbid the Court from looking at the contemporaneous record to determine the issues between the parties. The judgment thus does not address the situation prevailing in the present case.

21. Mr. Mehta also cited the judgment of the Supreme Court in *Kranti Associates (P) Ltd. v. Masood Ahmed Khan*,⁸ to submit that all orders, judicial, quasi-judicial and administrative, must be supported by reasons. This principle does not admit of any challenge, but the requirements of the principle of natural justice must be assessed based upon the circumstances of each case. The adequacy of the grounds available on the record will be assessed in the subsequent part of this judgment.

22. The records produced before the Court reveal as follows:

- a) On the reorganisation of the erstwhile State of Madhya Pradesh, the generating stations in the State were allocated between the MPSEB and CSEB based on the principle of geographical nexus, as agreed to between the two States. Using this method, the State of Madhya Pradesh was allotted 68.1% of the State sector power from the erstwhile State of Madhya Pradesh, and the State of Chhattisgarh was allotted 31.90%. As against this, the consumption



ratio between the states was 77.03% and 22.97%, respectively. The division of State sector power, as illustrated in the reply filed by MPSEB to W.P.(C) 5789/2005, is as follows:

<i>“Particular</i>	<i>Undivided MP</i>	<i>MPSEB</i>	<i>Chhattisgarh</i>
<i>Thermal Power Own</i>	<i>3387.50</i>	<i>2147.50</i>	<i>1240.00</i>
<i>Hydel Power own</i>	<i>867.17</i>	<i>747.17</i>	<i>120.00</i>
<i>Total: own</i>	<i>4254.67</i>	<i>2894.67</i> <i>(68%)</i>	<i>1360.00</i> <i>(32%)”</i>

- b) The provisional allocation dated 31.01.2001 was based upon a communication of the Central Electricity Authority [“CEA”] dated 11.04.2001, which was based upon a consumption ratio of 79:21 for the States of Madhya Pradesh and Chhattisgarh respectively. The ratio was expressly made subject to review on the basis of availability of longer range of energy consumption data.
- c) The State of Chhattisgarh had consumed only 30% of the Central sector share in January and February 2001 and 32% during the period January to October, 2001, as noted in a meeting taken by the Chairman, CEA on 27.11.2001. Pursuant to the meeting, the UOI issued a notification dated 08.02.2002, temporarily allocating 296 MW to Madhya Pradesh out of the original allocation of 498 MW

⁸ (2010) 9 SCC 496.



to Chhattisgarh, leaving the State of Chhattisgarh with an allocation of 202 MW.

- d) After certain further modifications, the power supply position for the period April, 2003 to March, 2004 showed an energy deficit of 13.2% for the State of Madhya Pradesh and 2.7% for the State of Chhattisgarh. For the next twelve months, the deficit worked out at 13.5% and 1.7% respectively.
- e) While issuing the final allocation order dated 03.11.2004, 10% share of the home state in the Korba STPS was given to the State of Chhattisgarh. The remaining share of the Central sector power was allocated to the State of Madhya Pradesh, considering the pre-existing State sector allocation, as well as the power consumption ratio. Consequently, the consolidated power allotted to the State of Madhya Pradesh, after accounting for the Central sector power allotted by the final order dated 03.11.2004 is 73.33% as against a consumption ratio of 77.03%. The consolidated power allotted to the State of Chhattisgarh is 26.67% as against a consumption ratio of 22.97%. The table illustrating this calculation was annexed to the affidavit filed by the UOI in reply to W.P.(C) 5789/2005, and is reproduced below:

<i>“Division of Power, Assets and Liabilities</i>		<i>Undivided MPEB</i>	<i>MPSEB</i>	<i>CSEB</i>
<i>Allocation of Power</i>	<i>Central Sector</i>	<i>1618.2 MW</i>	<i>1408.2 MW</i>	<i>210 MW (12.98%)</i>



		(100%)	(87.02 %)	
	State Sector	4268 MW (100%)	2908 MW (68.1%)	1360 MW (31.9%)
	Total	5886.2 MW (100%)	4316.2 MW (73.33%)	1570 MW (26.67%)
Power consumption Ratio		100%	77.03	22.97%”

23. While adjudicating these contentions in the context of the present petitions, it must be borne in mind that judicial review is not an appellate remedy, but a constitutionally mandated tool to examine the process adopted by the decision-making agency. This may include scrutiny of the factors which were taken into account by the decision-maker, to ensure that entirely irrelevant considerations have been eschewed, thus avoiding the vice of arbitrariness or caprice. However, so long as the authority has taken such considerations into account as are relevant to the final decision and are in accordance with the relevant statutory scheme, the Court’s task would not extend to examining the merits of the decision, or even to reassess the wisdom of the tools employed by the authority to reach its decision. It is for the decision-making authority to choose the factors which inform its ultimate decision, and to assign appropriate weightage to each. So long as those factors are not completely irrelevant, or significant considerations have not been ignored, the Court will not impose its own choices over those of the administrative authority.



24. Examining the impugned order dated 03.11.2004 in this context, it must first be noted that the statutory provision does not mandate adherence to any particular formula. The Central Government, at the time of the initial allocation, used the Gadgil Formula, but this does not imply that the formula was the only methodology upon which the allocation could be made in the future.

25. In the absence of any statutory mandate that a particular formula must be used, it was open to the UOI to employ an alternative metric. The judgments of the Supreme Court in *Natural Resources Allocation, In re, Special Reference No. 1 of 2012*⁹, and *Manohar Lal Sharma v. Principal Secy.*¹⁰, make it clear that allocation of resources may be undertaken by different methodologies. The choice of factors is best left to the administrative authorities, so long as they are not irrelevant or arbitrary.

26. Looked at from this perspective, I am unable to find fault with the methodology adopted by the UOI. That the power consumption ratio is a relevant factor for allocation of resources, is clear from the judgment of the Supreme Court in *Madhya Pradesh State Electricity Board vs. Union of India*¹¹, which concerns the same parties and arises out of the very same statute, viz. Madhya Pradesh Reorganisation Act, 2000. By an order dated 23.05.2003, under Section 58(4) of the Act, the Central Government had provisionally allocated liabilities of the erstwhile Madhya Pradesh State Electricity Board between the two successor electricity boards. The Court noticed the notification dated 04.11.2004, in which the power consumption ratio was one of the factors taken into

⁹ (2012) 10 SCC [Paragraphs 137-146].

¹⁰ (2014) 9 SCC 516 [Paragraph 110].



account. The Court reiterated the limitations of the writ jurisdiction in situations of this nature and specifically upheld the use of the power consumption ratio as a basis for the allocation of resources: -

*“54. The only question which survives now is as to whether the order dated 4-11-2004 regarding division of assets and liabilities between two successor Boards is just and proper. **The apportionment of current assets and liabilities has been made on the basis of power consumption ratio of the States. Any other variable might not have any rational nexus with the apportionment of current assets and liabilities.** It was submitted that the Central Government had adopted the most rational method of apportionment of current assets and liabilities as the power consumption ratio had a rational link with the subject-matter of apportionment. It was further submitted that any change from this principle would have resulted in the same grievance from CSEB. Long-term assets and liabilities were divided in the ratio of 90 : 10 and hence, overall, MPSEB had been given 85% of the assets and 84% of the liabilities. **The action on the part of the Central Government cannot hence be said to be irrational.** It may be observed that the revenue generation capacity would be the most favourable variable to them as would be clear from the table given below:*

Criteria	Madhya Pradesh	Chhattisgarh
Consumption	77%	23%
Connected load	79%	21%
Energy consumption	77%	23%
Installed capacity	67%	33%
Revenue generation	64%	36%” ¹²

27. I am therefore unable to accept the argument that the UOI was mandated to follow the Gadgil Formula, or that it has not applied its mind to relevant factors while reaching its final decision.

28. Mr. Mehta finally submitted that, even if the power consumption ratio had been used, the UOI was not entitled to adjust the allocation by deducting the amount of State sector power available to each of the

¹¹ *Supra* (note 2).



successor states. In this context, the statutory guidance provided in Section 75(2) of the Act is relevant. The Act itself enjoins that the UOI is to have “*due regard to the likely disadvantage which might have been occasioned to any successor state as a result of modified arrangements for generation and supply of electric power*”. The lack of State sector power available to the successor state is, in my view, the kind of disadvantage that the statute itself contemplates. The allocation of Central sector power on the basis of consumption requirements has been adjusted to account for the resources already available to the state. There is no unreasonableness or illegality in such an approach, so as to warrant interference of the writ Court.

29. For the aforesaid reasons, I do not find any reason to interfere with the impugned order dated 03.11.2004, in exercise of the writ jurisdiction of the Court.

IV. Re: W.P.(C) 2200/2002

30. By way of this writ petition, the State of Madhya Pradesh assails a provisional allocation order dated 31.01.2001, issued by the Union of India under the Madhya Pradesh Reorganization Act, 2000. The said order was superseded by the final allocation order dated 03.11.2004, which has been upheld by virtue of the judgment above in W.P.(C) 5789/2005. The writ petition has, therefore, been rendered infructuous.

V. Conclusion

¹² Emphasis supplied.



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31. For the reasons stated aforesaid, W.P.(C) 5789/2005 is dismissed, but with no order as to costs.

32. Consequently, W.P.(C) 2200/2002 is disposed of as infructuous.

PRATEEK JALAN, J.

OCTOBER 21, 2024

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