

HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION No. 2024 of 2004

PETITIONER : Sharad Kumar Shrivastava &
Others.
V E R S U S
RESPONDENTS : Chhattisgarh State Electricity
Board & Another

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION
OF INDIA

SB: Hon'ble Shri Satish K. Agnihotri, J.

Present: Shri P.S.Koshy with Shri Vivek Sharma and Shri Vaibhav
Shukla, Advocates for the petitioners.
Shri A.S.GAharwar, Shri Jitendra Pali and Shri Majid Ali,
Advocates for the respondent No. 1.
Shri V.V.S.Moorthy, Deuty Advocate General for the State/
respondent No. 2.

O R D E R

(Delivered on 6th day of May, 2013)

1. The petitioner seeks to challenge the legality and validity of the notification dated 24.06.2004 (Annexure P/5), which was issued by the first respondent/Board in exercise of its power under clause (c) of Section 79 of the Electricity Supply Act, 1948 (*for short 'the Supply Act'*) whereby the respondent/Board adopted the promotion policy of the State Government, as per the notification dated 06.09.2003 (Annexure P4).
2. The facts, in brief, as projected by the petitioners are that the petitioners are Senior Engineers in the respondent No. 1/Board. The

engineers of the Board are promoted as per the policy circulated by the erstwhile Madhya Pradesh Electricity Board, on 30.06.1999. The policy dated 30.06.1999 (Annexure P/3) provided for reservation for the category of Scheduled Caste (*for short 'the SC'*) and Scheduled Tribe (*for short 'the ST'*) to the extent of 15% and 18% to Class II post, promotion from Class II to Class II post, and Class II to Class I post, however, there was no reservation in Class I category and the same was in accordance with merit cum seniority. The State Government, by notification dated 06.09.2003 (Annexure P/4) framed rules for reservation and promotion in the civil services for SC and ST category candidates as Chhattisgarh Civil Services Promotion Rules, 2003 (*for short 'the Rules, 2003'*). Rule 5 of the Rules, 2003 provides reservation on the basis of merit cum seniority for the purpose for promotion in Class I category to the extent of 15% for SC and 23% for ST candidates. The respondent/Board, by notification dated 24.06.2004 in purported exercise of powers under section 79(c) of the Supply Act, adopted the rules provided in the Rules, 2003. By this notification, it was also decided to relax the qualifying experience criteria for all cadres by two years as on 31.12.2003 as one time measure. It was also decided to obtain undertaking from all the concerned employee to the effect that the promotion will be subject to the final apportionment of the officers/employees between MPSEB and CSEB and they should be ready even for demotion if the situation so warranted. The erstwhile

Electricity Board, vide order dated 17.03.1999 decided to give time bound promotion facility to its various engineers and other officers, taking into consideration the delay in promotion of engineers of different categories. According to this decision, all the Assistant Engineers (*for short 'the AE'*) who had put 9 years of service, were also to be paid higher pay scale of Executive Engineer (*for short 'the EE'*) and the EE who had put in 18 years of service, were also to be paid higher scale of Superintending Engineer (*for short 'the SE'*) and were to be designated as Additional Superintending Engineer (*for short 'the ASE'*). It was further decided that the AEs who had put in 15 years of service including training period with the Board shall be promoted to the post of EE and those engineers who had put in 23 years of service including training, shall be promoted to the post of SE. As per the promotion policy dated 17.03.1999 (Annexure P/6), the petitioner No. 1, 2 and 5 were designated as ASE and they are entitled for promotion to the post of SE under the time bound promotion scheme. The petitioner No. 8 has already been promoted to the post of SE.

3. It is the case of the petitioners that under the notification dated 24.06.2004 (Annexure P/5), the respondent/Board was contemplating to promote Junior Officers belonging to SC and ST category from Class I to Class I higher category i.e. from the post of EE to SE. The engineers belonging to SC and ST categories, have already been benefited by the reservation policy of the Board at the time of

recruitment and thereafter, at the time of promotion under time bound promotion scheme. The impugned notification dated 24.06.2004, being without authority of law, will create anomaly in the service conditions of the present petitioners.

4. Shri Koshy, learned counsel appearing for the petitioner, would submit that the impugned notification (Annexure P/5) was issued by the respondent/Board adopting the promotion policy of the State Government dated 06.09.2003 (Annexure P/4. The impugned notification was issued by the respondent/Board exercising powers conferred under section 79(c) of the Supply Act. The Supply Act was repealed by virtue of enforcement of the Electricity Act, 2003 (*for short 'the Act, 2003'*) vide S.O. 669(E), dated 10.06.2003, published in Gazette of India, Extraordinary, Pt. II, Sec. 3(ii), dated 10.06.2003. Thus, exercise of power conferred under section 79(c) of the Supply Act, is illegal. Consequently, the impugned notification is void and nullity.
5. On the other hand, Shri Gaharwar, learned counsel appearing with Shri Jitendra Pali and Shri Majid Ali, Advocates would submit that the provisions of section 79(c) of the Supply Act was saved under the provisions of section 185 of the Act, 2003 which clearly provides that notwithstanding such repeal made under section 185 (e), *ibid*, all directives issued, before the commencement of this Act, by a State

Government under the enactments specified in the Schedule shall continue to apply for the period for which such directions were issued by the State Government. The State Government, by notification dated 13.08.2003 (Annexure R/17) extended the period for enforcement of the Act, 2003 for a period of six months. Thereafter, the Government of India, by communication dated 02.06.2004 (Annexure R/18), made it clear that the Chhattisgarh State Electricity Board shall continue as the State Transmission Utility and a Licensee for a further period of six months beyond 10.06.2004 in pursuance of section 172 (a) of the Act, 2003. The aforesaid request of the State Government was accepted by the Central Government. Thus, exercise of power under section 79(c) of the Supply Act for adoption of the notification dated 24.06.2004 (Annexure P/5) of the State Government for reservation and promotion was valid and the first respondent/Board was fully competent to issue the notification.

6. Having heard learned counsel appearing for the parties, it is evident that Ministry of Power, vide notification dated 10.06.2003 (Annexure R/16) notified that sections 1 to 120 and sections 122 to 185 of the Act, 2003 shall come into force *w.e.f.* 10.06.2003. Thus, the Supply Act stood repealed on publication of the notification. Section 172(d) of the Act, 2003 deals with transitional provisions. Under Section 172(d) of the Act, 2003, the State Government, by notification dated 13.08.2003 (Annexure R/17) notified that the provisions of the Act, 2003 would

not come into effect for six months from 10.06.2003. Thus, in the State of Chhattisgarh, the provisions of the Act, as aforesaid, came into force *w.e.f.* 09.12.2003 and thereafter, no extension could have been granted as per section 172(d) of the Act, 2003. Thus, in case of the State of Chhattisgarh, the provisions of Section 79(c) of the Supply Act, stood repealed on 09.12.2003. Section 172 deals with the transitional provisions wherein the Chhattisgarh State Electricity Board became the State Transmission Utility and a Licensee under the provisions of this Act for a period of one year from the appointed date or such earlier date as the State Government may notify and was empowered to perform the duties and functions of State Transmission Utility and a Licensee. Under the proviso also, the State Government, by notification was authorized to function as the State Transmission Utility or a licensee for such further period beyond the said period of one year as may be mutually decided by the Central Government and the State Government. These provisions were transitional provisions in respect of the functioning of the State Electricity Board in the form of State Transmission Utility or a Licensee and thereafter, there was a provision for appointment of different companies dealing with several functions of the Electricity Board, separately.

7. Contention of learned counsel for the respondents that since the State Electricity Board was authorized to extend the period as the State Transmission Utility or a licensee and also for the purpose of creation

of different companies, thus, the respondent was competent to exercise powers under the provisions of the Supply Act, is noticed to be rejected. Section 185 (e) protects the decision taken before 9.12.2003 when the Act, 2003 came into force in the State of Chhattisgarh, not thereafter.

8. The Act, 2003 was enacted with a purpose to have a national policy and plan whereunder, under section 133 of the Act, 2003, all the officers and employees of the Board shall be transferred to different companies created under the provisions of this Act and during the transition period, there was no power with the first respondent/Board to change the service conditions of the officers and the employees, as the Board was in transition stage in the form of state transmission utility.
9. Section 131 (7) of the Act, 2003 clearly provides for closure of the Board and to creation of companies registered under the Companies Act to undertake generation, transmission or distribution in accordance with the scheme. Thus, decision of the first respondent/Board was not valid.
10. The first respondent/Board stood dissolved and new companies have been created. The petitioners have not taken any steps to substitute the first respondent/Board and also to implead the private persons who were entitled to benefits under the impugned notification dated 24.06.2004 (Annexure P/5). Thus, in view of that, it is held that the

impugned notification, though, was without authority of law. However, the officers, who have already availed the benefits under the notification dated 06.09.2003 (Annexure P/4) shall not be disturbed.

There was no stay of the operation of the said notification .

11.Resultantly, the writ petition stands disposed of. No order asto costs.

JUDGE

Amit